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DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 718

RIN: 0560–AG55

Skip Row and Strip Crops

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: The Farm Service Agency (FSA) is amending its regulations to revise the provisions governing how densely a producer's acreage must be planted in order for the full acre to be considered planted for program purposes in the Non-insured Crop Disaster Assistance Program and other programs. Under the revised rule the amount of a field considered planted will be limited to certain specified widths beyond the actual planted rows, which will allow for a more uniform determination of acreage.

EFFECTIVE DATE: November 29, 2002.

FOR FURTHER INFORMATION CONTACT: Daniel McGlynn (202) 720–3463.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule is issued in conformance with Executive Order 12866 and has been determined to be significant and has been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule because FSA is not required by 5 U.S.C. 553 or any other provisions of the law to publish a notice of final rule making regarding the subject matter of this rule.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988. The provisions of this final rule preempt State laws to the extent such laws are inconsistent with the provisions of this rule.

Executive Order 12372

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

Unfunded Mandates Reform Act of 1995

This rule contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Paperwork Reduction Act

This rule does not contain any new information collection requirements.

Executive Order 12612

It has been determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of Government.

Discussion of the Final Rule

For purposes of the operation of several programs, including the Non-Insured Crop Disaster Assistance Program (NAP), operated under rules set out at 7 CFR part 1437, it is necessary and important to determine how much of a field can be considered planted to a particular crop, and that determination can raise issues of how densely the field must be planted in order for the full acreage to be considered planted. Such determinations for NAP and other programs administered by FSA and the Commodity Credit Corporation are made using standards that are set out in regulations found at 7 CFR part 718. In particular, 7 CFR 718.107 addresses this issue. For example, persons filing for NAP benefits will indicate that they had a loss on a certain number of acres. That loss, in numbers of acres, will be multiplied by a yield per acre to arrive at a gross estimate of the amount of loss. This means, accordingly, that the number of acres considered committed to the crop can be critical in determining the amount of payments that the farmers can receive. In recent years, several situations have arisen in which farmers have reported unusual planting patterns that raise a question of whether the pattern reflected a desire to increase benefits rather than simply a desire to farm in the most productive manner possible for the market for the crop. These situations have prompted a review of the rule. That review has indicated that an overhaul of the measurement regulation is in order. Such an overhaul is undertaken in this rule, which provides that acreage planted to a crop will only be considered to be the rows of the crop itself and a set amount (as defined in the rule) on either side of the actual planted rows (including those rows which might be the last rows before a row is skipped and the first row after the skip). In the past, under the terms of the pre-existing regulation, it could occur that the full area of the skip might be considered to be planted even though the space was far greater than that which would normally occur between rows. It is believed that this revised rule will be fairer and will give a more accurate measure of the amount of the field that should be considered planted to a crop, assuming an intended full production of the crop.

The rules in 7 CFR part 718 were revised in response to the Agricultural Market Transition Act of 1996, Pub. L. No. 104–127, which, among other things, in section 196, re-instituted NAP within the CCC as it is now constituted. Originally, NAP was administered by the Federal Crop Insurance Program and the Risk Management Agency. After the 1996 Act, new rules were finalized for NAP (61 FR 69005, December 31, 1996) and also for the generic regulations in 7

CFR part 718 (61 FR 37552, July 18, 1996), which cover a number of issues common to a number of programs, including NAP. Section 161 of the 1996 Act provides for an exemption from the normal provisions of rule-making for implementing decisions made pursuant to that Act, and this exemption applies in this instance as well because this rule is part of the overall implementation of the 1996 Act and the administration of NAP. The rule has been designed to accommodate normal planting practices and to be flexible where needed to handle the special needs of special crops or special conditions in special areas.

Also, to provide for a transition from the old rules that would not occur in the middle of a crop year, the amended regulation in § 718.107 provides that the new provisions will apply only to the 2003 and subsequent crops.

List of Subjects in 7 CFR Part 718

Determination of Acreage and Compliance, Reconstitution of Farms, Allotments, Quotas, and Acreages.

For reasons set out in the preamble, 7 CFR part 718 is revised as follows:

PART 718—PROVISIONS APPLICABLE TO MULTIPLE PROGRAMS

1. The authority citation for 7 CFR part 718 continues to read as follows:

Authority: 7 U.S.C. 1373, 1374, 7201 *et seq.*; 15 U.S.C. 714b and 714c; and 21 U.S.C. 889.

2. Revise § 718.107 to read as follows:

§ 718.107 Measuring acreage including skip row acreage.

(a) When one crop is alternating with another crop, whether or not both crops have the same growing season, only the acreage that is actually planted to the crop being measured will be considered to be acreage devoted to the measured crop.

(b) Subject to the provisions of this paragraph and section, whether planted in a skip row pattern or without a pattern of skipped rows, the entire acreage of the field or subdivision may be considered as devoted to the crop only where the distance between the rows, for all rows, is 40 inches or less. If there is a skip that creates idle land wider than 40 inches, or if the distance between any rows is more than 40 inches, then the area planted to the crop shall be considered to be that area which would represent the smaller of: a 40-inch width between rows, or the normal row spacing in the field for all other rows in the field—those that are not more than 40 inches apart. The allowance for individual rows would be made based on the smaller of: actual spacing between those rows, or the normal spacing in the field. For example, if the crop is planted in single wide rows that are 48 inches apart, only 20 inches to either side of each row (for a total of 40 inches between the two rows) could, at a maximum, be considered as devoted as the crop and normal spacing in the field would control. Half the normal distance between rows will also be allowed beyond the outside planted rows not to exceed 20 inches and will reflect normal spacing in the field.

(c) In making calculations under this section, further reductions may be made in the acreage considered planted to the extent it is determined that the acreage is more sparsely planted than would be normal using reasonable and customary full production planting techniques.

(d) The Deputy Administrator for Farm Programs has the discretionary authority to allow row allowances other than those specified in this section in those instances in which crops are normally planted with spacings greater or less than 40 inches, such as in the case of tobacco, or where other circumstances are presented which the Deputy Administrator finds justifies that allowance.

(e) Paragraphs (a) through (d) of this section shall apply with respect to the 2003 and subsequent crops. For preceding crops, the rules in effect on January 1, 2002, shall apply.

Signed at Washington, DC, on November 27, 2002.

James R. Little,

Administrator, Farm Service Agency.

[FR Doc. 02–30702 Filed 11–29–02; 1:54 pm]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FVO2–905–2 FIR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Change in the Minimum Maturity Requirements for Fresh Grapefruit

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule increasing the minimum maturity requirements for fresh grapefruit under the marketing order for Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida (order). The Citrus Administrative Committee (Committee), which locally administers the order, recommended this change for Florida grapefruit.

EFFECTIVE DATE: January 2, 2003.

FOR FURTHER INFORMATION CONTACT: Melissa Schmaedick, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Post Office Box 1035, Moab, Utah 84532; telephone: (435) 259–7988, Fax: (435) 259–4945; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 84 and Marketing Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

USDA is issuing this rule in conformance with Executive Order 12866.

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.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which

the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect an increase in the minimum maturity requirements for fresh Florida grapefruit. This action continues to increase the minimum maturity from a 7.5 percent soluble solids (sugars) and a 7.0 to 1 solids to acid ratio with a sliding scale minimum ratio of 6.0 to 1, to an 8.0 percent soluble solids (sugars) and a 7.5 to 1 solids to acid ratio with a sliding scale minimum ratio of 7.2 to 1. This change results in a sweeter grapefruit taste and should increase consumer demand for fresh grapefruit. This action was recommended by the Committee at its meeting on May 22, 2002, during which thirteen Committee members voted in favor of this change, and three voted against the change.

Section 905.52 of the order provides authority for the establishment of grade and size requirements for Florida citrus. One element of grade is maturity. Section 905.306 of the order specifies, in part, the minimum grade requirements for grapefruit. The current grade requirement for Florida grapefruit is a U.S. No. 1. The specifics of this grade requirement are listed under the U.S. Standards for Grades of Florida Grapefruit (7 CFR 2851.750–2851.784).

The U.S. Standards for Grades of Florida Grapefruit (Standards) specify minimum and/or maximum allowances for discoloration, firmness, color, texture, form/shape, varietal characteristics, and maturity. The Standards define maturity by referencing the 1995 Florida Department of Citrus (FDOC) Florida Citrus Code, Chapter 601 and the FDOC Official Rules Affecting the Florida Citrus Industry, Part 1, Chapter 20–13. The 1995 Florida Citrus Code specifies a minimum maturity of 7.5 percent soluble solids (sugars) and a 7.0 to 1 ratio of solids to acid. The FDOC also employs a Citrus Fruit Maturity Chart as a sliding scale to determine equivalent soluble solids and ratio maturity combinations. The sliding scale allows for a range of soluble solids and ratio combinations that are comparable to the required minimum maturity level rather than just a fixed minimum requirement. With the sliding scale, a higher level of soluble solids (sugars) allows for a lower solids to acid ratio. In other words, grapefruit with higher soluble solids can have a lower solids to acid ratio and meet the minimum maturity requirements.

This rule continues to increase the minimum maturity requirements for fresh Florida grapefruit. At its meeting on May 22, 2002, the Committee recommended increasing the minimum maturity level for fresh grapefruit from a 7.5 percent soluble solids (sugars) and a 7.0 to 1 solids to acid ratio with a sliding scale minimum ratio of 6.0 to 1 as specified in the Standards, to an 8.0 percent soluble solids (sugars) and a 7.5 to 1 solids to acid ratio with a sliding scale minimum of 7.2 to 1.

The Committee had formed a subcommittee to examine the maturity issue, the Subcommittee on Grapefruit Maturity Standards (subcommittee). The subcommittee determined that the minimum maturity requirements for fresh grapefruit should be increased and forwarded this idea to the full Committee at the May meeting. The subcommittee's presentation to the full Committee focused on declining fresh grapefruit sales, which it attributed to consumer dissatisfaction with taste. Furthermore, it discussed the potential to increase consumer demand through increasing the sweetness of grapefruit, particularly early in the season.

The subcommittee found that consumers would be more likely to make repeat purchases if their initial taste experience with early season grapefruit was positive. By increasing the minimum maturity requirements, the industry could meet consumer demand for a sweeter tasting fruit. The subcommittee based its recommendation to increase the minimum maturity standard on recent market research studies and cited industry requests and support for a higher maturity standard.

The research studies referenced by the subcommittee were undertaken by the FDOC, or at their request, and were designed to determine those factors causing sales of fresh grapefruit to decline and those that cause demand to increase. Much of the decline in sales was attributed to consumer dissatisfaction with bitter tasting grapefruit early in the harvest season which, in turn, resulted in consumer reluctance to make repeat purchases. The studies indicate that consumer demand for grapefruit would increase if the initial taste experience of consumers was positive. In other words, repeat purchases are linked to consumer satisfaction with taste (Florida Department of Citrus, Consumer Research, February 20, 2002, conducted by a market research group; Grapefruit Sensory Evaluation Study, February 19, 1997, conducted by the FDOC; FDOC Grapefruit Strategy Working Session, February 20, 2002, conducted by a market research group).

The subcommittee stated there was also substantial industry support for an increase in the minimum maturity requirements, and referenced memos received by the Committee in support of such an increase. The memos received were from several industry groups representing nearly 80 percent of fresh grapefruit shipments. The memos specified the need to increase sales and identified an increased maturity standard as a means to improve consumer demand, particularly through repeat purchases.

The Committee, in its deliberations following the subcommittee's presentation, discussed the state of the fresh grapefruit market. Discussion centered around declining market demand and the need to improve consumer purchasing patterns, particularly for early season and repeat purchases. The Committee drew from information provided by the subcommittee, market studies, and from Committee members, and determined that providing the consumer with a sweeter, more mature grapefruit will likely result in improved fresh fruit sales.

The purpose of this action is to help stabilize the market for Florida grapefruit and improve producer returns by strengthening demand and increasing the number of repeat purchases of grapefruit. Market research indicates that this rule provides the consumer with a grapefruit that is closer to consumer expectations in terms of sweetness, thereby resulting in an increased demand for fresh grapefruit.

According to the FDOC Florida Citrus Outlook 2001–2002 report, domestic consumption of fresh Florida grapefruit has been declining in recent years, dropping from 7-pounds per capita consumption in the early 1980's to 6-pounds per capita consumption in the late 1990's. The Economic Research Service, USDA, listed per capita domestic consumption of grapefruit as 5.19 pounds in 2000.

This reduced consumption is reflected in shipping data for fresh grapefruit. The Committee's 2000–2001 Annual Statistical Report indicates that shipments of Florida fresh grapefruit have declined 28 percent over the past five seasons, dropping from 22.1 million boxes (1⅗ bushels) in 1996–1997, to 15.9 million boxes in 2000–2001. For the same period, FDOC reports show that domestic consumption of fresh grapefruit has declined nearly 38 percent, from 18.6 million cartons (⅘ bushel) during the 1996–1997 season to

11.6 million cartons for the 2000–2001 season.

The FDOC also notes that Florida's share of the U.S. fresh grapefruit market has declined from 71.7 percent in 1990–1991, to 44.0 percent in 2001–02. Much of this lost market share has gone to Texas. Texas shipped an estimated 273 million pounds of fresh grapefruit to the domestic and Canadian markets in 2000–2001 compared to 184.3 million pounds in 1995–96, and accounted for over 31 percent of those market shipments in 2000–2001, up from 17 percent in 1995–96. Texas had a 32 percent increase in shipments to those markets over the 1995–96 season. During the same period, to the same markets, Florida fresh grapefruit shipments decreased by 32 percent.

The Committee raised the question as to the minimum maturity requirements for fresh Texas grapefruit. One reason for the increasing demand for Texas grapefruit may be its sweeter taste. Texas currently has a higher minimum maturity requirement than Florida. Minimum maturity requirements for fresh Texas grapefruit include a 9.0 percent soluble solids (sugars) and a 7.2 to 1 solids to acid ratio.

The Committee recognizes that Florida grapefruit production has been declining along with demand. However, the lower market supply has not stabilized market prices. Florida accounts for nearly 80 percent of total domestic grapefruit production. Production for the 2000–2001 season was approximately 46 million boxes. This compares to production of approximately 47.1 million boxes for the 1998–99 season, and is substantially less than the 55.8 million boxes produced in 1996–97. While this represents nearly an 18 percent decrease in Florida grapefruit production, lower supply did not result in higher producer returns as demand for fresh Florida grapefruit also declined during this period.

The weakening demand for Florida fresh grapefruit has contributed to declining on-tree prices and has led to economic abandonment of fruit. According to the National Agricultural Statistical Service, on-tree prices for fresh Florida grapefruit, fell from an average of $6.52 per box in 1999–2000 to an average of $4.80 per box in 2000–2001. Due to low economic returns the past several years, some producers have resorted to leaving portions of their crops unharvested. Economic abandonment has impacted the Florida grapefruit industry for four of the past six seasons, reaching an apex of 12 percent of total production in the 1997–1998 season. Abandoned fruit accounted for 4 percent of production in the 2000–2001 and the 2001–02 seasons.

The Committee believes that the over shipment of smaller-sized red seedless grapefruit contributes to poor returns and lower prices. To address this situation the Committee has recommended weekly percentage of size regulation under § 905.153 for the last five seasons. This regulation limits the volume of small sizes entering the market during the regulated period. Under weekly percentage of size regulation, f.o.b. prices and on-tree returns increased and movement stabilized as compared to years with no percentage of size regulation. Weekly percentage of size regulation has helped improved the situation, but it has not solved all the problems. Consequently, the Committee believes it is important to also address the demand side of the market.

The Committee's recommendation to increase the minimum maturity requirements recognizes that due to the loss of market demand, decreasing production and limiting shipments alone cannot adequately stabilize weakening prices. In its efforts to achieve market stabilization, the Committee has turned its focus to increasing consumer demand. The Committee's recommendation to increase the minimum maturity requirement seeks to increase demand by meeting consumer preferences with a sweeter tasting grapefruit.

The Committee's recommendation is supported by several recent market studies. FDOC research on consumer purchasing attitudes towards grapefruit demonstrates the need for increasing sweetness in grapefruit taste. Research results indicate that taste is a crucial factor in consumer grapefruit purchasing patterns, particularly repeat purchases (Grapefruit Sensory Evaluation Study, February 19, 2002, conducted by the FDOC).

One study, compiled in April of 2002 by the FDOC, Blue Ribbon Committee on Grapefruit, links the 30-percent decline in fresh grapefruit sales in less than 10 years to customer attrition and consumer perceptions of inconsistent taste. Another study conducted by the Opinion Dynamics Corporation, a market research group (February 20, 2002), states that taste is by far the most important consideration in consumer purchases of fruit.

A ''Grapefruit Sensory Evaluation Study'' conducted by the FDOC in 1997, concluded that the major determinant of repeat purchases of fresh grapefruit was the flavor of the consumer's first grapefruit purchase of the season. The results of this study indicate a strong correlation between sweetness of flavor and consumer's willingness to make additional purchases. The more bitter the consumer's initial grapefruit experience, the less likely the consumer was to make an immediate repeat purchase. Conversely, increased sweetness resulted in increased repeat purchases of fresh grapefruit.

An additional study prepared by the Compendium Group, a market research group, for the FDOC Grapefruit Strategy Working Session, February 2002, also stressed the importance of consumer perceptions and expectations in purchasing decisions. According to this study, consumers associate sweetness of grapefruit flavor to the overall quality of the fruit. The study states ''consumers want consistent fruit that tastes the way they want it.''

In addition to the above-mentioned market research, there is strong industry support for an increase in the minimum maturity requirements. Industry support for an increase in the minimum maturity requirements was indicated through memos representing nearly 80 percent of Florida grapefruit production. Indian River Citrus League requested, in a memo to the Committee, a raise in the minimum maturity to 8.0 percent soluble solids and a 7.2 to 1 solids to acid ratio, a ratio slightly lower than ultimately recommended by the Committee. Florida Citrus Packers and the Peace River Citrus Growers Association supported an even larger increase in the minimum maturity standard. Several Committee members also expressed strong support for an increase.

The Committee's recommendation to raise the minimum maturity standard incorporates its belief that a sweeter fresh grapefruit is more attractive to consumers, and that consumer satisfaction with taste will lead to an increase in repeat purchases. In turn, greater demand for fresh grapefruit benefits the industry as a whole, as increased demand will likely help stabilize market prices.

While the recommendation to increase the minimum maturity standard was accepted by a majority of Committee members, some raised concerns about the impact of the higher standards on the different grapefruit producing regions and on early market sales. These concerns provided the basis for the three Committee members who opposed the Committee's recommendation.

One concern was that grapefruit production in areas lying to the north of the dominant, central grapefruit growing region could be disadvantaged due to differences in growing conditions. One

member indicated there were some areas in the northern production region that may not be able to reach the higher maturity standard regardless of the use of a sliding scale, and, therefore, be excluded from the market. Variety of rootstock and geographic differences in soil and climate were listed as possible reasons for some production not being able to meet the higher standard.

Although some fruit may not meet the higher maturity standard, it is expected that it represents a very small percentage of the overall crop. The Committee's recommendation represents only a slight increase in the minimum maturity and includes a sliding scale. The sliding scale provides producers additional flexibility in meeting the higher standard. Also, the sliding scale helps producers in differing regions of the production area to meet the higher maturity requirements without compromising the desired outcome of a sweeter grapefruit taste.

Florida citrus maturity samples also indicate that the majority of Florida grapefruit will meet the higher maturity level, albeit later in the season. Therefore, while some fruit may require longer maturing periods before harvest, the majority of Florida citrus is expected to meet the higher standard at some point during the season. It is estimated that less than 2 percent of the Florida grapefruit crop will not make the higher maturity in a typical growing season.

Committee members also countered that, although a small percentage of Florida grapefruit production may not be able to meet the higher maturity standard, this percentage pales in comparison to the amount of grapefruit production currently left unharvested due to low economic returns. Several million boxes of grapefruit were left on the tree four of the past six seasons.

Another concern raised was that the higher maturity standard requires some fruit to be left on the tree longer than current industry practice, and that some producers will then forfeit the more lucrative early-season sales. A concern over a potential loss of competitive advantage was also voiced by the Gulf Citrus Growers Association (GCGA), which indicated in a memo to the Committee its opposition to an increase in the maturity standard. The southern production region has historically benefited from early-season sales as climate conditions allow their grapefruit production to mature sooner than the rest of the production area.

The FDOC maturity sampling results indicate that while soluble solids (sugars) levels are on average well over 8.0 from the onset of the grapefruit harvest season, average grapefruit ratio solids to acid levels in Florida grapefruit generally do not increase over 7.0 to 1 until the month of October, nearly one month after the traditional harvest season begins. Hence, a portion of Florida grapefruit crop will not meet the higher maturity requirements until slightly later in the season. However, maturity samples also indicate that meeting the increased maturity requirements later in the season is practicable for the majority of the Florida grapefruit industry as average soluble solids and solids to acid ratio levels are consistently above the recommended minimum threshold.

While the increase in minimum maturity could cause a delay in some fruit being released into the higher priced, early-season market, the Committee pressed the importance of meeting consumer expectations of flavor in order to secure repeat purchases. There is a push to get fruit into the market early to take advantage of high prices available at the beginning of the season. However, early fruit tends to be less mature. The availability of this early, less mature fruit can negatively impact repeat purchases and reduce demand in the long term. In addition, the higher maturity requirements apply to all Florida fresh grapefruit. This change impacts the entire industry, not just individual regions. Any harvesting delays resulting from this increase in maturity will impact all regions of the production area.

Committee members stated that while an increase in the minimum maturity standard could delay the release of some grapefruit onto the market, the potential opportunity costs of losing early-season sales will be more than compensated for by consumers buying grapefruit more frequently due to its sweeter, more appealing taste. Furthermore, the Committee estimated that only a small percentage of total Florida fresh grapefruit shipments will be affected by this change in the minimum maturity standard. In addition, the whole industry benefits from a stronger market demand and increased consumer satisfaction.

Taking into consideration the above concerns, the Committee believes increasing the maturity standard will benefit the industry. The Committee believes the higher maturity requirements will result in a sweeter grapefruit taste and improve producer returns through increased consumer purchases of fresh grapefruit by addressing consumer preferences for a more appealing taste. Moreover, as maturity naturally increases throughout the season, the overall impact on industry shipments will be equal to or less than 2 percent of the total grapefruit crop. Also, the sliding scale allows some flexibility for handlers to meet the higher maturity requirements without compromising the desired sweeter grapefruit taste.

This rule continues to raise the minimum maturity requirements from a 7.5 percent soluble solids (sugars) and a 7.0 to 1 solids to acid ratio with a sliding scale minimum ratio of 6.0 to 1, to an 8.0 percent soluble solids (sugars) and a 7.5 to 1 solids to acid ratio with a sliding scale minimum of 7.2 to 1. The sliding scale is based on the FDOC Citrus Fruit Maturity Chart, and is as follows:

Minimum total solids (sugars), %	Solids to acid minimum ratio
8.0 to (not including) 9.1.	7.50 to 1
9.1 to (not including) 9.2.	7.45 to 1
9.2 to (not including) 9.3.	7.40 to 1
9.3 to (not including) 9.4.	7.35 to 1
9.4 to (not including) 9.5.	7.30 to 1
9.5 to (not including) 9.6.	7.25 to 1
9.6 and greater	7.20 to 1

Section 8e of the Act provides that when certain domestically produced commodities, including grapefruit, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. Since this rule increases the minimum maturity requirements under the domestic handling regulations, a corresponding change to the import regulations must also be accomplished. A rule making a similar change to the maturity requirements under the import regulations will be issued as a separate action.

Final Regulatory Flexibility Analysis

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

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

behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 75 grapefruit handlers subject to regulation under the order and approximately 11,000 producers of citrus in the regulated area. Small agricultural service firms, which include handlers, are defined by the Small Business Administration (SBA) 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 (13 CFR 121.201).

Based on industry and Committee data, the average annual f.o.b. price for fresh Florida grapefruit during the 2001–02 season was approximately $6.98 per 4/5-bushel carton, and total fresh shipments for the 2001–2002 season were estimated at 31.68 million cartons. Approximately 33 percent of all handlers handled 72 percent of Florida grapefruit shipments. Using the average f.o.b. price, at least 66 percent of grapefruit handlers could be considered small businesses under SBA's definition. Therefore, the majority of Florida grapefruit handlers may be classified as small entities. The majority of Florida grapefruit producers may also be classified as small entities.

There has been a significant decline in consumer purchases of fresh Florida grapefruit. The Committee believes that taste is one of the prime factors effecting demand and repeat purchases. This rule continues in effect an increase in the minimum maturity requirements from a 7.5 percent soluble solids and a 7.0 to 1 solids to acid ratio with a sliding scale minimum ratio of 6.0 to 1, to an 8.0 percent soluble solids (sugars) and a 7.5 to 1 solids to acid ratio with a sliding scale minimum ratio of 7.2 to 1. The increase in maturity results in a sweeter tasting fruit, particularly during the early months of the harvest season, and should increase consumer demand for fresh grapefruit. The Committee made its recommendation at its May 22, 2002, meeting, in a vote of thirteen in favor of this change, with three opposed. This rule continues in effect the modifications made to the grade provisions of § 905.306. Authority for this action is provided in § 905.52 of the order.

The increased minimum maturity requirements result in a sweeter grapefruit being released into the marketplace, particularly during the early months of the season. Lower maturity, which often translates into a more tart or bitter grapefruit taste, is typical of early season fresh-picked grapefruit. Market research indicates that a sweeter grapefruit taste is more desirable to consumers and could contribute to more repeat purchases of fresh grapefruit.

A ''Grapefruit Sensory Evaluation Study'' conducted by the FDOC in 1997, concluded that the major determinant of repeat purchases of fresh grapefruit was the flavor of the consumer's first grapefruit purchase of the season. The results of this study indicate a strong correlation between sweetness of flavor and consumer's willingness to make additional purchases. The more-bitter the consumer's initial grapefruit experience, the less likely the consumer was to make an immediate repeat purchase. Conversely, increased sweetness resulted in increased repeat purchases of fresh grapefruit.

The Committee discussed the potential costs associated with this action. It was mentioned that some producers could be disadvantaged by increased costs. Such costs may include, for example, the need for additional maturity checks and fruit that does not meet the higher maturity requirements.

The changes in this rule may require some producers to run additional maturity checks prior to harvest and shipping to ensure maturity. While additional maturity checks could be required for some, such checks are considered a standard practice within the industry and are not expected to result in significant increased costs to producers. Additional maturity tests could be avoided by simply delaying the harvest of the groves in question. Also, the overall impact of this change on shipments is expected to be minimal. Because grapefruit continues to mature throughout the season, the overall impact on industry shipments should be small, with only a small part of the grapefruit crop, equal to or less than 2 percent of overall production, possibly not meeting the increased maturity. The sliding scale also provides some additional flexibility to help producers meet the higher maturity requirements.

This rule may necessitate a delay in the onset of the fresh grapefruit harvest for some producers. This may mean selling fruit later in the season, and possibly missing the higher prices typically available in the early-season. However, the higher maturity requirements apply to all Florida fresh grapefruit. This change will impact the entire industry, not just individual regions. Any harvesting delays resulting from this increase in maturity will impact all regions of the production area.

In addition, it is anticipated that this change will result in higher consumer satisfaction and more repeat purchases, which should strengthen demand and stabilize prices. Therefore, the Committee believes the benefits gained from increased sales as a result of more frequent consumer purchases outweigh any losses associated with slightly lower prices received for shipments delayed due to increased maturity requirements. Any additional harvesting costs should also be compensated for through increased sales and stability in on-tree prices.

The purpose of this rule is to help stabilize the market and improve producer returns by increasing the number of repeat purchases of grapefruit, particularly earlier in the season. Based on the information given above, market research indicates this rule provides the consumer with a product that is closer to consumer expectations in terms of sweetness of flavor, therefore resulting in an increased demand for fresh grapefruit. The opportunities and benefits of this rule are expected to be available to all grapefruit handlers and producers regardless of their size of operation.

The Committee considered alternatives to taking this action. One alternative considered was a fixed maturity rate near the level identified in the market research studies of 8.5 percent soluble solids and an 8.0 to 1 solids to acid ratio or higher. Committee members believed this option would be too drastic of a change to effectuate in one season. While market research demonstrates that consumer tastes prefer a higher soluble solids (sugars) and ratio combination and sweeter taste, many producers would not be able to achieve that level until much later into the season. Therefore, this option was rejected.

Another alternative considered was a fixed maturity rate of 8.0 percent soluble solids and a 7.5 to 1 solids to acid ratio without the addition of an equivalent soluble solids and solids to acid ratio sliding scale. However, due to geographical and climactic differences between varying regions in the production area, some Committee members believed that some producers would have more difficulty in achieving the fixed rate, therefore disproportionately foregoing the more lucrative early season sales. Therefore, this alternative was also rejected.

The Committee also discussed leaving the regulations as previously issued. However, the majority of Committee members agreed that some change to minimum maturity was necessary to improve consumer demand for fresh grapefruit and to help them compete in the present market. Consequently, this alternative was also rejected.

This rule will not impose any additional reporting or recordkeeping

requirements on either small or large Florida grapefruit handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule. However, as previously stated, grapefruit have to meet certain requirements set forth in the standards issued under the Agricultural Marketing Act of 1946 (7 CFR 1621 *et seq.*). Standards issued under the Agricultural Marketing Act of 1946 are otherwise voluntary.

The Committee's meeting was widely publicized throughout the citrus industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the May 22, 2002, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

An interim final rule concerning this action was published in the **Federal Register** on August 28, 2002. Copies of the rule were mailed by the Committee's staff to all Committee members and grapefruit handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register and USDA. That rule provided for a 60-day comment period, which ended October 28, 2002.

One comment was received during the comment period. The comment favored the regulation as published. The commenter believes that this is a positive move for the industry. According to the commenter, if the marketing season is delayed until better tasting grapefruit is available, consumers will not be as hesitant to make repeat purchases and may purchase more often. Accordingly, no changes are made to the rule based on the comment received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that finalizing this interim final rule, without change, as published in the **Federal Register** (67 FR 55101; August 28, 2002) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

Accordingly, the interim final rule amending 7 CFR part 905, which was published at 67 FR 55101 on August 28, 2002, is adopted as a final rule without change.

Dated: November 26, 2002.

A. J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–30584 Filed 12–2–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. FV02–989–6 FIR]

Raisins Produced From Grapes Grown In California; Decrease in Desirable Carryout Used to Compute Trade Demand

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule that decreased the desirable carryout used to compute the yearly trade demand for raisins covered under the Federal marketing order for California raisins (order). The order regulates the handling of raisins produced from grapes grown in California and is administered locally by the Raisin Administrative Committee (Committee). This action continues to decrease the amount of tonnage available early in the season and is expected to help the industry reduce an oversupply of California raisins.

EFFECTIVE DATE: January 2, 2003.

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

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

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

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

This rule continues to decrease the desirable carryout used to compute the yearly trade demand for raisins regulated under the order. Trade demand is computed based on a formula specified in the order, and is used to determine volume regulation percentages for each crop year, if necessary. Desirable carryout, one factor

in this formula, is the amount of tonnage from the prior crop year needed during the first part of the next crop year to meet market needs, before new crop raisins are available. This action continues to decrease the desirable carryout for Natural (sun-dried) Seedless (NS) raisins from a rolling average of 3 to 2 months of prior year's shipments over the past 5 years, dropping the high and low figures, and dividing the remaining sum by three, or 60,000 natural condition tons, whichever is higher. This action also continues to decrease the desirable carryout for all other varietal types of raisins covered under the order from a rolling average of 3 to 2½ months of prior year's shipments over the past 5 years, dropping the high and low figures, and dividing the remaining sum by three. These actions were recommended by the Committee at meetings held on June 27 and July 24, 2002.

The order provides authority for volume regulation designed to promote orderly marketing conditions, stabilize prices and supplies, and improve producer returns. When volume regulation is in effect, a certain percentage of the California raisin crop may be sold by handlers to any market (free tonnage) while the remaining percentage must be held by handlers in a reserve pool (reserve) for the account of the Committee. Reserve raisins are disposed of through certain programs authorized under the order. For instance, reserve raisins may be sold by the Committee to handlers for free use or to replace part of the free tonnage raisins they exported; used in diversion programs; carried over as a hedge against a short crop the following year; or disposed of in other outlets not competitive with those for free tonnage raisins, such as government purchase, distilleries, or animal feed. Funds generated from sales of reserve raisins are also used to support handler sales to export markets. Net proceeds from sales of reserve raisins are ultimately distributed to the reserve pool's equity holders, primarily producers.

Section 989.54 of the order prescribes procedures to be followed in establishing volume regulation and includes methodology used to calculate volume regulation percentages. Trade demand is based on a computed formula specified in this section, and is also part of the formula used to determine volume regulation percentages. Trade demand is equal to 90 percent of the prior year's shipments, adjusted by the carryin and desirable carryout inventories.

At one time, § 989.54(a) also specified actual tonnages for desirable carryout for each varietal type regulated. However, in 1989, these tonnages were suspended from the order, and flexibility was added so that the Committee could adopt a formula for desirable carryout in the order's rules and regulations. The formula has allowed the Committee to periodically adjust the desirable carryout to better reflect changes in each season's marketing conditions.

The formula for desirable carryout has been specified since 1989 in § 989.154. Initially, the formula was established so that desirable carryout was based on shipments for the first 3 months of the prior crop year—August, September, and October (the crop year runs from August 1 through July 31). This amount was gradually reduced to 2½ months in 1991–92, 2¼ months in 1995–96, and to 2 months in 1996–97. The Committee reduced the desirable carryout between 1991–1997 because it believed that an excessive supply of raisins was available early in a new crop year creating unstable market conditions.

In 1998, the Committee determined that, because of the reduced desirable carryout, not enough raisins were being made available for growth. Thus, the desirable carryout was increased to 2½ months of prior year's shipments to allow for a higher trade demand figure and, thus, a higher free tonnage percentage, making more raisins available to handlers, especially for immediate use early in the season when supplies are often tight. This action also allowed desirable carryout to move towards what handlers actually hold in inventory at the end of a crop year, or about 100,000 tons. The Committee continued this practice and, in 2000, desirable carryout was changed to equal a rolling average of 3 months of prior year's shipments (August, September, and October) over the past 5 years, dropping the high and low figures.

June 27, 2002, Recommendation

At a meeting on June 27, 2002, the Committee reviewed the desirable carryout level. Most Committee members believe that the supply of free tonnage raisins on the market has once again become excessive and is contributing to unstable market conditions. The following table illustrates how handler inventories for NS raisins have been building in recent years:

CARRYOUT INVENTORY OVER PAST 5 YEARS

Crop years	Carryout inventory (Natural condition tons)
2001–02	133,815 (estimated)
2000–01	116,131
1999–2000	101,946
1998–99	98,291
1997–98	92,769

To moderate the oversupply of marketable tonnage early in the crop year, the Committee recommended reducing the desirable carryout level for all varietal types of raisins from a rolling average of 3 months (August, September, and October) to 2½ months (August, September, and one-half of October) of prior year's shipments over the past 5 years, dropping the high and low figures. Committee staff estimated that this change to the desirable carryout level would reduce the 2002 trade demand for NS raisins by 15,000 tons. Decreasing the trade demand will reduce the free tonnage percentage, thus, making less free tonnage available to handlers for immediate use.

The Committee's vote on this action was 41 in favor and 5 opposed. Two of the members voting no commented that the large carryout at the end of the current crop year was due mainly to an extra 32,000 tons of reserve raisins that were purchased by handlers in September 2001. They believe that the carryout problem will correct itself next season. Other members commented that this action would create a hardship on producers by reducing the free tonnage percentage, thereby reducing producer payments. After much deliberation, the majority of Committee members supported reducing the desirable carryout from a rolling average of 3 to 2½ months of shipments over the past 5 years, dropping the high and low figures.

Most of the discussion at the Committee's meeting concerned the desirable carryout level for NS raisins. NS raisins are the major commercial varietal type of raisin produced in California. With the exception of the 1998–99 crop year, volume regulation has been implemented for NS raisins for the past several seasons. However, the Committee also believes that the decrease in desirable carryout should apply to the other varietal types of raisins covered under the order.

July 24, 2002, Revised Recommendation for NS Raisins

The raisin industry continued to explore other avenues to reduce the oversupply of California raisins, including implementing a ''surplus pool

and non-harvest'' program for the 2002 crop year. However, rulemaking would be required as appropriate.

The Committee met on July 24, 2002, and revisited its oversupply situation and the desirable carryout issue. As a result, the Committee voted to further reduce the NS supply by decreasing the NS desirable carryout to a rolling average of 2 months (August and September) of prior year's shipments over the past 5 years, dropping the high and low figures, or 60,000 natural condition tons, whichever is higher. Committee staff estimated that this would reduce the 2002 trade demand for NS raisins by another 15,000 tons, or a total of 30,000 tons. The desirable carryout for all other varietal types would remain at the 2½ month level recommended in June 2002.

The Committee's vote on this action was 32 in favor, 10 opposed, and 2 abstentions. The members voting no were primarily concerned that this action would reduce the free tonnage percentage and producer payments.

Although this action tightens the supply of raisins available early in the season, handlers will still be provided an opportunity to increase their inventories, if necessary, by purchasing raisins from the reserve pool under order-mandated 10 plus 10 offers and other releases of reserve raisins available under the order. The 10 plus 10 offers are two offers of reserve pool raisins, which are made available to handlers each season. For each such offer, a quantity of raisins equal to 10 percent of the prior year's shipments is made available for free use. Although this rule tends to tighten the supply of raisins early in the season, handlers will still have the opportunity to obtain additional raisins from the 10 plus 10 offers. Thus, paragraph (a) in § 989.154 is modified accordingly.

Final Regulatory Flexibility Analysis

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

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

There are approximately 20 handlers of California raisins who are subject to regulation under the order and approximately 4,500 raisin producers in the regulated area. Small agricultural service firms are defined by the Small Business Administration (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. Thirteen of the 20 handlers subject to regulation have annual sales estimated to be at least $5,000,000, and the remaining 7 handlers have sales less than $5,000,000. No more than 7 handlers, and a majority of producers, of California raisins may be classified as small entities.

This rule continues to reduce the desirable carryout used to compute the yearly trade demand for raisins regulated under the order. Trade demand is computed based on a formula specified under § 989.54(a) of the order. It is also part of another formula used to determine volume regulation percentages for each crop year, if necessary. Desirable carryout, one factor in this formula, is the amount of tonnage from the prior crop year needed during the first part of the next crop year to meet market needs, before new crop raisins are available. This rule continues to reduce the desirable carryout specified in paragraph (a) of § 989.154 for NS raisins from a rolling average of 3 months (August, September, and October) to 2 months (August and September) of prior year's shipments for the past 5 years, dropping the high and low figures, and dividing the remaining sum by three, or 60,000 natural condition tons, whichever is higher. This rule also continues to reduce the desirable carryout for all other varietal types covered under the order from 3 months (August, September, and October) to 2½ months (August, September, and one-half of October) of prior year's shipments for the past 5 years, dropping the high and low figures, and dividing the remaining sum by three.

The desirable carryout level applies uniformly to all handlers in the industry, whether small or large, and there are no known additional costs incurred by small handlers. As previously mentioned, reducing the desirable carryout will reduce the trade demand and free tonnage percentage, thus making less raisins available to handlers early in the season. This action is expected to help reduce the burdensome supply of California raisins, thereby improving market conditions. Handlers will be provided opportunities throughout the crop year to purchase raisins from the reserve pool to increase their inventories.

The Committee considered a number of alternative levels of desirable carryout. The Committee has an appointed subcommittee, which periodically holds public meetings to discuss changes to the order and other issues. The subcommittee met on June 26, 2002, and discussed desirable carryout. Some industry members supported maintaining the status quo. Others supported an incremental reduction to the desirable carryout, reducing the level to a rolling average of 2¾ months in 2002, and to a rolling average of 2½ months in 2003. The subcommittee ultimately recommended to the full Committee in June that the desirable carryout be reduced for all varietal types to a rolling average of 2½ months of prior year's shipments for the past 5 years, dropping the high and low figures, and dividing the remaining sum by three. The full Committee adopted the subcommittee's June recommendation.

As mentioned earlier, the raisin industry continued to explore other avenues to reduce the oversupply of California raisins, including implementing a ''surplus pool and non-harvest'' program for the 2002 crop year. However, rulemaking would be required as appropriate.

The Committee revisited the desirable carryout issue on July 24, 2002. At that meeting, the Committee reviewed an alternative proposal that would revise the trade demand formula by eliminating the adjustment for carryin and carryout inventory. The Committee also reviewed the merits of reducing the desirable carryout for NS raisins to a rolling average of 2 months of prior year's shipments over the past 5 years, dropping the high and low figures, and dividing the remaining sum by three, or 60,000 natural condition tons, whichever is higher. After much discussion, the majority of Committee members supported further reducing the desirable carryout for NS raisins to this level. Committee staff estimated that this would reduce the 2002 trade demand for NS raisins by another 15,000 tons, or a total of 30,000 tons. The desirable carryout for all other varietal types would remain at the 2½ month level recommended in June 2002.

This rule imposes no additional reporting or recordkeeping requirements on either small or large raisin handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Finally, USDA has not

identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

In addition, the Committee's subcommittee meeting on June 26, 2002, and the Committee's meetings on June 27 and July 24, 2002, where this action was deliberated, were public meetings widely publicized throughout the raisin industry. All interested persons were invited to attend the meetings and participate in the industry's deliberations. Finally, all interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses.

Comments were received addressing the interim final rule including its initial regulatory flexibility analysis. These comments are addressed in the following discussion of comments received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following Web site: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

An interim final rule concerning this action was published in the **Federal Register** on August 12, 2002 (67 FR 52390). Copies of the rule were mailed by Committee staff to all Committee members and alternates, the Raisin Bargaining Association, handlers and dehydrators. In addition, the rule was made available through the Internet by the Office of the Federal Register and USDA. That rule provided for a 10-day comment period that ended on August 22, 2002. Two comments were received. One favored the action. The other opposed the action.

The comment in favor stated that reducing the amount of NS raisins available to processors in terms of trade demand will not short the availability of raisins to the handler community because reserve raisins for free use can be made available to handlers under the marketing order. According to this commenter, producers need handlers to purchase their raisins and handlers need a marketing environment to sell those raisins in the most productive and efficient manner possible, and the reduction in desirable carryover appears to address both these needs.

The commenter opposed to the action stated that the reduction in desirable carryout is designed solely to protect the existing unsold inventory of weaker handlers. This action, however, is intended to decrease the amount of tonnage available early in the season and to help the industry reduce an oversupply of California raisins.

The commenter alleges that the decrease in desirable carryout, and eventually trade demand, first to 2.5 months and then to 2 months for NS raisins is entirely arbitrary and capricious. The commenter states that neither the Committee nor USDA have supplied price, revenue, or grower income responses to the formula change. Previous adjustments in desirable carryover were similarly lacking such analysis, according to the commenter.

The commenter states that the admitted effect of reducing carryout is to reduce trade demand by 30,000 tons, and, therefore, the total amount of free tonnage. The commenter contends that this would have a disproportionate impact on both growers and handlers based upon their relative sizes. According to the commenter, since one of the main effects of the proposal is price protection for existing inventory, those handlers with greater unsold inventories will experience more net gain compared to those handlers who hold less remaining inventory, thus creating a wealth transfer (from both growers and more efficient handlers) to those handlers less capable of effective marketing. The commenter further contends that the regulatory flexibility analysis is inadequate and defective and fails to take account of the net adverse effect on all growers and handlers of the lost revenue from reducing trade demand by 30,000 tons, and its addition to the unprofitable reserve.

The commenter further contends that the Committee and USDA have increasingly mismanaged the volume control program under the marketing order to produce a dynamically unstable condition of simultaneous oversupply and under-marketing. The commenter also contends that the volume control and various disposition programs for reserve raisins implemented under the order have prevented a normal and orderly supply response to changes in domestic and world demand and have contributed to unreasonable fluctuations in supplies and prices contrary to the Act.

The commenter states that the volume control program is careening out of control in terms of regulatory complexity, misallocation of resources, and distortions of supply, demand, and price signals. The Committee is losing consensus, has no strategic plan for the long-run future of the industry, and volume control should be stopped immediately. Only then, the commenter states, will supply, demand, and price balance be restored to long-term equilibrium. According to the commenter, wasting half the crop is simply absurd, and the raisin order was never intended as a prorate program or as an excuse to accumulate increasingly large price depressing surpluses. The commenter states that domestic price and supply manipulation is unwise, if not impossible, in an increasingly competitive world market.

The intent of volume control under the marketing order is to help stabilize raisin supplies and prices, strengthen market conditions, and improve producer returns. The marketing order has been quite successful in achieving these goals over the years. From the mid-1980's to the late 1990's producer prices were strong, demand in export was growing, and demand domestically was holding steady, due in part to the volume control programs implemented under the marketing order.

It is true that the industry has been experiencing an oversupply of raisins and weak marketing conditions since 1999. However, an immediate stop to volume regulation could result in an even worse situation and more than one-half of the expected 2002–03 crop probably would have to be disposed of in low return outlets.

The raisin industry has more raisins than it can sell, is faced with low prices, and weak domestic and export demand. It needs some means to help improve the situation. Most of the raisins produced are made from the Thompson Seedless grape, and the predominant raisin varietal is Natural (sun-dried) Seedless, comprising about 90 percent of the California crop. In previous seasons, producers earned as much as $1,425 a ton on raisins. Last season, the price dropped to about $880 per ton. This year's price has yet to be set, but is expected to be about the same or lower. Producers are having difficulty covering their production costs at such prices. Further, possible foreclosures on grower loans could add to the existing difficult situation.

Handlers are carrying in an aggregate of about 150,000 tons of 2001 NS crop inventory (about 45,000 tons higher than usual). With the large carryin, additional NS raisins available through a raisin-back export program (about 18,000 tons) and the 2002 diversion program (about 51,000 tons), and a 2002–03 bumper NS crop of about 400,000 tons, the available supply of NS raisins could exceed 600,000 tons. The industry ships about 310,000 tons of raisins annually. Thus, with no volume regulation the industry could have an excess of over 300,000 tons of raisins. This has made it difficult for handlers

and producers to agree on a field price, and handlers are continuing to have difficulty selling their raisins at competitive prices. Without a mechanism in place to withhold the excess from the market, much of the crop might be wasted, and weak marketing conditions would continue for both producers and handlers. This would be disastrous for both producers and handlers. On October 8, 2002, preliminary volume regulation percentages were computed and announced for 2002–03 by the Committee. For NS, Oleate Seedless, Zante Currant, and Other Seedless raisins, a percentage of the crop will be held in reserve, which is expected to help balance supply with demand, and help alleviate the economic pressures caused by oversupply, low prices, and weak demand.

USDA disagrees with the commenter's views concerning this rulemaking and the operation of the marketing order program. This action is intended to help the raisin industry alleviate the oversupply problem it is facing and as the commenter in favor of the action states, it should meet the marketing needs of both growers and handlers. This action is consistent with the Agricultural Marketing Agreement Act of 1937 and the marketing order as well as other applicable law.

The current volume regulation procedures are intended to fully supply the domestic and export markets, provide for market expansion, and help prevent oversupplies in the domestic market, and have been used in previous years to help the industry. These procedures have been used carefully in an attempt to help the industry consistent with the Act.

Before the 1975–76 crop year, more than 50 percent of the raisins were packed and sold directly to consumers. Now, over 60 percent of raisins are sold in bulk. This means that raisins are now sold to consumers mostly as an ingredient in another product such as cereal and baked goods. In addition, for a few years in the early 1970's, over 50 percent of the raisin grapes were sold to the wine market for crushing. Since then, the percent of raisin-variety grapes sold to the wine industry has decreased.

California's grapes are classified into three groups—table grapes, wine grapes, and raisin-variety grapes. Raisin-variety grapes are the most versatile of the three types. They can be marketed as fresh grapes, crushed for juice in the production of wine or juice concentrate, or dried into raisins. Annual fluctuations in the fresh grape, wine, and concentrate markets, as well as weather-related factors, cause fluctuations in raisin supply. This type of situation introduces a certain amount of variability into the raisin market. Although the size of the crop for raisin-variety grapes may be known, the amount dried for raisins depends on the demand for crushing. This makes the marketing of raisins a more difficult task. These supply fluctuations can result in producer price instability and disorderly market conditions.

Volume regulation is helpful to the raisin industry because it lessens the impact of such fluctuations and contributes to orderly marketing. For example, producer prices for NS raisins have remained fairly steady between the 1992–93 through the 1997–98 seasons, although production has varied. As shown in the table below, during those years, production varied from a low of 272,063 tons in 1996–97 to a high of 387,007 tons in 1993–94, or about 42 percent. According to Committee data, the total producer return per ton during those years, which includes proceeds from both free tonnage plus reserve pool raisins, has varied from a low of $901 in 1992–93 to a high of $1,049 in 1996–97, or 16 percent. Total producer prices for the 1998–99 and 1999–2000 season increased significantly due to back-to-back short crops during those years.

NATURAL SEEDLESS PRODUCER PRICES

Crop year	Production (natural condition tons)	Producer prices
2000–2001	432,616	[1] $570.82
1999–2000	299,910	1,211.25
1998–99	240,469	[2] 1,290.00
1997–98	382,448	946.52
1996–97	272,063	1,049.20
1995–96	325,911	1,007.19
1994–95	378,427	928.27
1993–94	387,007	904.60
1992–93	371,516	901.41

[1] Return to date, reserve pool still open.
[2] No volume regulation.

There are essentially two broad markets for raisins—domestic and export. In recent years, both export and domestic shipments have been decreasing. Domestic shipments decreased from a high of 204,805 packed tons during the 1990–91 crop year to a low of 156,325 packed tons in 1999–2000. In addition, exports decreased from 114,576 packed tons in 1991–92 to 91,600 packed tons in the 1999–2000 crop year.

In addition, the per capita consumption of raisins has declined from 2.07 pounds in 1988 to 1.55 pounds in 2000. This decrease is consistent with the decrease in the per capita consumption of dried fruits in general, which is due to the increasing availability of most types of fresh fruit throughout the year.

While the overall demand for raisins has been decreasing (as reflected in decline in commercial shipments), production has been increasing. The production of dried raisins reached an all-time high of an estimated 432,616 tons in the 2000–01 crop year. This large crop was preceded by two short crop years; production was 240,469 tons in 1998–99 and 299,910 tons in 1999–2000. Production for the 2000–01 crop year soared to a record level because of increased bearing acreage and yields. Estimated production is more moderate at 372,499 tons in 2001–02. However, with 2001–02 carryin inventory totaling 116,131 tons, total available supply is quite large.

The order permits the industry to exercise supply control provisions, which allow for the establishment of

free and reserve percentages, and establishment of a reserve pool. One of the primary purposes of establishing free and reserve percentages is to equilibrate supply and demand. If raisin markets are over-supplied with product, grower prices will decline.

Raisins are generally marketed at relatively lower price levels in the more elastic export market than in the more inelastic domestic market. This results in a larger volume of raisins being marketed and enhances grower returns. In addition, this system allows the U.S. raisin industry to be more competitive in export markets. crop year.

There are no known additional costs incurred by small handlers that are not incurred by large handlers. While the level of benefits of this rulemaking are difficult to quantify, the stabilizing effects of the volume regulations impact small and large handlers positively by helping them maintain and expand markets even though raisin supplies fluctuate widely from season to season. Likewise, price stability positively impacts small and large producers by allowing them to better anticipate the revenues their raisins will generate.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee, the comments received, and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 989 which was published at 67 FR 52390 on August 12, 2002, is adopted as a final rule without change.

Dated: November 26, 2002.

A. J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–30583 Filed 12–2–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–271–AD; Amendment 39–12970; AD 2002–24–05]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 727 series airplanes. This action requires detailed inspections to detect cracking and corrosion of the upper chord of the rear spar of the wing; and repair, if necessary. This action also requires detailed inspections to detect and permanently repair any cracking that has been previously repaired by stop-drilling. This action is necessary to prevent failure of the wing and fuel leaks in the airplane due to stress corrosion cracking of the upper chord of the rear spar. This action is intended to address the identified unsafe condition.

DATES: Effective December 18, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 18, 2002.

Comments for inclusion in the Rules Docket must be received on or before February 3, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–271–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov*. Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–271–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2131; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has received reports of spanwise stress corrosion cracking of the upper chord of the rear spar of the wing between Wing Butt Line (WBL) 70.5 and the wing tip. Investigation revealed that some cracks were up to 14 inches long. Further, one of the cracks was almost long enough to jeopardize the residual strength capability of the upper chord of the rear spar. Such cracking of the upper chord of the rear spar of the wing, if not corrected, could result in structural failure of the wing and fuel leaks in the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin (ASB) 727–57A0145, revision 2, dated October 24, 2002. That ASB describes procedures for performing repetitive external detailed inspections on airplanes specified as ''Group 1'' to detect cracking and corrosion of the upper chord of the rear spar of the wing, and repair, if necessary. The ASB also describes procedures for detecting and permanently repairing any cracking that was previously repaired by stop-drilling. Additionally, the ASB describes procedures to perform high-frequency eddy current inspections (HFEC) on ''Group 1'' airplanes to detect cracking and corrosion of the upper chord of the rear spar and corrective action. Further, the ASB describes procedures to perform external detailed inspections and HFEC inspections on ''Group 1'' airplanes to detect cracking and corrosion of other areas such as the lower chord of the rear spar and the upper and lower chords of the front spar. In addition, the ASB describes procedures for certain other airplanes specified as ''Group 2'' airplanes that include external detailed inspections and HFEC inspections of various areas to detect cracking and corrosion; and repair, if necessary. The ASB also describes repair procedures for minor surface defects, corrosion, and cracking.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent failure of the wing and fuel leaks in the airplane due to stress corrosion cracking of the upper chord of the rear spar. This AD requires the following actions for airplanes designated as ''Group 1'' in Boeing Alert Service Bulletin 727–57A0145, revision 2, dated October 24, 2002:

- Repetitive external detailed inspections to detect cracking and corrosion of the upper chord of the rear spar of the wing,
- Repair of cracking and corrosion,
- External detailed inspections to detect any cracking that has been previously repaired by stop-drilling, and
- Permanent repair of any previously stop-drilled cracking.

Clarification of Certain Repair Conditions

Operators should note that, although the alert service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this AD requires that those conditions be accomplished per a method approved by the FAA, or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

Interim Action

The actions required by this AD are considered to be interim action. The FAA is currently considering requiring additional actions specified in the alert service bulletin. However, the planned compliance time for the implementation of those actions is sufficiently long so that notice and opportunity for prior public comment will be practicable.

Determination of Rule's Effective Date

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

Comments Invited

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

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–271–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2002–24–05 Boeing: Amendment 39–12970. Docket 2002–NM–271–AD.

Applicability: Model 727 series airplanes, serial numbers 1 through 1832 inclusive; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent structural failure of the wing and fuel leaks in the airplane due to stress corrosion cracking of the upper chord of the rear spar, accomplish the following:

Inspection and Repair

(a) For airplanes specified as ''Group 1'' airplanes in Boeing Alert Service Bulletin 727–57A0145, revision 2, dated October 24, 2002: Within 20 years after the date of manufacture or within 90 days after the effective date of this AD, whichever occurs

later, perform an external detailed inspection for cracking, corrosion, and existing stop-drilled repairs of cracking in the upper chord on the rear spar from Wing Butt Line (WBL) 70.5 through WBL 249.3, per Boeing Alert Service Bulletin 727–57A0145, revision 2, paragraph 3.B, ''Work Instructions,'' part 1, dated October 24, 2002. Thereafter, repeat the inspection at intervals not to exceed 2 years.

Note 2: For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, *etc.,* may be used. Surface cleaning and elaborate access procedures may be required.''

(1) If no cracking, corrosion, or existing stop-drilled repairs of previous cracking is detected during any inspection required by this AD, repeat the inspection at intervals not to exceed 2 years.

(2) If any existing stop-drilled repairs of previous cracking are detected during any inspection required by this AD, before further flight, permanently repair the cracking per the alert service bulletin.

(3) If any cracking or corrosion is detected during any inspection required by this AD that is within the limits specified in the alert service bulletin, before further flight, repair per the alert service bulletin.

(4) If any cracking or corrosion is detected during any inspection required by this AD that exceeds the limits specified in the alert service bulletin, and the bulletin specifies to contact Boeing for appropriate action: Before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, the approval must specifically reference this AD.

Alternative Methods of Compliance

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

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

Incorporation by Reference

(d) Except as specified in paragraph (a)(4) of this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 727–57A0145, revision 2, dated October 24, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on December 18, 2002.

Issued in Renton, Washington, on November 20, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–30344 Filed 12–2–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–192–AD; Amendment 39–12967; AD 2002–24–02]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757–200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 757–200 series airplanes, that requires repetitive inspections for fatigue cracking of certain areas of the forward and aft frames of the cargo doorways and repair, if necessary. The actions specified by this AD are intended to find and fix such cracking, which could lead to rapid depressurization of the airplane and result in reduced structural integrity of the cargo doorway. This action is intended to address the identified unsafe condition.

DATES: Effective January 7, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 7, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dennis Stremick, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2776; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 757–200 series airplanes was published in the **Federal Register** on July 12, 2002 (67 FR 46132). That action proposed to require repetitive inspections for fatigue cracking of certain areas of the forward and aft frames of the cargo doorways, and repair, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received. One commenter states that the proposed AD does not apply to its fleet.

Request To Change Certain Terminology

One commenter states that the terminology throughout the proposed AD which reads, ''cargo door frame(s)'' should be changed to ''cargo doorway frames.'' The commenter notes that the structures requiring the inspections are the cutout fuselage frames of the cargo door and not the cargo door frames. The commenter adds that the term ''cargo doorway,'' as specified in Boeing Alert Service Bulletin 757–53A0080, dated February 3, 2000 (referenced in the proposed AD as the appropriate source of service information for accomplishment of the actions), is a better description.

We agree with the commenter in that the description of the frames of the cargo door should be clarified. We have changed the description throughout this final rule to read, ''cargo doorway.''

Explanation of Editorial Change

We have changed the service bulletin citation throughout this final rule to exclude the Evaluation Form. (The form is intended to be completed by operators and submitted to the

manufacturer to provide input on the quality of the service bulletin; however, this AD does not include such a requirement.)

Conclusion

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

Interim Action

This is considered to be interim action. The manufacturer has advised that it currently is developing a modification that will address the unsafe condition identified in this AD. Once this modification is developed, approved, and available, the FAA may consider further rulemaking.

Cost Impact

There are approximately 57 airplanes of the affected design in the worldwide fleet. The FAA estimates that 28 airplanes of U.S. registry will be affected by this AD.

For all airplanes: It will take approximately 3 work hours per airplane to do the high frequency eddy current and detailed inspections, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspections required by this AD on U.S. operators is estimated to be $5,040, or $180 per airplane, per inspection cycle.

For Group 3 airplanes: It will take approximately 1 work hour per airplane to do the additional detailed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this required inspection on U.S. operators is estimated to be $60 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2002–24–02 Boeing: Amendment 39–12967. Docket 2001–NM–192–AD.

Applicability: Model 757–200 series airplanes, line numbers 1 through 57 inclusive, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To find and fix fatigue cracking of the cargo doorway frames, which could lead to rapid depressurization of the airplane and result in reduced structural integrity of the cargo doorway, accomplish the following:

Repetitive Inspections

(a) Before the accumulation of 22,000 total flight cycles or within 500 flight cycles after the effective date of this AD, whichever is later: Do the applicable inspections specified in paragraphs (a)(1) and (a)(2) of this AD, per Boeing Alert Service Bulletin 757–53A0080, excluding Evaluation Form, dated February 3, 2000.

(1) For all airplanes: Do detailed and high frequency eddy current (HFEC) inspections for cracking of the doorway frames of the number 1 and 2 cargo doors (includes the frame webs, frame inner and outer chords, bear strap, and skin panels between the upper and lower sills of the cargo doorway). Repeat the detailed inspections every 3,000 flight cycles, and the HFEC inspections every 12,000 flight cycles.

(2) For Group 3 airplanes: Do a detailed inspection for cracking of the doorway frame of the number 3 cargo door. Repeat the inspection every 3,000 flight cycles.

Note 2: For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

Repair

(b) Before further flight, repair any cracking found in the frame webs, per Boeing Alert Service Bulletin 757–53A0080, excluding Evaluation Form, dated February 3, 2000. If any cracking is found in any other area and the service bulletin specifies to contact Boeing for disposition of those repairs, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, the approval must specifically reference this AD.

Note 3: There is no terminating action currently available for the repetitive inspections required by this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that

provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

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

Incorporation by Reference

(e) Except as provided by paragraph (b) of this AD, the actions shall be done per Boeing Alert Service Bulletin 757–53A0080, excluding Evaluation Form, dated February 3, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on January 7, 2003.

Issued in Renton, Washington, on November 20, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–30342 Filed 12–2–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–17–AD; Amendment 39–12968; AD 2002–24–03]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes Powered by General Electric (GE) CF6–80C2 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes powered by GE CF6–80C2 series engines, that requires repetitive inspections and torque checks to find discrepancies of the fasteners that attach the diagonal brace fittings of the lower spar to the inboard engine struts, and modification of the fasteners if discrepancies are found. This amendment also requires eventual modification of all the fasteners, which ends the repetitive inspections and checks. The actions specified by this AD are intended to find and fix discrepant fasteners of the diagonal brace fittings, which could result in reduced structural integrity of the diagonal brace-to-strut attachment, and possible separation of the strut and engine from the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective January 7, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 7, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tamara Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2771; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes powered by General Electric CF6–80C2 series engines was published in the **Federal Register** on August 30, 2002 (67 FR 55739). That action proposed to require repetitive inspections and torque checks to find discrepancies of the fasteners that attach the diagonal brace fittings of the lower spar to the inboard engine struts, and modification of the fasteners if discrepancies are found. That action also proposed to require eventual modification of all the fasteners, which would end the repetitive inspections and checks.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Explanation of Editorial Change

We have changed the service bulletin citation throughout this final rule to exclude the Evaluation Form. (The form is intended to be completed by operators and submitted to the manufacturer to provide input on the quality of the service bulletin; however, this AD does not include such a requirement.)

Cost Impact

There are approximately 237 airplanes of the affected design in the worldwide fleet. We estimate that 14 airplanes of U.S. registry will be affected by this AD.

It will take approximately 5 work hours per airplane to accomplish the inspection and torque check at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the required actions on U.S. operators is estimated to be $4,200, or $300 per airplane, per inspection/check cycle.

It will take approximately 76 work hours per airplane to accomplish the terminating action at an average labor rate of $60 per work hour. Required parts will cost approximately $4,268 per airplane. Based on these figures, the cost impact of this required action on U.S. operators is estimated to be $123,592, or $8,828 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is

determined that this final rule does not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2002–24–03 Boeing: Amendment 39–12968. Docket 2001–NM–17–AD.

Applicability: Model 747–200B, −300, −400, −400D, and −400F series airplanes powered by General Electric CF6–80C2 series engines, as listed in Boeing Alert Service Bulletin 747–54A2207, dated November 16, 2000, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To find and fix discrepant fasteners of the diagonal brace fittings, which could result in reduced structural integrity of the diagonal brace-to-strut attachment, and possible separation of the strut and engine from the airplane, accomplish the following:

Repetitive Inspections and Torque Checks/ Corrective Action

(a) Do a detailed inspection and torque check to find discrepancies of the fasteners (e.g., loose, fractured, or missing fastener heads) that attach the diagonal brace fittings of the lower spar to the inboard engine struts, at the applicable time specified in paragraph (a)(1) or (a)(2) of this AD, per Boeing Alert Service Bulletin 747–54A2207, dated November 16, 2000, excluding Evaluation Form. Repeat the inspection and check after that every 8,000 flight hours or 24 months, whichever is first.

Note 2: For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

(1) For airplanes that have not been modified as required by AD 95–13–06, amendment 39–9286 (all Group 2 airplanes): Before the accumulation of 6,000 total flight cycles or within 24 months after the effective date of this AD, whichever is later.

(2) For airplanes that have been modified as required by AD 95–13–06 (all Group 1 airplanes): Before the accumulation of 6,000 total flight cycles after doing the modification or within 24 months after the effective date of this AD, whichever is later.

(b) If no discrepancy is found during any inspection/check required by paragraph (a) of this AD, repeat the inspection/check at the time specified in paragraph (a) of this AD until the terminating action specified in paragraph (c) of this AD is done. If any discrepancy is found, do the applicable actions specified in paragraph (b)(1) or (b)(2) of this AD.

(1) If any discrepancy is found in the area that connects the diagonal brace fitting to the aft bulkhead, before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, as required by this paragraph, the approval must specifically reference this AD.

(2) If any discrepancy is found in any area other than that specified in paragraph (b)(1) of this AD, before further flight, do the terminating action specified in paragraph (c) of this AD.

Terminating Action

(c) Except as provided by paragraph (b)(2) of this AD, within 72 months after the effective date of this AD: Do the modification (including doing a high frequency eddy current (HFEC) inspection, oversizing the fastener holes, and installing new fasteners) as specified in and per Figure 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–54A2207, dated November 16, 2000, excluding Evaluation Form. If any cracking is found during the HFEC inspection and the service bulletin specifies contacting Boeing for repair procedures, before further flight, repair per a method approved by the Manager, Seattle ACO; or per data meeting the type certification basis of the airplane approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, as required by this paragraph, the approval must specifically reference this AD. Accomplishment of the actions specified in this paragraph ends the repetitive inspections and checks.

Alternative Methods of Compliance

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

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

Incorporation by Reference

(f) Except as provided by paragraphs (b)(1) and (c) of this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 747–54A2207, dated November 16, 2000, excluding Evaluation Form. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(g) This amendment becomes effective on January 7, 2003.

Issued in Renton, Washington, on November 20, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–30343 Filed 12–2–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–37–AD; Amendment 39–12971; AD 2002–24–06]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd. & Co KG, Model Tay 620–15 and 650–15 Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Rolls-Royce Deutschland Ltd. & Co KG (RRD), Model Tay 620–15 and 650–15 turbofan engines. This action requires initial and repetitive inspections of certain low pressure (LP) fuel tubes. This amendment is prompted by a dual-engine flameout. The actions specified in this AD are intended to prevent a dual-engine flameout due to fuel exhaustion, which could lead to forced landing and possible damage to the airplane.

DATES: Effective December 18, 2002. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of December 18, 2002.

Comments for inclusion in the Rules Docket must be received on or before February 3, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–37–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: ''*9-ane-adcomment@faa.gov*''. Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from Rolls-Royce Deutschland Ltd. & Co KG, Eschenweg 11, D–15827 DAHLEWITZ, Germany; telephone 49 (0) 33–7086–1768; fax 49 (0) 33–7086–3356. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified the FAA that an unsafe condition may exist on RRD Model Tay 620–15 and 650–15 turbofan engines. The LBA advises that there has been a dual-engine flameout on a Fokker 100 airplane that resulted in a forced landing and destruction of the airplane. The LBA has determined that a leak from the LP fuel tube, which connects the LP fuel flowmeter to the high pressure (HP) fuel pump, resulted in complete fuel exhaustion and subsequent dual engine flameout.

Manufacturer's Service Information

RRD has issued Service Bulletin (SB) TAY–73–1540, Revision 1, dated September 13, 2002, that specifies procedures for inspecting the LP fuel tube for fretting. The LBA classified this service bulletin as mandatory and issued AD No. 2002–331, dated September 13, 2002, in order to assure the airworthiness of these RRD Model Tay 620–15 and 650–15 turbofan engines in Germany.

Bilateral Airworthiness Agreement

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

FAA's Determination of an Unsafe Condition and Required Actions

Since an unsafe condition has been identified that is likely to exist or develop on other RRD Model Tay 620–15 and 650–15 turbofan engines of the same type design, this AD is being issued to prevent a dual-engine flameout due to fuel exhaustion, which could lead to forced landing and possible damage to the airplane. This AD requires an initial inspection of the LP fuel tube for fretting within 300 hours or one month after the effective date of this AD, whichever occurs first, and thereafter, repetitive inspections for fretting within 2,000 hours time-in-service after the last inspection. The actions must be done in accordance with the service bulletin described previously. The inspections required by this AD are considered interim action, and further rulemaking actions may be taken.

Immediate Adoption of This AD

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments

submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NE–37–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Analysis

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2002–24–06 Rolls-Royce Deutschland Ltd. & Co KG: Amendment 39–12971. Docket No. 2002–NE–37–AD.

Applicability

This airworthiness directive (AD) is applicable to Rolls-Royce Deutschland Ltd. & Co KG (RRD), Model Tay 620–15 and 650–15 turbofan engines with low pressure (LP) fuel tube part number, (P/N) JR33021A, installed. These engines are installed on, but not limited to Fokker F.28 Mark 0100 airplanes.

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

Compliance

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

To prevent a dual-engine flameout due to fuel exhaustion which could lead to forced landing and possible damage to the airplane, do the following:

(a) Within 300 hours time-in-service (TIS) after the effective date of this AD or one month after the effective date of this AD, whichever occurs first, inspect LP fuel tube, P/N JR33021A, for fretting in accordance with 3.C.1. through 3.C.10. of the Accomplishment Instructions of RRD service bulletin (SB) TAY–73–1540, Revision 1, dated September 13, 2002.

(b) Thereafter, inspect the LP fuel tube, P/N JR33021A, for fretting in accordance with 3.C.1. through 3.C.10. of the Accomplishment Instructions of RRD SB TAY–73–1540, Revision 1, dated September 13, 2002; at intervals not to exceed 2,000 hours TIS since the last inspection.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Documents That Have Been Incorporated By Reference

(e) The inspections must be done in accordance with Rolls-Royce Deutschland Ltd. & Co KG service bulletin TAY–73–1540, Revision 1, dated September 13, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Rolls-Royce Deutschland Ltd. & Co KG, Eschenweg 11, D–15827 DAHLEWITZ, Germany; telephone 49 (0) 33–7086–1768; fax 49 (0) 33–7086–3356. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in LBA airworthiness directive 2002–331, dated September 13, 2002.

Effective Date

(f) This amendment becomes effective on December 18, 2002.

Issued in Burlington, Massachusetts, on November 21, 2002.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–30345 Filed 12–2–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ANM–32]

Revision of Class E Airspace, Holyoke, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises the Class E airspace at Holyoke, CO. This change is necessary because the Airport Reference Point (ARP) coordinates for the Class E5 airspace at the Holyoke Airport have been changed. The legal description of the Holyoke Airport Class E airspace must be changed to reflect the new coordinates. The intended effect of this rule is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Holyoke Airport, Holyoke, CO.

EFFECTIVE DATE: 0901 UTC, October 3, 2002.

FOR FURTHER INFORMATION CONTACT: Ed Haeseker, ANM–520.7 Federal Aviation Administration, Docket No. 00–ANM–32, 1601 Lind Avenue SW, Renton, Washington 98055–4056; telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

History

On August 29, 2001, the FAA proposed to amend Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by revising Class E airspace at Holyoke, CO, to reflect a change in the ARP at the Holyoke Airport, Holyoke, CO (66 FR 45659). This action creates Class E5 airspace at Holyoke, CO, to meet current airspace requirements for IFR flight in Holyoke, Colorado. Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal. No comments were received.

The Rule

This amendment to Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) revises the description of Class E5 airspace at Holyoke, CO, to reflect the change to the ARP coordinates in the legal description of Holyoke Airport. Class E5 controlled airspace is required to contain aircraft executing IFR procedures at Holyoke Airport. The FAA establishes Class E airspace where necessary to contain aircraft transitioning between the terminal and en route environments. This rule is designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under IFR at the Holyoke Airport and between the terminal and en route transition stages.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E5 airspace areas extending upward from 700-feet or more above the surface of the earth, are published in Paragraph 6005, of FAA Order 7400.9K dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E5 airspace designation listed in this document will be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

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

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

§ 71.1 [Amended]

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

Paragraph 6005 Class E5 airspace areas extending upward from 700-feet or more above the surface of the earth.

* * * * *

ANM CO E5 Holyoke, CO [Revised]

Holyoke Airport, CO
(Lat. 40°34′10″N., long. 102°16′22″W.)
Heginbotham NDB
(Lat. 40°34′53″N., long. *102°16′52.7″W).*

That airspace extending upward from 700-feet above the surface within the 6.7-mile radius of the Holyoke Airport, and within 2.5 miles each side of the 325° bearing from the Heginbotham NDB extending from the 6.7-mile radius to 7 miles northwest of the NDB; excluding that airspace within Federal Airways.

Issued in Seattle, Washington, on October 10, 2002.

Raul C. Trevino,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 02–30611 Filed 12–2–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30341; Amdt. No. 3033]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective December 3, 2002. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 3, 2002.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located;
3. The Flight Inspection Area Office which originated the SIAP; or,
4. The Office of Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale

by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, and Navigation (air).

Issued in Washington, DC, on November 22, 2002.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

Effective December 26, 2002

Sacramento, CA, Sacramento Mather, ILS RWY 22L, Amdt 3

Effective January 23, 2003

Tallahassee, FL, Tallahassee Regional, VOR OR GPS RWY 18, Amdt 10
Tallahassee, FL, Tallahassee Regional, VOR/DME OR TACAN RWY 36, Orig
Tallahassee, FL, Tallahassee Regional, NDB OR GPS RWY 36, Amdt 19
Tallahassee, FL, Tallahassee Regional, ILS RWY 27, Amdt 7
Tallahassee, FL, Tallahassee Regional, ILS RWY 36, Amdt 23
Tallahassee, FL, Tallahassee Regional, RNAV (GPS) RWY 9, Orig
Tallahassee, FL, Tallahassee Regional, RNAV (GPS) RWY 27, Orig
Tallahassee, FL, Tallahassee Regional, GPS RWY 9, Orig-A, CANCELLED
Tallahassee, FL, Tallahassee Regional, GPS RWY 27, Orig-A, CANCELLED
Americus, GA, Souther Field, LOC RWY 23, Amdt 3
Americus, GA, Souther Field, NDB RWY 23, Amdt 3
Americus, GA, Souther Field, RNAV (GPS) RWY 5, Orig
Americus, GA, Souther Field, RNAV (GPS) RWY 23, Orig
Brazil, IN, Brazil Clay County, RNAV (GP) RWY 27, Orig
South Bend, IN, South Bend Regional, VOR RWY 18, Amdt 7D
South Bend, IN, South Bend Regional, RNAV (GPS) RWY 9L, Orig
South Bend, IN, South Bend Regional, RNAV (GPS) RWY 18, Orig
South Bend, IN, South Bend Regional, RNAV (GPS) RWY 27R, Orig
South Bend, IN, South Bend Regional, RNAV (GPS) RWY 36, Orig
Ulysses, KS, Ulysses, NDB RWY 12, Amdt 13
Ulysses, KS, Ulysses, RNAV (GPS) RWY 12, Orig
Ulysses, KS, Ulysses, RNAV (GPS) RWY 17, Orig
Ulysses, KS, Ulysses, RNAV (GPS) RWY 30, Orig
Ulysses, KS, Ulysses, RNAV (GPS) RWY 35, Orig
Henderson, KY, Henderson-City County, VOR–A, Amdt 10

Henderson, KY, Henderson-City County, NDB RWY 9, Amdt 4
Henderson, KY, Henderson-City County, RNAV (GPS) RWY 9, Orig
Henderson, KY, Henderson-City County, RNAV (GPS) RWY 27, Orig
Henderson, KY, Henderson-City County, GPS RWY 27, Orig, CANCELLED
Prestonburg, KY, Big Sandy Regional, VOR/DME–A, Amdt 2
Prestonburg, KY, Big Sandy Regional, RNAV (GPS) RWY 3, Orig
Prestonburg, KY, Big Sandy Regional, RNAV (GPS) RWY 21, Orig
Tallulah, LA, Vicksburg Tallulah Regional, LOC RWY 36, Amdt 1
Tallulah, LA, Vicksburg Tallulah Regional, NDB RWY 36, Amdt 1
Tallulah, LA, Vicksburg Tallulah Regional, RNAV (GPS) RWY 18, Amdt 1
Tallulah, LA, Vicksburg Tallulah Regional, RNAV (GPS) RWY 36, Amdt 1
Bay City, MI, James Clements Muni, RNAV (GPS) RWY 18, Orig
Hancock, MI, Houghton County Memorial, RNAV (GPS) RWY 7, Orig
Hancock, MI, Houghton County Memorial, RNAV (GPS) RWY 25, Orig
Sault Ste Marie, MI, Chippewa County Intl, RNAV (GPS) RWY 9, Orig
Sault Ste Marie, MI, Chippewa County Intl, RNAV (GPS) RWY 27, Orig
Sedalia, MO, Sedalia Memorial, NDB RWY 18, Amdt 8
Sedalia, MO, Sedalia Memorial, NDB RWY 36, Amdt 9
Sedalia, MO, Sedalia Memorial, RNAV (GPS) RWY 18, Orig
Sedalia, MO, Sedalia Memorial, RNAV (GPS) RWY 36, Orig
Sedalia, MO, Sedalia Memorial, GPS RWY 18, Orig-B, CANCELLED
Sedalia, MO, Sedalia Memorial, GPS RWY 36, Orig-B, CANCELLED
Laurel, MT, Laurel Muni, VOR RWY 22, Amdt 2
Laurel, MT, Laurel Muni, RNAV (GPS) RWY 4, Orig
Laurel, MT, Laurel Muni, RNAV (GPS) RWY 22, Orig
Greensboro, NC, Piedmont Triad Intl, VOR RWY 5, Amdt 12C
Greensboro, NC, Piedmont Triad Intl, VOR/DME RWY 23, Amdt 9D
Greensboro, NC, Piedmont Triad Intl, NDB RWY 14, Amdt 15D
Greensboro, NC, Piedmont Triad Intl, RNAV (GPS) RWY 5, Orig
Greensboro, NC, Piedmont Triad Intl, RNAV (GPS) RWY 14, Orig
Greensboro, NC, Piedmont Triad Intl, RNAV (GPS) RWY 23, Orig
Greensboro, NC, Piedmont Triad Intl, RNAV (GPS) RWY 32, Orig
Greensboro, NC, Piedmont Triad Intl, GPS RWY 32, Orig, CANCELLED
Greenville, NC, Pitt-Greenville, RNAV (GPS) RWY 8, Orig
Greenville, NC, Pitt-Greenville, RNAV (GPS) RWY 20, Orig
Greenville, NC, Pitt-Greenville, RNAV (GPS) RWY 26, Orig
Greenville, NC, Pitt-Greenville, RNAV (GPS) Y RWY 2, Orig
Greenville, NC, Pitt-Greenville, RNAV (GPS) Z RWY 2, Orig
Greenville, NC, Pitt-Greenville, GPS RWY 2, Amdt 1, CANCELLED
Greenville, NC, Pitt-Greenville, GPS RWY 20, Amdt 1, CANCELLED
Williamston, NC, Martin County, NDB RWY 21, Amdt 5
Williamston, NC, Martin County, RNAV (GPS) RWY 3, Orig
Williamston, NC, Martin County, RNAV (GPS) RWY 21, Orig
Minot, ND, Minot Intl, ILS RWY 31, Amdt 9
Gordon, NE, Gordon Muni, RNAV (GPS) RWY 4, Orig
Kearney, NE, Kearney Muni, ILS RWY 36, Amdt 1
Kearney, NE, Kearney Muni, NDB RWY 36, Amdt 5
Kearney, NE, Kearney Muni, VOR RWY 13, Amdt 2
Kearney, NE, Kearney Muni, VOR RWY 18, Amdt 13
Kearney, NE, Kearney Muni, VOR RWY 36, Amdt 10
Kearney, NE, Kearney Muni, RNAV (GPS) RWY 36, Orig
Kearney, NE, Kearney Muni, GPS RWY 36, Orig, CANCELLED
Valentine, NE, Miller Field, RNAV (GPS) RWY 14, Orig
Farmington, NM, Four Corners Regional, VOR RWY 23, Orig
Farmington, NM, Four Corners Regional, VOR RWY 25, Amdt 10
Farmington, NM, Four Corners Regional, VOR/DME RWY 5, Orig
Farmington, NM, Four Corners Regional, RNAV (GPS) RWY 5, Orig
Farmington, NM, Four Corners Regional, RNAV (GPS) RWY 7, Amdt 1
Farmington, NM, Four Corners Regional, RNAV (GPS) RWY 23, Orig
Las Cruces, NM, Las Cruces Intl, NDB RWY 30, Amdt 1
Las Cruces, NM, Las Cruces Intl, ILS RWY 30, Amdt 2
Las Cruces, NM, Las Cruces Intl, RNAV (GPS) RWY 12, Orig
Las Cruces, NM, Las Cruces Intl, RNAV (GPS) RWY 30, Orig
Las Cruces, NM, Las Cruces Intl, GPS RWY 30, Orig, CANCELLED
Buffalo, OK, Buffalo Muni, NDB–A, Amdt 2
Buffalo, OK, Buffalo Muni, RNAV (GPS) RWY 17, Orig
Buffalo, OK, Buffalo Muni, GPS RWY 17, Orig, CANCELLED
Chandler, OK, Chandler Muni, NDB RWY 35, Amdt 1
Chandler, OK, Chandler Muni, RNAV (GPS) RWY 17, Orig
Chandler, OK, Chandler Muni, RNAV (GPS) RWY 35, Orig
Chandler, OK, Chandler Muni, GPS RWY 17, Orig, CANCELLED
Chandler, OK, Chandler Muni, GPS RWY 35, Orig, CANCELLED
Clinton, OK, Clinton Muni, RNAV (GPS) RWY 35, Orig
Clinton, OK, Clinton Muni, GPS RWY 35, Amdt 1, CANCELLED
Hobart, OK, Hobart Muni, RNAV (GPS) RWY 17, Orig
Hobart, OK, Hobart Muni, RNAV (GPS) RWY 35, Orig
Hobart, OK, Hobart Muni, GPS RWY 17, Orig–A, CANCELLED
Hobart, OK, Hobart Muni, GPS RWY 35, Orig–A, CANCELLED
Bend, OR, Bend Muni, VOR/DME RWY 16, Amdt 8
Bend, OR, Bend Muni, RNAV (GPS) RWY 16, Orig
Redmond, OR, Roberts Field, VOR–A, Amdt 5
Redmond, OR, Roberts Field, VOR/DME RWY 22, Amdt 3
Redmond, OR, Roberts Field, RNAV (GPS) RWY 28, Orig
Redmond, OR, Roberts Field, GPS RWY 28, Orig, CANCELLED
Paris, TN, Henry County, RNAV (GPS) RWY 20, Orig
Smithville, TN, Smithville Muni, RNAV (GPS) RWY 6, Orig
Austin, TX, Austin-Bergstrom Intl, ILS RWY 17L, Amdt 1
Austin, TX, Austin-Bergstrom Intl, ILS RWY 17R, Amdt 2
Austin, TX, Austin-Bergstrom Intl, ILS RWY 35L, Amdt 2
Austin, TX, Austin-Bergstrom Intl, ILS RWY 35R, Amdt 1
Austin, TX, Austin-Bergstrom Intl, RNAV (GPS) RWY 17L, Orig
Austin, TX, Austin-Bergstrom Intl, RNAV (GPS) RWY 17R, Orig
Austin, TX, Austin-Bergstrom Intl, RNAV (GPS) Y RWY 35L, Orig
Austin, TX, Austin-Bergstrom Intl, RNAV (GPS) Z RWY 35L, Orig
Austin, TX, Austin-Bergstrom Intl, RNAV (GPS) RWY 35R, Orig
Austin, TX, Austin-Bergstrom Intl, GPS RWY 17L, Orig. CANCELLED
Austin, TX, Austin-Bergstrom Intl, GPS RWY 17R, Amdt 1B, CANCELLED
Austin, TX, Austin-Bergstrom Intl, GPS RWY 35L, Amdt 1B, CANCELLED
Austin, TX, Austin-Bergstrom Intl, GPS RWY 35R, Orig B, CANCELLED
George West, TX, Live Oak County, VOR/DME–A, Amdt 2
George West, TX, Live Oak County, RNAV (GPS) RWY 13, Orig
George West, TX, Live Oak County, GPS RWY 13, Orig, CANCELLED

El Paso, TX, El Paso Intl, RNAV (GPS) RWY 26L, Orig
El Paso, TX, El Paso Intl, RNAV (GPS) RWY 26R, Orig
El Paso, TX, El Paso Intl, GPS RWY 26L, Orig, CANCELLED
Houston, TX, West Houston, RNAV (GPS) Y RWY 33, Orig
Temple, TX, Draughon-Miller Central Texas Regional, LOC/DME BC RWY 33, Amdt 3A, CANCELLED
Wichita Falls, TX, Sheppard AFB/ Wichita Falls Muni, NDB RWY 33L, Amdt 11
Wichita Falls, TX, Sheppard AFB/ Wichita Falls Muni, VOR–D, Amdt 14
Wichita Falls, TX, Sheppard AFB/ Wichita Falls Muni, RNAV (GPS) RWY 15R, Orig
Wichita Falls, TX, Sheppard AFB/ Wichita Falls Muni, RNAV (GPS) RWY 33L, Orig
Evanston, WY, Evanston-Uinta County Burns Field, VOR/DME RWY 23, Amdt 2B
Evanston, WY, Evanston-Uinta County Burns Field, RNAV (GPS) RWY 5, Orig
Evanston, WY, Evanston-Uinta County Burns Field, RNAV (GPS) RWY 23, Orig

The FAA published the following procedure in Docket No. 30339; Amdt. No. 3031 to Part 97 of the Federal Aviation Regulations (Vol. 67, FR No. 225, Page 70155; dated Thursday, November 21, 2002) under section 97.29 effective November 28, 2002 which is hereby amended to be effective December 26, 2002:

Sacramento, CA, Sacramento Mather, ILS RWY 22L, Amdt 3

[FR Doc. 02–30441 Filed 12–2–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 520

Oral Dosage Form New Animal Drugs; Lincomycin Hydrochloride Soluble Powder

AGENCY: Food and Drug Administration, HHS.

ACTION: Technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations for preslaughter withdrawal time for lincomycin soluble powder products used to make medicated drinking water for swine to correct inadvertant editorial errors. This action is being taken to ensure accuracy and clarity in the agency's regulations.

DATES: This rule is effective December 3, 2002.

FOR FURTHER INFORMATION CONTACT: George K. Haibel, Center for Veterinary Medicine (HFV–6), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–4567, e-mail: ghaibel@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: FDA has found that § 520.1263c (21 CFR 520.1263c) does not reflect the approved preslaughter withdrawal time for three lincomycin soluble powder products used to make medicated drinking water for swine. The 6-day withdrawal time was inadvertently removed for a generic product approved under ANADA 200–189 at the time it was being removed for the pioneer product approved under NADA 111–636 (64 FR 13341, March 18, 1999). The conditions of use for two other products approved February 4, 1999, under ANADA 200–241 (64 FR 13508, March 19, 1999) and September 22, 1999, under ANADA 200–233 (64 FR 66382, November 26, 1999) were subsequently codified without a withdrawal period. At this time, the regulations are being amended in § 520.1263c to correct these errors.

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

List of Subjects in 21 CFR Part 520

Animal drugs.

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

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

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

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

§ 520.1263c [Amended]

2. Section 520.1263c *Lincomycin hydrochloride soluble powder* is amended in paragraph (d)(1)(iii) by adding at the end the sentence ''For Nos. 046573 and 051259: Do not slaughter swine for 6 days following last treatment.''

Dated: November 8, 2002.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 02–30639 Filed 12–2–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Ivermectin Paste

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Virbac AH, Inc. The ANADA provides for oral use of ivermectin paste in horses for treatment and control of various internal parasites or parasitic conditions.

DATES: This rule is effective December 3, 2002.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–104), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–8549, e-mail: lluther@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: Virbac AH, Inc., 3200 Meacham Blvd., Ft. Worth, TX 76137, filed ANADA 200–320 for EQUELL (ivermectin) Paste. The application provides for oral use of 1.87 percent ivermectin paste in horses for the treatment and control of various species of internal parasites or parasitic conditions. Virbac's EQUELL Paste is approved as a generic copy of Merial Limited's EQUALEN Paste, approved under NADA 134–314. ANADA 200–320 is approved as of August 9, 2002, and 21 CFR 520.1192 is amended to reflect the approval. The basis of approval is discussed in the freedom of information summary.

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

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

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

List of Subjects 21 CFR Part 520

Animal drugs.

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

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

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

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

§ 520.1192 [Amended]

2. Section 520.1192 *Ivermectin paste* is amended in paragraph (b)(2) by removing ''No.'' and by adding in its place ''Nos. 051311 and''.

Dated: November 18, 2002.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 02–30640 Filed 12–2–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Ractopamine and Tylosin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Elanco Animal Health. The supplemental NADA provides for use of ractopamine and tylosin single-ingredient Type A medicated articles to make combination drug Type C medicated feeds used for increased rate of weight gain, improved feed efficiency, increased carcass leanness; and for the prevention of swine dysentery in finishing swine.

DATES: This rule is effective December 3, 2002.

FOR FURTHER INFORMATION CONTACT: Charles J. Andres, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–1600, e-mail: candres@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: Elanco Animal Health, A Division of Eli Lilly & Co., Lilly Corporate Center, Indianapolis, IN 46285, filed a supplement to NADA 141–172 that provides for use of PAYLEAN (9 or 45 grams per pound (g/lb) ractopamine hydrochloride) and TYLAN (10, 40, or 100 g/lb tylosin phosphate) Type A medicated articles to make combination drug Type C medicated feeds used for increased rate of weight gain, improved feed efficiency, and increased carcass leanness; and for the prevention of swine dysentery in finishing swine. The supplemental NADA is approved as of June 19, 2002, and the regulations are amended in § 558.500 (21 CFR 558.500) to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In addition, § 558.500 is being revised to reflect a current format. The entire text of this section is being provided for the convenience of the reader.

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

The agency has determined under 21 CFR 25.33(a)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

2. Section 558.500 is revised to read as follows:

§ 558.500 Ractopamine.

(a) *Specifications.* Type A medicated articles containing 9 or 45 grams of ractopamine hydrochloride per pound.

(b) *Approvals.* See No. 000986 in § 510.600(c) of this chapter.

(c) *Related tolerances.* See § 556.570 of this chapter.

(d) *Special considerations.*

(1) Labeling of Type B and Type C swine feeds shall bear the following:

(i) ''Caution: Pigs fed PAYLEAN are at an increased risk for exhibiting the downer pig syndrome (also referred to as ''slows,'' ''subs,'' or ''suspects''). Pig handling methods to reduce the incidence of downer pigs should be thoroughly evaluated prior to initiating use of PAYLEAN.''

(ii) ''Not for use in breeding swine.''

(2) Tylosin in combinations as tylosin phosphate.

(e) *Conditions of use.* (1) *Swine*—

Ractopamine in grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsor
(i) 4.5		For increased rate of weight gain, improved feed efficiency, and increased carcass leanness in finishing swine fed a complete ration containing at least 16 percent crude protein from 150 lb (68 kg) to 240 lb (109 kg) body weight.	Feed continuously as sole ration.	000986

Ractopamine in grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsor
(ii) 4.5	Tylosin 40	Finishing swine: As in paragraph (e)(1)(i) of this section; and for prevention of swine dysentery (vibrionic).	Feed continuously as sole ration until market weight following the use of tylosin at 100 grams per ton (g/t) for at least 3 weeks.	000986
(iii) 4.5	Tylosin 100	1. Finishing swine: As in paragraph (e)(1)(i) of this section; and for prevention and/or control of porcine proliferative enteropathies (ileitis) associated with *Lawsonia intracellularis.* 2. Finishing swine: As in paragraph (e)(1)(i) of this section; and for prevention of swine dysentery (vibrionic).	Feed continuously as sole ration for 21 days. Feed continuously as sole ration for at least 3 weeks followed by tylosin at 40 g/t until market weight.	000986 000986
(iv) 4.5 to 18		For improved feed efficiency and increased carcass leanness in finishing swine fed a complete ration containing at least 16 percent crude protein from 150 lb (68 kg) to 240 lb (109 kg) body weight.	Feed continuously as sole ration.	000986
(v) 4.5 to 18	Tylosin 40	Finishing swine: As in paragraph (e)(1)(iv) of this section; and for prevention of swine dysentery (vibrionic).	Feed continuously as sole ration until market weight following the use of tylosin at 100 g/t for at least 3 weeks.	000986
(vi) 4.5 to 18	Tylosin 100	1. Finishing swine: As in paragraph (e)(1)(iv) of this section; and for prevention and/or control of porcine proliferative enteropathies (ileitis) associated with *Lawsonia intracellularis*. 2. Finishing swine: As in paragraph (e)(1)(iv) of this section; and for prevention of swine dysentery (vibrionic).	Feed continuously as sole ration for 21 days. Feed continuously as sole ration for at least 3 weeks followed by tylosin at 40 g/t until market weight.	000986 000986

(2) [Reserved]

Dated: November 8, 2002.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 02–30637 Filed 12–2–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for an approved new animal drug application (NADA) from Boehringer Ingelheim Vetmedica, Inc., to Pennfield Oil Co.

DATES: This rule is effective December 3, 2002.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–104), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–8549, e-mail: lluther@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: Boehringer Ingelheim Vetmedica, Inc., 2621 North Belt Hwy., St. Joseph, MO 64506–2002, has informed FDA that it has transferred ownership of, and all rights and interest in, NADA 128–550 for ANCHOR Zinc Bacitracin Type A medicated article to Pennfield Oil Co., 14040 Industrial Rd., Omaha, NE 68137. Accordingly, the agency is amending the regulations in 21 CFR 558.78 to reflect the transfer of ownership.

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

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.78 [Amended]

2. Section 558.78 *Bacitracin zinc* is amended in paragraph (a)(2) by removing ''To 000010'' and by adding in its place ''No. 053389''.

Dated: November 8, 2002.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 02–30638 Filed 12–2–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9021]

RIN 1545–AX68

Loans From a Qualified Employer Plan to Plan Participants or Beneficiaries

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to loans made from a qualified employer plan to plan participants or beneficiaries. These final regulations affect administrators of, participants in, and beneficiaries of qualified employer plans that permit

participants or beneficiaries to receive loans from plans, including loans from section 403(b) contracts and other contracts issued under qualified employer plans.

DATES: *Effective Date:* These regulations are effective December 3, 2002.

Applicability Date: These regulations apply to assignments, pledges, and loans made on or after January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Vernon S. Carter, (202) 622–6060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 72 of the Internal Revenue Code of 1986 (Code). Section 72(p) was added by section 236 of the Tax Equity and Fiscal Responsibility Act of 1982 (96 Stat. 324), and amended by the Technical Corrections Act of 1982 (96 Stat. 2365), the Deficit Reduction Act of 1984 (98 Stat. 494), the Tax Reform Act of 1986 (100 Stat. 2085), and the Technical and Miscellaneous Revenue Act of 1988 (102 Stat. 3342).

On July 31, 2000, final regulations were published in the **Federal Register** in TD 8894 (65 FR 46588) with respect to issues arising under section 72(p)(2). On the same date, a notice of proposed rulemaking (REG–116495–99) was published in the **Federal Register** (65 FR 46677) with respect to issues arising under section 72(p)(2) that were not addressed in the 2000 final regulations. The proposed regulations addressed the suspension of loan repayments during a leave of absence for military service in accordance with section 414(u)(4), the effect of a new loan following a deemed distribution of a prior loan, and the effect of refinancings and multiple loans. The preamble to the proposed regulations also requested comments on the application of the Electronic Signature in Global and National Commerce Act (114 Stat. 464) (ESIGN), which had been enacted shortly before publication of the proposed regulations. Following publication of the proposed regulations, comments were received and a public hearing was held on January 17, 2001. After consideration of the comments received the proposed regulations are adopted as revised by this Treasury decision.

Explanation of Provisions

Section 72(p)(1)(A) provides that a loan from a qualified employer plan (including a contract purchased under a qualified employer plan) to a participant or beneficiary is treated as received as a distribution from the plan for purposes of section 72 (a deemed distribution). Section 72(p)(1)(B) provides that an assignment or pledge of (or an agreement to assign or pledge) any portion of a participant's or beneficiary's interest in a qualified employer plan is treated as a loan from the plan.

Section 72(p)(2) provides that section 72(p)(1) does not apply to the extent certain conditions are satisfied. Specifically, under section 72(p)(2), a loan from a qualified employer plan to a participant or beneficiary is not treated as a distribution from the plan if the loan satisfies requirements relating to the term of the loan, the repayment schedule, and the amount loaned. For example, except in the case of certain home loans, the exception in section 72(p)(2) only applies to a loan that by its terms is to be repaid over not more than five years in substantially level installments. Such a loan is not a deemed distribution to the extent it does not exceed the lesser of (i) an amount equal to $50,000, reduced to the extent that the participant's or beneficiary's highest balance for plan loans outstanding during the preceding 12 months exceeds the current balance for plan loans, or (ii) 50 percent of the participant's or beneficiary's nonforfeitable benefit. Under section 72(p)(2)(D), these limitations apply by treating the loans from all plans of the employer's controlled group as one loan.

For purposes of section 72, a qualified employer plan includes a plan that qualifies under section 401 (relating to qualified trusts), 403(a) (relating to qualified annuities) or 403(b) (relating to tax sheltered annuities), as well as a plan (whether or not qualified) maintained by the United States, a State or a political subdivision thereof, or an agency or instrumentality thereof. A qualified employer plan also includes a plan which was (or was determined to be) a qualified employer plan or a government plan.

Summary of Comments Received, Changes Made, and Summary of the Final Regulations

These final regulations retain the general structure and much of the substance of the proposed regulations, including a variety of examples illustrating the provisions. Some changes have been made in connection with specific recommendations for modifications and clarifications. The comments received in response to the proposed regulations are generally summarized below.

A. Loan Repayment Suspension During Leave of Absence for Military Service in Accordance with Section 414(u)(4)

The proposed regulations stated that, under section 414(u)(4), a plan that permits suspension of loan repayment during a leave of absence for military service (as defined in 38 U.S.C. chapter 43) will not cause the loan to be deemed distributed, even if the leave exceeds a year. The rule was conditioned on loan repayments resuming upon the completion of the military service, the amount remaining due on the loan being repaid in substantially level installments, and the loan being fully repaid by the end of the original term of the loan plus the period of the military service. One commentator was concerned that because the requirement that interest accruing during military service be paid within the extended term would result in larger loan payments following military service than payments preceding military service, the rule could work a hardship on some participants. The commentator suggested that the regulations be modified to allow extension of the loan term in these cases to the period necessary to repay the loan with payments in the same amount as before the military service leave. Another commentator requested that the same extension of loan repayments be permitted for other *bona fide* leaves of absence.

Section 414(u)(4) accommodates military service personnel by permitting postponement of loan repayments while performing military service, but does not alter the accrual of interest or any conditions in section 72(p)(2). Under the proposed regulations, upon resuming repayment, a lender may permit a participant to choose to increase the amount of the payments or to make payments at the previous rate with a balloon payment due at the end of the required time. The IRS and Treasury believe that the amendments suggested by these comments would not satisfy the conditions in section 72(p)(2) that are unaffected by section 414(u)(4). Therefore, the final regulations adopt the regulation as proposed. However, an example in the final regulations has been modified to reflect the application of a maximum 6 percent interest rate during the military leave in accordance with the Soldiers' and Sailors' Civil Relief Act Amendments of 1942. A modification has also been made to clarify that loan repayments can be revised at the end of a military leave to extend the repayment schedule in the event the loan originally had a term of

fewer than five years, as discussed below at the end of section C.

B. May Another Loan Be Extended After a Deemed Distribution

The proposed regulations provided that if a loan is deemed distributed to a participant or beneficiary and has not been repaid, then, unless certain conditions are satisfied, any payment made to the participant or beneficiary thereafter will not be treated as a loan for purposes of section 72(p)(2). Specifically, the proposed regulations provided that to avoid this result, the plan must enter into an agreement under which either repayments are made by payroll withholding or adequate security for the additional loan (in addition to the participant's accrued benefit) is obtained. Some commentators stated that because individuals often hold section 403(b) annuity contracts with more than one issuer, it may be difficult for an issuer to determine whether an individual has defaulted on a plan loan with another issuer. A concern was expressed that if upon a deemed distribution a form 1099–R, Distributions From Pensions, Annuities, Retirement or Profit Sharing Plans, IRAs, Insurance Contracts, *etc.*, is not issued reflecting taxable income, a subsequent loan to a defaulting participant could subject the loan issuer to penalties.

However, in order to satisfy the limitations on the maximum amount that may be loaned from plans of the employer imposed by section 72(p)(2)(A), the issuer of any loan under section 72(p)(2) must inquire about other loans made from the plan or any other plan of the employer before extending a loan. As part of this process, the issuer can condition a new loan on a participant's disclosure of such prior loans and, for this purpose, can rely on an employee's certification concerning the status of prior loans, assuming the issuer has no reason to doubt the employee's certification. Accordingly, the final regulations adopt the provision as proposed.

C. May a Loan Be Refinanced

The proposed regulations provided that, while a loan may be refinanced, the refinancing arrangement must satisfy the requirements of section 72(p)(2)(B) and (C) that loans be repaid in substantially level installments, not less often than quarterly and over a period not in excess of five years (longer for certain home loans). Under the proposed regulations, a refinancing is treated as a continuation of the prior loan, plus a new loan to the extent of any increase in the loan balance. Thus, while a refinancing loan can be repaid over a five-year period from the date of the refinancing to the extent the refinancing loan exceeds the prior loan amount, the prior outstanding loan must continue to be repaid in substantially level installments over a period not longer than the original term remaining on the prior loan in order for the refinancing not to result in a deemed distribution. A refinancing can also satisfy the repayment requirements of section 72(p)(2)(B) and (C) if the refinanced loan is repaid within the original term remaining on the prior loan. If any portion of the refinancing loan has a later repayment date than the original term remaining on the prior loan, then both the prior loan and the refinancing loan are treated as outstanding at the time of the refinancing for purposes of the limitations on the maximum amount that may be loaned from plans of the employer under section 72(p)(2) (which is generally the lesser of a $50,000 amount described above or 50 percent of the employee's nonforfeitable benefit). These standards were illustrated in examples.

Commentators requested that the regulations be modified so that the rules for refinancings accommodate a prior loan with a term of less than five years that is refinanced to a date that is five years from the date of the prior loan.

The final regulations generally adopt the provision on loan refinancings as proposed. However, the refinancing rules have been modified to conform with the recommendation made by commentators on the extension of a prior loan with an original term of less than five years to a term of five years from the date of the prior loan. A similar modification has also been made for repayments made following a military leave.

D. Are Multiple Loans Permitted

Section 72(p)(2) does not prohibit a participant from borrowing from a plan more than once a year. However, in order to address the risk that additional loans could be taken out in order to avoid repayment of prior loans, the proposed regulations provided that a deemed distribution occurs if a participant obtains more than two loans a year.

Several commentators stated that obtaining loans simply to repay previous loans is an abuse that should not be permitted, and commentators and others also provided information indicating that the vast majority of defined contribution plans already include limitations under which a participant is not permitted to have more than two loans outstanding at any time. However, commentators generally requested the flexibility of being allowed to make more than two loans per year to a participant and provided various examples of situations (such as a parent with several children in college) in which a participant might have a legitimate need for multiple borrowings during a year. They also noted that there is no direct statutory foundation for limiting the number of loans under section 72(p) and that the special 12-month rule with respect to the calculation of the $50,000 limitation under section 72(p)(2)(A)(i) inherently limits the number of loans that can be made for larger borrowings. In recognition of these comments, the final regulations do not include any limitation on the number of loans that can be made under section 72(p)(2). Treasury and the IRS recognize that the absence of any limitation on the number of loans that may be made to a participant will allow certain practices that could not otherwise occur without generating taxable income through a deemed distribution under section 72(p). For example, as pointed out by certain commentators, the use of a participant's account balance under a qualified employer plan to secure a credit card is a practice that would not be permissible if the regulations were to limit the number of loans that could be made to a participant from a plan. Thus, Treasury and the IRS recognize that, because the final regulations do not include any limitation on the number of loans that can be made, there will be no section 72(p) barrier to credit card loans that otherwise meet the requirements of that section.

E. Application of ESIGN

The 2000 final regulations require that the terms of a plan loan be set forth in an enforceable agreement and provide that the agreement may be set forth in an electronic medium that satisfies standards that are based on the standards for an electronic consent to a distribution contained in § 1.411(a)–11(f)(2). As noted in the preamble to the proposed regulations under § 1.417(a)(3)–1 published in the **Federal Register** on October 7, 2002 (67 FR 62417) (relating to disclosure of relative values of optional forms of benefit), the IRS and the Treasury Department are considering the extent to which notices under the various Code requirements relating to qualified retirement plans can be provided electronically, taking into account the effect of ESIGN. As further noted in that preamble, the IRS and the Treasury Department anticipate issuing proposed regulations regarding

these issues, and invite comments on these issues. The requirements applicable to electronic plan loan agreements may be considered in connection with those upcoming proposed regulations as well.[1]

F. May Section 457(b) Governmental Plans Have Plan Loans

Commentators requested that the regulations be modified to clarify that eligible governmental plans under section 457(b) are permitted to offer loans to employees in a manner consistent with section 72(p). Proposed regulations under section 457 (REG–105885–99) that were published in the **Federal Register** on May 8, 2002 (67 FR 30826), clarify the conditions under which loans can be made to participants in such plans (at proposed § 1.457–6(f)) and that section 72(p) applies to any such loan (at proposed § 1.457–7(b)(3)).

G. Regulation Effective Date

The proposed regulations would have been effective on the first January 1 that is at least 6 months after they are published as final regulations. These final regulations apply to assignments, pledges, and loans made on or after January 1, 2004, but do not apply to loans made under an insurance contract that is in effect on December 31, 2003, if the insurance carrier is required to offer loans to contractholders that are not secured (other than by the participant's or beneficiary's benefit under the contract).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Vernon S. Carter, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.72(p)–1 is amended as follows:

1. A–9, Q&A–19, and Q–20 are revised, and A–20 is added.

2. A–22 is amended by adding paragraph (d).

The revisions and additions read as follows:

§ 1.72(p)–1 Loans treated as distributions.

* * * * *

A–9: (a) *Leave of absence.* The level amortization requirement of section 72(p)(2)(C) does not apply for a period, not longer than one year (or such longer period as may apply under section 414(u) and paragraph (b) of this Q&A–9), that a participant is on a *bona fide* leave of absence, either without pay from the employer or at a rate of pay (after applicable employment tax withholdings) that is less than the amount of the installment payments required under the terms of the loan. However, the loan (including interest that accrues during the leave of absence) must be repaid by the latest permissible term of the loan and the amount of the installments due after the leave ends must not be less than the amount required under the terms of the original loan.

(b) *Military service.* In accordance with section 414(u)(4), if a plan suspends the obligation to repay a loan made to an employee from the plan for any part of a period during which the employee is performing service in the uniformed services (as defined in 38 U.S.C. chapter 43), whether or not qualified military service, such suspension shall not be taken into account for purposes of section 72(p) or this section. Thus, if a plan suspends loan repayments for any part of a period during which the employee is performing military service described in the preceding sentence, such suspension shall not cause the loan to be deemed distributed even if the suspension exceeds one year and even if the term of the loan is extended. However, the loan will not satisfy the repayment term requirement of section 72(p)(2)(B) and the level amortization requirement of section 72(p)(2)(C) unless loan repayments resume upon the completion of such period of military service and the loan is repaid thereafter by amortization in substantially level installments over a period that ends not later than the latest permissible term of the loan.

(c) *Latest permissible term of a loan.* For purposes of this Q&A–9, the latest permissible term of a loan is the latest date permitted under section 72(p)(2)(B) (*i.e.*, five years from the date of the loan, assuming that the replacement loan does not qualify for the exception at section 72(p)(2)(B)(ii) for principal residence plan loans) plus any additional period of suspension permitted under paragraph (b) of this Q&A–9.

(d) *Examples.* The following examples illustrate the rules of this Q&A–9 and are based upon the assumptions described in the introductory text of this section:

Example 1. (i) On July 1, 2003, a participant with a nonforfeitable account balance of $80,000 borrows $40,000 to be repaid in level monthly installments of $825 each over 5 years. The loan is not a principal residence plan loan. The participant makes 9 monthly payments and commences an unpaid leave of absence that lasts for 12 months. The participant was not performing military service during this period. Thereafter, the participant resumes active employment and resumes making repayments on the loan until the loan is repaid. The amount of each monthly installment is increased to $1,130 in order to repay the loan by June 30, 2008.

(ii) Because the loan satisfies the requirements of section 72(p)(2), the

[1] The staff of the Board of Governors of the Federal Reserve System (Board) has advised the IRS that a plan loan that satisfies section 72(p)(2) and these regulations would constitute an extension of credit under 12 CFR 226.2(a)(14) of regulation Z, implementing the Truth in Lending Act (TILA). Thus, unless the plan or the loan is otherwise excepted from the application of regulation Z (for example, the plan could be exempt because the plan has not made enough loans to be considered a creditor under regulation Z, or a particular loan could be exempt because it exceeds TILA's limit of $25,000 for loans not secured by real property or a dwelling), a plan loan that satisfies the requirements of Q&A–3(b) of § 1.72(p)–1 would be subject to the disclosure and other requirements of regulation Z. The staff of the Board has further advised the IRS and Treasury that, pending the Board's adoption of final rules regarding electronic disclosures, creditors may provide electronic disclosures required by regulation Z if the consumer's consent is obtained as required under ESIGN. *See* 66 FR 17322 (March 30, 2001, relating to reg. M, Consumer Leasing Act); 66 FR 17329 (March 30, 2001, relating to reg. Z, TILA); 66 FR 17779 (April 4, 2001, relating to reg. B, Equal Credit Opportunity Act); 66 FR 17786 (April 4, 2001, relating to reg. E, Electronic Fund Transfer Act); and 66 FR 17795 (April 4, 2001, relating to reg. DD, Truth in Savings Act).

participant does not have a deemed distribution. Alternatively, section 72(p)(2) would be satisfied if the participant continued the monthly installments of $825 after resuming active employment and on June 30, 2008 repaid the full balance remaining due.

Example 2. (i) The facts are the same as in *Example 1,* except the participant was on leave of absence performing service in the uniformed services (as defined in chapter 43 of title 38, United States Code) for two years and the rate of interest charged during this period of military service is reduced to 6 percent compounded annually under 50 App. section 526 (relating to the Soldiers' and Sailors' Civil Relief Act Amendments of 1942). After the military service ends on April 2, 2006, the participant resumes active employment on April 19, 2006, continues the monthly installments of $825 thereafter, and on June 30, 2010, repays the full balance remaining due ($6,487).

(ii) Because the loan satisfies the requirements of section 72(p)(2) and paragraph (b) of this Q&A–9, the participant does not have a deemed distribution. Alternatively, section 72(p)(2) would also be satisfied if the amount of each monthly installment after April 19, 2006, is increased to $930 in order to repay the loan by June 30, 2010 (without any balance remaining due then).

* * * * *

Q–19: If there is a deemed distribution under section 72(p), is the interest that accrues thereafter on the amount of the deemed distribution an indirect loan for income tax purposes and what effect does the deemed distribution have on subsequent loans?

A–19: (a) *General rule.* Except as provided in paragraph (b) of this Q&A–19, a deemed distribution of a loan is treated as a distribution for purposes of section 72. Therefore, a loan that is deemed to be distributed under section 72(p) ceases to be an outstanding loan for purposes of section 72, and the interest that accrues thereafter under the plan on the amount deemed distributed is disregarded for purposes of applying section 72 to the participant or the beneficiary. Even though interest continues to accrue on the outstanding loan (and is taken into account for purposes of determining the tax treatment of any subsequent loan in accordance with paragraph (b) of this Q&A–19), this additional interest is not treated as an additional loan (and thus, does not result in an additional deemed distribution) for purposes of section 72(p). However, a loan that is deemed distributed under section 72(p) is not considered distributed for all purposes of the Internal Revenue Code. *See* Q&A–16 of this section.

(b) *Effect on subsequent loans*—(1) *Application of section 72(p)(2)(A).* A loan that is deemed distributed under section 72(p) (including interest accruing thereafter) and that has not been repaid (such as by a plan loan offset) is considered outstanding for purposes of applying section 72(p)(2)(A) to determine the maximum amount of any subsequent loan to the participant or beneficiary.

(2) *Additional security for subsequent loans.* If a loan is deemed distributed to a participant or beneficiary under section 72(p) and has not been repaid (such as by a plan loan offset), then no payment made thereafter to the participant or beneficiary is treated as a loan for purposes of section 72(p)(2) unless the loan otherwise satisfies section 72(p)(2) and this section and either of the following conditions is satisfied:

(i) There is an arrangement among the plan, the participant or beneficiary, and the employer, enforceable under applicable law, under which repayments will be made by payroll withholding. For this purpose, an arrangement will not fail to be enforceable merely because a party has the right to revoke the arrangement prospectively.

(ii) The plan receives adequate security from the participant or beneficiary that is in addition to the participant's or beneficiary's accrued benefit under the plan.

(3) *Condition no longer satisfied.* If, following a deemed distribution that has not been repaid, a payment is made to a participant or beneficiary that satisfies the conditions in paragraph (b)(2) of this Q&A–19 for treatment as a plan loan and, subsequently, before repayment of the second loan, the conditions in paragraph (b)(2) of this Q&A–19 are no longer satisfied with respect to the second loan (for example, if the loan recipient revokes consent to payroll withholding), the amount then outstanding on the second loan is treated as a deemed distribution under section 72(p).

Q–20: May a participant refinance an outstanding loan or have more than one loan outstanding from a plan?

A–20: (a) *Refinancings and multiple loans*—(1) *General rule.* A participant who has an outstanding loan that satisfies section 72(p)(2) and this section may refinance that loan or borrow additional amounts if, under the facts and circumstances, the loans collectively satisfy the amount limitations of section 72(p)(2)(A) and the prior loan and the additional loan each satisfy the requirements of section 72(p)(2)(B) and (C) and this section. For this purpose, a refinancing includes any situation in which one loan replaces another loan.

(2) *Loans that repay a prior loan and have a later repayment date.* For purposes of section 72(p)(2) and this section (including paragraph (a)(3) of this Q&A–20 and the amount limitations of section 72(p)(2)(A)), if a loan that satisfies section 72(p)(2) is replaced by a loan (a replacement loan) and the term of the replacement loan ends after the latest permissible term of the loan it replaces (the replaced loan), then the replacement loan and the replaced loan are both treated as outstanding on the date of the transaction. For purposes of the preceding sentence, the latest permissible term of the replaced loan is the latest date permitted under section 72(p)(2)(C) (*i.e.*, five years from the original date of the replaced loan, assuming that the replaced loan does not qualify for the exception at section 72(p)(2)(B)(ii) for principal residence plan loans and that no additional period of suspension applied to the replaced loan under Q&A–9 (b) of this section). Thus, for example, if the term of the replacement loan ends after the latest permissible term of the replaced loan and the sum of the amount of the replacement loan plus the outstanding balance of all other loans on the date of the transaction, including the replaced loan, fails to satisfy the amount limitations of section 72(p)(2)(A), then the replacement loan results in a deemed distribution. This paragraph (a)(2) does not apply to a replacement loan if the terms of the replacement loan would satisfy section 72(p)(2) and this section determined as if the replacement loan consisted of two separate loans, the replaced loan (amortized in substantially level payments over a period ending not later than the last day of the latest permissible term of the replaced loan) and, to the extent the amount of the replacement loan exceeds the amount of the replaced loan, a new loan that is also amortized in substantially level payments over a period ending not later than the last day of the latest permissible term of the replaced loan.

(b) *Examples.* The following examples illustrate the rules of this Q&A–20 and are based on the assumptions described in the introductory text of this section:

Example 1. (i) A participant with a vested account balance that exceeds $100,000 borrows $40,000 from a plan on January 1, 2005, to be repaid in 20 quarterly installments of $2,491 each. Thus, the term of the loan ends on December 31, 2009. On January 1, 2006, when the outstanding balance on the loan is $33,322, the loan is refinanced and is replaced by a new $40,000 loan from the plan to be repaid in 20 quarterly installments. Under the terms of the refinanced loan, the loan is to be repaid in

level quarterly installments (of $2,491 each) over the next 20 quarters. Thus, the term of the new loan ends on December 31, 2010.

(ii) Under section 72(p)(2)(A), the amount of the new loan, when added to the outstanding balance of all other loans from the plan, must not exceed $50,000 reduced by the excess of the highest outstanding balance of loans from the plan during the 1-year period ending on December 31, 2005, over the outstanding balance of loans from the plan on January 1, 2006, with such outstanding balance to be determined immediately prior to the new $40,000 loan. Because the term of the new loan ends later than the term of the loan it replaces, under paragraph (a)(2) of this Q&A–20, both the new loan and the loan it replaces must be taken into account for purposes of applying section 72(p)(2), including the amount limitations in section 72(p)(2)(A). The amount of the new loan is $40,000, the outstanding balance on January 1, 2006, of the loan it replaces is $33,322, and the highest outstanding balance of loans from the plan during 2005 was $40,000. Accordingly, under section 72(p)(2)(A), the sum of the new loan and the outstanding balance on January 1, 2006, of the loan it replaces must not exceed $50,000 reduced by $6,678 (the excess of the $40,000 maximum outstanding loan balance during 2005 over the $33,322 outstanding balance on January 1, 2006, determined immediately prior to the new loan) and, thus, must not exceed $43,322. The sum of the new loan ($40,000) and the outstanding balance on January 1, 2006, of the loan it replaces ($33,322) is $73,322. Since $73,322 exceeds the $43,322 limit under section 72(p)(2)(A) by $30,000, there is a deemed distribution of $30,000 on January 1, 2006.

(iii) However, no deemed distribution would occur if, under the terms of the refinanced loan, the amount of the first 16 installments on the refinanced loan were equal to $2,907, which is the sum of the $2,491 originally scheduled quarterly installment payment amount under the first loan, plus $416 (which is the amount required to repay, in level quarterly installments over 5 years beginning on January 1, 2006, the excess of the refinanced loan over the January 1, 2006, balance of the first loan ($40,000 minus $33,322 equals $6,678)), and the amount of the 4 remaining installments was equal to $416. The refinancing would not be subject to paragraph (a)(2) of this Q&A–20 because the terms of the new loan would satisfy section 72(p)(2) and this section (including the substantially level amortization requirements of section 72(p)(2)(B) and (C)) determined as if the new loan consisted of 2 loans, one of which is in the amount of the first loan ($33,322) and is amortized in substantially level payments over a period ending December 31, 2009 (the last day of the term of the first loan) and the other of which is in the additional amount ($6,678) borrowed under the new loan. Similarly, the transaction also would not result in a deemed distribution (and would not be subject to paragraph (a)(2) of this Q&A–20) if the terms of the refinanced loan provided for repayments to be made in level quarterly installments (of $2,990 each) over the next 16 quarters.

Example 2. (i) The facts are the same as in *Example 1*(i), except that the applicable interest rate used by the plan when the loan is refinanced is significantly lower due to a reduction in market rates of interest and, under the terms of the refinanced loan, the amount of the first 16 installments on the refinanced loan is equal to $2,848 and the amount of the next 4 installments on the refinanced loan is equal to $406. The $2,848 amount is the sum of $2,442 to repay the first loan by December 31, 2009 (the term of the first loan), plus $406 (which is the amount to repay, in level quarterly installments over 5 years beginning on January 1, 2006, the $6,678 excess of the refinanced loan over the January 1, 2006, balance of the first loan).

(ii) The transaction does not result in a deemed distribution (and is not subject to paragraph (a)(2) of this Q&A–20) because the terms of the new loan would satisfy section 72(p)(2) and this section (including the substantially level amortization requirements of section 72(p)(2)(B) and (C)) determined as if the new loan consisted of 2 loans, one of which is in the amount of the first loan ($33,322) and is amortized in substantially level payments over a period ending December 31, 2009 (the last day of the term of the first loan), and the other of which is in the additional amount ($6,678) borrowed under the new loan. The transaction would also not result in a deemed distribution (and not be subject to paragraph (a)(2) of this Q&A–20) if the terms of the new loan provided for repayments to be made in level quarterly installments (of $2,931 each) over the next 16 quarters.

* * * * *

A–22: * * *

(d) *Effective date for Q&A–19(b)(2) and Q&A–20.* Q&A–19(b)(2) and Q&A–20 of this section apply to assignments, pledges, and loans made on or after January 1, 2004.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: November 7, 2002.

Pamela F. Olson,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 02–29204 Filed 12–2–02; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 924

[MS–017–FOR]

Mississippi Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving an amendment to the Mississippi regulatory program (Mississippi program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Mississippi proposed revisions to and additions of rules about valid existing rights, roads, formal review of citations, and revegetation success standards. Mississippi intends to revise its program to be consistent with the corresponding Federal regulations and to improve operational efficiency.

EFFECTIVE DATE: December 3, 2002.

FOR FURTHER INFORMATION CONTACT: Arthur W. Abbs, Director, Birmingham Field Office. Telephone: (205) 290–7282. Internet: *aabbs@osmre.gov*.

SUPPLEMENTARY INFORMATION:

I. Background on the Mississippi Program
II. Submission of the Amendment
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the Mississippi Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''* * * a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior approved the Mississippi program on September 4, 1980. You can find background information on the Mississippi program, including the Secretary's findings and the disposition of comments, in the September 4, 1980, **Federal Register** (45 FR 58520). You can find later actions on the Mississippi program at 30 CFR 924.10, 924.15, 924.16, and 924.17.

II. Submission of the Amendment

By letter dated September 28, 2001 (Administrative Record No. MS–0388), Mississippi sent us an amendment to its program under SMCRA and the Federal regulations at 30 CFR 732.17(b). Mississippi sent the amendment in response to our letters dated August 17, 2000, and August 23, 2000 (Administrative Record Nos. MS–0382 and MS–0381, respectively), that we

sent to Mississippi in accordance with 30 CFR 732.17(c). Mississippi also sent the amendment in response to required program amendments at 30 CFR 924.16(i) and (l). Finally, the amendment included changes made at Mississippi's own initiative.

We announced receipt of the proposed amendment in the November 2, 2001, **Federal Register** (66 FR 55611). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. The public comment period closed on December 3, 2001. Because no one requested a public hearing or meeting, we did not hold one. We received comments from one State agency.

During our review of the amendment, we identified concerns relating to the definition of ''immediate mining area'' and provisions concerning limited use vehicular pathways. We notified Mississippi of these concerns by letter dated January 23, 2002 (Administrative Record No. MS–0390). By letter dated July 22, 2002, Mississippi sent us a revised amendment (Administrative Record No. MS–0394). Based upon Mississippi's revisions to its amendment, we reopened the public comment period in the September 6, 2002, **Federal Register** (67 FR 56967). The public comment period closed on September 23, 2002. We did not receive any comments.

Also during our review, we identified editorial concerns relating to Mississippi's revegetation success standards. We notified Mississippi of these concerns by telephone on September 10, 2002 (Administrative Record No. MS–0398). By letter dated September 12, 2002, Mississippi sent us revisions to its amendment (Administrative Record No. MS–0397). Because the revisions merely clarified certain provisions of Mississippi's amendment, we did not reopen the public comment period.

III. OSM's Findings

Following, under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are our findings concerning the amendment to the Mississippi program. Any revisions that we do not discuss below are minor wording changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

A. Revisions to Mississippi's Rules That Are Substantively the Same as the Corresponding Provisions of the Federal Regulations

The State rules listed in the table contain language that is the same as or similar to the corresponding sections of the Federal regulations. Differences between the State rules and the Federal regulations are minor.

Topic	State rule	Federal counterpart regulation
Areas where mining is prohibited or limited	Section 1105	30 CFR 761.11
Submission and processing of requests for valid existing rights determinations.	Section 1106	30 CFR 761.16
Valid existing rights review at time of permit application review.	Section 3114	30 CFR 761.17
Permit requirements for exploration removing more than 250 tons of coal, or occurring on lands designated as unsuitable for surface coal mining operations.	Section 2103(b)(14), (c), (d), (e), and (f)	30 CFR 772.12(b)(14), (c), (d), and (e)

Because the above State rules are substantively the same as the corresponding Federal regulations, we find that they are no less effective than the Federal regulations.

B. Revisions to Mississippi's Rules That Are Not the Same as the Corresponding Provisions of the Federal Regulations

1. Section 105, Definition of ''Valid Existing Rights''

Mississippi revised its definition of ''valid existing rights'' to closely follow the Federal definition at 30 CFR 761.5. However, Mississippi's definition of ''valid existing rights'' includes language in paragraph (a) specifying that valid existing rights must have been in existence on August 3, 1977, unless, subsequent to the adoption of the definition, section 53–9–71(4) of the Mississippi Surface Coal Mining and Reclamation Law is amended to delete that requirement. Mississippi's definition further provides that if section 53–9–71 of the Mississippi Surface Coal Mining and Reclamation Law is amended to delete the requirement that a right exist as of August 3, 1977, then the right must have been in existence at the time the land came under the protection of 30 CFR 761.11, 30 U.S.C. 1272(e), Miss. Code Ann. 53–9–71, or section 1105 of the Mississippi regulations. In a letter dated September 28, 2001 (Administrative Record No. MS–0388), Mississippi explained that section 53–9–71(4) of Mississippi's Surface Coal Mining and Reclamation Law provides that valid existing rights must have existed on or before August 3, 1977. Mississippi further explained that it may suggest a statutory change to the Mississippi Legislature to bring the state law in line with the Federal statute and regulations.

Mississippi's definition of ''valid existing rights'' provides that a person claiming valid existing rights must demonstrate valid existing rights in the same manner required by the Federal definition at 30 CFR 761.5, except that those rights must have existed on August 3, 1977. The Federal regulations require that valid existing rights must have existed on the date that the land came under the protection of 30 CFR 761.11 or 30 U.S.C 1272(e)—a date that could occur on or after August 3, 1977. Because rights that exist under the Mississippi rules would also exist under the Federal regulations, we find that Mississippi's proposed definition is no less effective than the Federal definition at 30 CFR 761.5. Therefore, we are approving it.

2. Section 1103, Responsibility

Mississippi revised the language in this section by adding the phrase, ''a valid existing rights determination made by OSM'' after the reference to ''30 U.S.C. 1272(e).'' Mississippi also replaced the phrase, ''this Chapter'' with the phrase, ''these regulations.''

As revised, section 1103 reads as follows:

> The Permit Board shall comply with Chapters 17 to 37 and determine whether an application for a permit must be denied because surface coal mining operations on those lands are prohibited or limited by § 522(e) of SMCRA, 30 U.S.C. 1272(e), a valid existing rights determination made by OSM, § 53–9–71, these regulations, or a designation of the Commission.

The Federal regulations at 30 CFR 761.3 authorizes a State regulatory authority to prohibit or limit surface coal mining operations on or near

certain private, Federal, and other public lands, subject to valid existing rights and except for those operations which existed on August 3, 1977. Therefore, we find that Mississippi's revisions to section 1103 are not inconsistent with 30 CFR 761.3, and we are approving it.

3. Section 1107, Procedures

a. At paragraph (a), Mississippi added language to require the Permit Board to determine whether proposed surface coal mining operations are limited or prohibited under section 1105 prior to the submission of a complete application, if the applicant requests the Permit Board to do so under section 1106. We find that the revision of this section is not inconsistent with the Federal provisions at 30 CFR 761.16, which allow an applicant to request that the regulatory authority make a valid existing rights determination prior to preparing and submitting an application for a permit or boundary revision. Therefore, we are approving it.

b. Mississippi revised the first sentence of paragraph (b) to provide that where a proposed operation would be located on any lands listed in section 1105, the Permit Board must deny the permit if the applicant has no valid existing rights for the area. We find that Mississippi's revisions are no less effective than the Federal provisions at 30 CFR 773.15(c)(ii), which provides that no permit application can be approved unless the application affirmatively demonstrates and the regulatory authority finds in writing that the proposed permit area is not within an area subject to the prohibitions of 30 CFR 761.11. Therefore, we are approving it.

c. Mississippi revised paragraph (f) to provide that the Permit Board will follow the procedures required by section 3114(d) of Mississippi's rules when it determines that a proposed surface coal mining operation will adversely affect any publicly owned park or any place included in the National Register of Historic Places. Section 3114(d) of Mississippi's rules is substantively the same as the Federal provisions at 30 CFR 761.17(d), which describe the procedures for joint approval of surface coal mining operations that will adversely affect publicly owned parks or historic places. Because Mississippi's revision merely directs the reader to the procedures found in 3114(d), we find that Mississippi's revision at section 1107(f) is no less effective than the Federal provisions at 30 CFR 761.17(d), and we are approving it.

d. Finally, Mississippi removed paragraph (h), which provided that determinations made by the Permit Board concerning whether a person has valid existing rights are subject to administrative and judicial review under Miss. Code Ann. 53–9–77. Paragraph (h) also provided that determinations made by the Permit Board concerning whether surface coal mining operations existed on the date of enactment are subject to administrative and judicial review under Miss. Code Ann. 53–9–77.

Section 1106(g) of Mississippi's revised rules provides that a determination that valid existing rights do or do not exist is subject to administrative and judicial review under section 53–9–77 of the Mississippi Surface Coal Mining and Reclamation Law. Therefore, we find that the removal of the portion of section 1107(h) concerning administrative and judicial review of valid existing rights determinations does not render the Mississippi rules less effective than the Federal regulations, and we are approving it.

On December 17, 1999, we removed the portion of former 30 CFR 761.12(h) that provided for administrative appeals of existing operations determinations. In the preamble, we explained that because the exception for existing operations in 30 CFR 761.12 does not require any affirmative action or decision on the part of the permittee or the regulatory authority, no action or decision exists to appeal (64 FR 70804). Therefore, Mississippi's removal of the portion of section 1107(h) concerning administrative and judicial review of existing operations determinations is consistent with the removal of our counterpart provision at former 30 CFR 761.12(h), and we are approving it.

C. Revisions to Mississippi's Rules With No Corresponding Federal Regulations

1. Section 105, Definition of ''Immediate Mining Area''

Mississippi added a definition for ''immediate mining area'' to read as follows:

Immediate Mining Area—as used in the definition of Road in this section, means an area of mining activity or pre-mining construction activity covered by a construction stormwater pollution prevention plan or, after construction is completed, situated so that surface water run-off will be routed to an approved water control structure such as a sedimentation pond. Routes of travel within the immediate mining area will be either: consumed by mining; reclaimed; or have design plans submitted for approval as permanent postmine features prior to phase II bond release.

No Federal counterpart to this definition exists. However, in the preamble to our November 8, 1988, **Federal Register** (53 FR 44356) concerning roads, we discussed what the phrase meant. In that discussion, we incorporated two concepts into the interpretation of ''immediate mining area''—frequent changes and drainage control. Several commenters suggested that the term be interpreted consistent with drainage control since the necessary environmental protection would be provided and it would provide an exact meaning of the term. We stated that our view is in part consistent with the commenters concerning the exclusion of roads within the permit area for which drainage control is otherwise provided. We went on to explain that because all of the other standards of section 515 of SMCRA would also necessarily apply to temporary routes not considered roads, the protection required by section 515(b)(17) of SMCRA would still be achieved. However, we retained the concept of frequent changes in order to ensure that all roads are adequately reclaimed. We stated that all routes subject to frequent changes would be obliterated during the mining process, but routes no longer changing need to be included in the definition of road to ensure that they are adequately designed, constructed, maintained, and reclaimed. No further guidance in interpretation of the phrase ''frequent changes'' was provided.

Routes of travel in large mines over relatively flat terrain, such as the mine in Mississippi, move as operations move, and are therefore subject to frequent change. We believe that, considering the nature of mining operations in Mississippi, it would not be unreasonable or an abuse of discretion for the State to consider the immediate mining area as matching the area where drainage control has been established through construction of siltation structures so long as mechanisms are in place to ensure that when travel routes are no longer changing, they are either (1) Reclaimed with vegetation established or (2) approved as roads as mining and reclamation operations are completed, such as by the time of phase II bond release. We believe that these mechanisms would ensure full and contemporaneous reclamation, and ensure that travel routes not reclaimed as part of the general reclamation of an area would be included in the definition of a road.

By letter dated January 23, 2002 (Administrative Record No. MS–0390), we notified Mississippi that its definition lacked the mechanisms to ensure that all travel routes are either reclaimed or approved as roads as mining and reclamation operations are completed. By letter dated July 22, 2002 (Administrative Record No. MS–0394), Mississippi sent a revision to its definition to add a provision requiring routes of travel within the immediate mining area to be (1) Consumed by mining; (2) reclaimed; or (3) have design plans submitted for approval as permanent postmine features prior to phase II bond release. Because Mississippi's definition of ''immediate mining area'' provides mechanisms to ensure that all travel routes are either (1) reclaimed with vegetation established or (2) approved as roads prior to phase II bond release, we find that it is not inconsistent with the requirements of the Federal program, and we are approving it.

2. Section 53111, Roads: General

Mississippi added new paragraphs (a)(4) and (5) to read as follows:

(4) A limited use vehicular pathway is not classified as a road if it meets all the following:

(i) the pathway has no improved roadbed, which means it has no constructed crown, compacted base, roadway ditches, or surface material added to enhance use as a pathway which precludes vegetation;

(ii) the pathway has no bridges or other cross-drainage structures;

(iii) the pathway is not located in and/or does not cross or ford any channel of an intermittent or perennial stream;

(iv) the pathway has only limited clearing, if any, of woody vegetation, typically wide enough only for the safe passage of one vehicle;

(v) the pathway is located so as to control erosion and siltation; and

(vi) maintenance of the pathway is limited to maintenance consisting only of the occasional filling of potholes and ruts in order to remain passable.

(5) A limited use vehicular pathway:

(i) shall be reclaimed with vegetation sufficient to prevent erosion prior to phase II bond release;

(ii) along with the area it disturbs, is a mining related activity and must be covered by an appropriate reclamation bond;

(iii) will be reclassified as a road if upgraded by construction activities such as blading, construction, placement of a compacted surface, cut and fill of the natural grade, construction of drainage ditches or low water crossings, or installation of drainage structures. The submittal and approval of plans and drawings required by these regulations must be completed prior to the upgrading of a limited use vehicular pathway.

No Federal counterpart to these provisions exists. However, we recognize that in flat agricultural areas such as those that occur in the mining areas of Mississippi, occasional overland travel that occurs repeatedly in the same place will create tracks that can be called pathways, trails, lanes, etc., even though there has been no improved roadbed. We further recognize that such pathways will need occasional repair or maintenance to remain passable, and that such maintenance does not necessarily make the pathway a road. We do not believe it would be unreasonable or an abuse of discretion for the State to exempt such pathways from regulation as a ''road'' so long as the State does not allow the pathways to have any characteristics of ancillary or primary roads.

By letter dated January 23, 2002 (Administrative Record No. MS–0390), we notified Mississippi that its provisions at 53111(a)(4) and (5) could allow limited use vehicular pathways to have some characteristics of ancillary roads. By letter dated July 22, 2002 (Administrative Record No. MS–0394), Mississippi revised its provisions at section 53111(a)(4) and (5) by removing language that would have allowed limited use vehicular pathways to have culverts, be located in and/or cross or ford channels of intermittent or perennial streams, and include water bars across the pathway and drainage ways incidental to the area. Because Mississippi's provisions at 53111(a)(4) and (5) do not allow limited use vehicular pathways to have any characteristics of ancillary or primary roads, we find that it is not inconsistent with the requirements of the Federal regulations, and we are approving it.

C. Section 6511, Formal Review of Citations

Mississippi revised the first sentence of paragraph (c) to allow any party to a proceeding that is the result of the issuance of a notice of violation or cessation order to apply to the Commission for temporary relief from the notice or cessation order.

Mississippi's revision at section 6511(c) is substantively the same as the Federal regulation at 30 CFR 4.1261. Further, the revision satisfies the requirements placed on the Mississippi program at 30 CFR 924.16(l). Therefore, we are approving Mississippi's revision and removing the required program amendment at 30 CFR 924.16(l).

D. Revegetation Success Guidelines

1. Section 53103, Revegetation: Standards for Success

Mississippi redesignated paragraph (a)(1) as paragraph (b)(1); paragraph (b)(1) as paragraph (b)(2); paragraph (b)(2) in its entirety as paragraph (b)(3); and paragraph (b)(3) as new paragraph (b)(4). Mississippi also revised paragraph (a) to incorporate by reference a revegetation success guidance document titled ''Appendix A, Revegetation Success Standards.'' Finally, Mississippi added language in paragraph (a) to provide that if a postmining land use is selected and approved by the Permit Board for which standards are not specified in Appendix A, or if Appendix A does not specify a more specific standard of success for a postmining land use, the general standards of success found at redesignated paragraph (b) will apply.

The Federal regulations at 30 CFR 816.116(a)(1) require that each regulatory authority select revegetation success standards and statistically valid sampling techniques for measuring revegetation success and include them in its approved regulatory program. We find that Mississippi's incorporation by reference of Appendix A into its rules at 53103(a) meets the requirements of 30 CFR 816.116(a)(1), and we are approving it. Further, we find that Mississippi's Appendix A provides success standards for the most probable types of postmining land use that an operator might choose. It would be highly unlikely that an operator would select a postmining land use that was not covered by Appendix A. If an operator did choose a postmining land use that was not covered under Appendix A, Mississippi would need to develop success standards for that land use and submit them to us for approval. Therefore, we are approving Mississippi's provision at section 53103(a).

2. Appendix A, Revegetation Success Standards

Mississippi added Appendix A to describe the standards for revegetation success on commercial forest lands, croplands, industrial or commercial lands, pasture and previously mined areas, prime farmlands, recreation lands, residential lands, and wildlife habitats.

The Federal regulations at 30 CFR 816.116(a)(1) require that each regulatory authority select revegetation success standards and statistically valid sampling techniques for measuring revegetation success and include them in its approved regulatory program.

Mississippi developed its revegetation success guidelines to satisfy this requirement. The guidelines include revegetation success standards and statistically valid sampling techniques for measuring revegetation success of reclaimed commercial forest lands, croplands, industrial or commercial lands, pasture and previously mined areas, recreation lands, residential lands, and wildlife habitats in accordance with Mississippi's counterparts to the Federal regulations at 30 CFR 816.116. The guidelines also include revegetation success standards and statistically valid sampling techniques for restoring soil productivity of prime farmland soils in accordance with Mississippi's counterparts to the Federal regulations at 30 CFR 823.15. Mississippi's standards, criteria, and parameters for revegetation success reflect the extent of cover, species composition, and soil stabilization required in the Federal regulations at 30 CFR 816.111. As required by the Federal regulations at 30 CFR 816.116(a)(2) and (b) and 823.15, Mississippi's revegetation success standards include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of ground cover, production, or stocking suitable to the approved postmining land uses. Mississippi's guidelines specify the procedures and techniques to be used for sampling, measuring, and analyzing vegetation parameters. Ground cover, production, and stocking suitable to the approved postmining land uses, except prime farmland, are considered equal to the approved success standard when they are not less than 90 percent of the success standard. The average production of crops for prime farmland soils must equal or exceed the average production of the same crops for the same or similar unmined prime farmland soils. Sampling techniques for measuring success use a 90-percent statistical confidence interval for all land uses. We found that use of these procedures and techniques will ensure consistent, objective collection of vegetation data.

For the above reasons, we find that the revegetation success standards and statistically valid sampling techniques for measuring revegetation success contained in Mississippi's revegetation success guidelines satisfy the requirements of 30 CFR 816.116(a)(1) and 823.15. The guidelines also satisfy the requirement placed on the Mississippi program at 30 CFR 924.16(i), and we are removing it.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment, but did not receive any.

Federal Agency Comments

On October 11, 2001, and July 30, 2002, under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Mississippi program (Administrative Record Nos. MS–0395 and MS–0396, respectively). We did not receive any comments.

Environmental Protection Agency (EPA)

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence of the EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Mississippi proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask the EPA for its concurrence.

On October 11, 2001, and July 30, 2002, under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from the EPA (Administrative Record Nos. MS–0395 and MS–0396, respectively). The EPA did not respond to our request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On October 11, 2001, and July 30, 2002, we requested comments on Mississippi's amendment (Administrative Record Nos. MS–0395 and MS–0396, respectively). The SHPO responded on November 20, 2001 (Administrative Record No. MS–0389). The SHPO stated that sections 1105(c), 1106(e)(2)(ii), 1107(f), and 3114(d)(1) of Mississippi's rules should be modified to include any place that is eligible for the National Register of Historic Places as well as those that have already been included in the Register. Also, the SHPO stated that at section 2103(b)(8), Mississippi should add another item to require applications for exploration permits to contain a statement from the SHPO that assesses the need for a cultural resources survey.

On September 24, 2002 (Administrative Record No. MS–0399), we sent a letter to the SHPO informing them that Mississippi's rules are consistent with Section 522(e)(3) of SMCRA and Part 761 of the Federal regulations. We also explained that even though SMCRA and the Federal regulations do not require consideration of properties eligible for listing on the National Register of Historic Places when making a determination of whether a person has valid existing rights to mine in areas where surface coal mining operations are normally prohibited or limited, the permit application requirements of the Federal regulations do require this consideration for these areas. Finally, we informed the SHPO that Mississippi did not propose changes to section 2103(b)(8), and that we've previously found that Mississippi's provisions at section 2103(b)(8) are substantively identical, and no less effective than, the Federal regulations at 30 CFR 772.12(b)(8).

V. Director's Decision

Based on the above findings, we approve the amendment Mississippi sent to us on September 28, 2001, and as revised on July 22, 2002, and September 12, 2002. We approve the rules that Mississippi proposed with the provision that the rules be published in identical form to the rules sent to and reviewed by OSM and the public.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 924, which codify decisions concerning the Mississippi program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that a State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this rule effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

In this rule, the State is adopting valid existing rights standards that are similar to the standards in the Federal definition at 30 CFR 761.5. Therefore, this rule has the same takings implications as the Federal valid existing rights rule. The takings implications assessment for the Federal valid existing rights rule appears in Part XXIX.E. of the preamble to that rule. See 64 FR 70766, 70822–27, December 17, 1999. The other provisions in the rule based on counterpart Federal regulations do not have takings implications. This determination is

based on the analysis performed for the counterpart Federal regulations. The revisions made at the initiative of the State have also been reviewed and a determination made that they do not have takings implications. This determination is based on the fact that the provisions will have no substantive effect on the regulated industry.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior 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.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 924

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 17, 2002.

Charles E. Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR Part 924 is amended as set forth below:

PART 924—MISSISSIPPI

1. The authority citation for Part 924 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 924.15 is amended in the table by adding a new entry in chronological order by Date of final publication to read as follows:

§ 924.15 Approval of Mississippi regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* * * * * * *		
September 28, 2001	December 3, 2002	Sections 105; 1103; 1105; 1106; 1107(a), (b), (f), and (h); 2103(b)(14), (c), (d), (e), and (f); 3114; 53103(a) and (b); 53111(a)(4) and (5); 6511(c); and Appendix A: Revegetation Success Guidelines

§ 924.16 [Amended]

3. Section 924.16 is amended by removing and reserving paragraphs (i) and (l).

4. Section 924.17 is amended by revising the section heading to read as follows:

§ 924.17 State regulatory program provisions and amendments not approved.

[FR Doc. 02–30607 Filed 12–2–02; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[WV–096–FOR]

West Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendments.

SUMMARY: We are announcing our approval with one exception of amendments to the West Virginia surface coal mining regulatory program (the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The amendments we are approving concern changes to the Code of State Regulations as contained in State House Bill 4163 and Senate Bill 2002, concerning contemporaneous reclamation of mine land.

EFFECTIVE DATE: December 3, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Charleston Field Office, 1027 Virginia Street East, Charleston, West Virginia 25301. Telephone: (304) 347–7158.

SUPPLEMENTARY INFORMATION:

I. Background on the West Virginia Program
II. Submission of the Amendment
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the West Virginia Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''* * * a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' See 30 U.S.C. 1253(a) (1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the West Virginia program on January 21, 1981. You can find background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and conditions of approval of the West Virginia program in the January 21, 1981, **Federal Register** (46 FR 5915). You can also find later actions concerning West Virginia's program and program amendments at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

II. Submission of the Amendment

By letter dated April 9, 2002 (Administrative Record Number WV–1296), the West Virginia Department of Environmental Protection (WVDEP) sent us a proposed amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). The proposed amendment consists of several changes to the Code of State Regulations (CSR) at 38–2, and the addition of new CSR 38–4, the Coal Related Dam Safety Rules, as contained in House Bill 4163.

We announced receipt and provided an opportunity to comment on the amendment in the June 6, 2002, **Federal Register** (67 FR 38919) (Administrative Record Number WV–1311). The comment period closed on July 8, 2002. We received comments from the U.S. Department of Labor, Mine Safety and Health Administration.

By letter and electronic mail dated June 19, 2002, WVDEP sent us additional amendments to its program that are contained in Senate Bill 2002 concerning changes to CSR 38–2 (Administrative Record Number WV–1316). Senate Bill 2002 was signed by the Governor on June 21, 2002. Senate Bill 2002 authorized the WVDEP to promulgate revisions to its Surface Mining and Reclamation Regulations.

We announced receipt of the proposed amendments in the August 16, 2002, **Federal Register** (67 FR 53542) (Administrative Record Number WV–1322). In that notice, we also identified proposed amendments that we inadvertently omitted identifying in the June 6, 2002, **Federal Register** notice, including the new Coal Related Dam Safety Rules at CSR 38–4. The comment period closed on September 16, 2002. We received comments from the U.S. Department of Labor, Mine Safety and Health Administration, the U.S. Fish and Wildlife Service, and the Environmental Protection Agency.

Revisions to the State's contemporaneous reclamation requirements are contained in the two amendment submittals discussed above. In order to expedite our review of the State's amendments to its contemporaneous reclamation provisions, we have separated those amendments from the two amendment submittals discussed above. In this notice, we are presenting our findings only on the proposed amendments to the State's contemporaneous reclamation requirements at CSR 38–2–14.15. We will present our findings on the remainder of the amendments submitted by the State on April 9 and June 19, 2002, in a separate **Federal Register** notice at a later date.

III. OSM's Findings

For the reasons discussed below, we are approving, with one exception, the proposed amendments to the State's contemporaneous reclamation standards at CSR 38–2–14.15. Any revisions that we do not specifically discuss below concern nonsubstantive wording or editorial changes that do not require specific approval.

1. CSR 38–2–14.15.a.1

This provision concerns backfilling and grading of spoil that is returned to the mined out area. The first sentence in this provision has been amended by adding the phrase ''unless a waiver is

granted pursuant to W. Va. Code [Code of West Virginia] 22–3–13(c)(2)'' between the words ''approximate original contour'' and the words ''with all highwalls eliminated.'' As amended, the first sentence is as follows:

14.15.a.1. Spoil returned to the mined-out area shall be backfilled and graded to the approximate original contour unless a waiver is granted pursuant to W. Va. Code 22–3–13(c)(2) with all highwalls eliminated.

This amended provision authorizes an exception to the requirement to return land to approximate original contour (AOC) pursuant to a waiver granted pursuant to W. Va. Code 22–3–13(c)(2) concerning mountaintop removal mining operations. SMCRA contains such a variance from the requirements to return land to AOC for mountaintop removal mining operations at section 515(c)(2). Therefore, we find that this amendment does not render the West Virginia program less stringent than SMCRA and can be approved.

2. CSR 38–2–14.15.a.2

This provision, which was transferred from former Subdivision 14.15.b.6.B.1. and slightly modified, provides as follows:

14.15.a.2. All permit applications shall incorporate into the required mining and reclamation plan a detailed site specific description of the timing, sequence, and areal extent of each progressive phase of the mining and reclamation operation which reflects how the mining operations and the reclamation operations will be coordinated so as to minimize the amount of disturbed, unreclaimed area, and to quickly establish and maintain a specified ratio of disturbed versus reclaimed area throughout the life of the operation.

In effect, this modified provision provides that the required mining and reclamation operations plan submitted with each permit application, include a detailed site-specific description of the timing, sequence, and areal extent of each progressive phase of proposed mining and reclamation operations. Such detailed site-specific description should provide a clear indication of how the mining and reclamation operations will be coordinated by the permittee. The required information should enable the WVDEP to assess the potential effectiveness of the proposed mining and reclamation operations plan in complying with the contemporaneous reclamation requirements at CSR 38–2–14.15. We find that this proposed provision is consistent with and no less effective than the Federal mining and reclamation plan requirements at 30 CFR 780.11 and 780.18, and consistent with the Federal contemporaneous reclamation requirements at 30 CFR 816.100 and can be approved.

3. CSR 38–2–14.15.b.5

This provision is amended by adding a sentence to the end of the existing provision that provides as follows:

Regardless of the allowable limits contained in this section, any disturbed area other than those specified in subdivision 14.15.c. of this rule must complete backfilling and rough grading within 180 days of final mineral removal.

As amended, CSR 38–2–14.15.b.5. provides as follows:

14.15.b.5. Where the operation consists of multiple seam mining along the topographic contour on steep or non-steep slopes, and where the coal seams running through the mountain, hill, or ridge are only partially removed, disturbed and unreclaimed acreage including excess spoil disposal sites, shall not exceed two hundred (200) acres or fifty (50) percent of the permit area, whichever is less. Augering and/or highwall mechanical mining which becomes a part of these types of operations shall be incorporated into the operation in such a fashion so as to meet the subject acreage limitations. Regardless of the allowable limits contained in this section, any disturbed area other than those specified in subdivision 14.15.c. of this rule must complete backfilling and rough grading within 180 days of final mineral removal.

In effect, this provision sets the standard for completion of rough backfilling and grading of multiple seam mining operations where the coal seams are only partially removed at 180 days, except for those areas classified as ''reclaimed'' and exempted under subdivision 14.15.c.2., as discussed below. The Federal time and distance standards for backfilling and grading at 30 CFR 816.101 have been indefinitely suspended (57 FR 33875, July 31, 1992). However, we find that this provision is not inconsistent with the Federal requirements at 30 CFR 816/817.100 concerning contemporaneous reclamation and can be approved.

4. CSR 38–2–14.15.b.6.A

This provision concerns disturbed and unreclaimed acreage limitations for mountaintop mining operations or combination mountaintop mining operations with incidental contour mining. The provision was amended by adding the following language after the second sentence:

Where operations contemplated under this [sub]section are approved with incidental contour mining, which may include augering or highwall mining, the acreage must be calculated in the allowable disturbance authorized in this paragraph. The incidental contour pit length cannot exceed 3000 feet and backfilling/grading shall follow mineral removal within 180 days. Regardless of the allowable limits contained in section fourteen of this rule, any disturbed area other than those specified in subdivision 14.15.c. of this rule must complete backfilling and rough grading within 180 days of final mineral removal. Operations required to comply with AOC+ guidelines or approved specific post-mining land use requirements must complete backfilling and rough grading within 270 days of final mineral removal unless a waiver is otherwise granted by the Secretary pursuant to this [sub]section.

As amended, CSR 38–2–14.15.b.6.A. provides as follows:

14.15.b.6.A. Disturbed and unreclaimed acreage, including excess spoil disposal sites, shall not exceed thirty-five (35) percent of the total permit acreage, or three hundred (300) acres, whichever is less. Provided; however, the Secretary may grant a variance not to exceed five hundred (500) acres on operations which consist of multiple spreads of equipment. Where operations contemplated under this [sub]section are approved with incidental contour mining, which may include augering or highwall mining, the acreage must be calculated in the allowable disturbance authorized in this paragraph. The incidental contour pit length cannot exceed 3000 feet and backfilling/grading shall follow mineral removal within 180 days. Regardless of the allowable limits contained in section fourteen of this rule, any disturbed area other than those specified in subdivision 14.15.c. of this rule must complete backfilling and rough grading within 180 days of final mineral removal. Operations required to comply with AOC+ guidelines or approved specific post-mining land use requirements must complete backfilling and rough grading within 270 days of final mineral removal unless a waiver is otherwise granted by the Secretary pursuant to this [sub]section.

The ratio of disturbed and unreclaimed acreage versus reclaimed or undisturbed acreage shall be shown on progress maps submitted annually or as otherwise required by the Secretary. The subject ratios shall be verified by the Secretary to be consistent with the mining and reclamation plan on the next regular inspection following receipt of the progress map.

Under the proposed rule, mountaintop mining operations with incidental contour mining, which may include auger or highwall mining, will have to complete backfilling and grading of the incidental contour pit within 180 days of mineral removal. In addition, proposed mountaintop mining operations with complete coal removal, and mountaintop mining operations with contour mining with partial coal removal are required to complete backfilling and rough grading of any disturbed areas within 180 days of final mineral removal. However, mountaintop mining operations subject to the recently developed AOC guidelines (also known as AOC+ guidelines) or with specific postmining

land uses must be backfilled and graded within 270 days of final mineral removal, unless a waiver is granted by the Secretary.

The AOC+ guidelines referred to above are dated January 27, 2000, and took effect on March 24, 2000. The AOC+ guidelines are to be used in determining when AOC has been achieved by surface coal mining operations in steep slope areas of the State. They are also used in determining when placement of excess spoil in fills has been optimized by applicants both seeking or not seeking an AOC variance. The AOC+ guidelines do not apply to contour mining operations. Those operations are subject to the AOC/Excess Spoil Guidance document that was issued on March 16, 1999. OSM and other Federal agencies have concurred with the State's AOC+ guidelines, because they have been found to be useful in providing guidance on AOC demonstrations within the context of the approved State regulatory program (Administrative Record Numbers WV–1150, WV–1153, and WV–1154).

As proposed, mountaintop mining operations without exceptions to AOC that are subject to the AOC+ guidelines or mountaintop removal mining operations with the approvable postmining land uses at subsection 22–3–13(c)(3) of the West Virginia Surface Coal Mining and Reclamation Act would be required to complete backfilling and rough grading within 270 days of final coal removal, unless a waiver is granted by the State. To date, only a few mountaintop mining operations have been approved by the State pursuant to the AOC+ guidelines and are required to complete backfilling and grading within 270 days of final coal removal. All contour and mountaintop mining operations that were approved prior to March 24, 2000, must complete backfilling and grading within 180 days of final coal removal. Therefore, all contour mining operations and most mountaintop mining operations that have been approved by the State to date would have to complete backfilling and grading within 180 days of final coal removal.

We note that, as required by proposed CSR 38–2–14.15.a.2, the operator through the proposed mining and reclamation operations plan, which will contain detailed site-specific information concerning the timing, sequence, and areal extent of each progressive phase of the mining and reclamation operations, must minimize the amount of disturbed area throughout the life of the mining operation. This information will be supplemented with progress maps that the operator will have to submit to ensure compliance with the mining and reclamation plan. We anticipate that the permit application will specify the need for any waiver of these requirements, and provide the regulatory authority with sufficient information it needs in granting such waivers.

The Federal time and distance standards for backfilling and grading at 30 CFR 816.101 have been indefinitely suspended (57 FR 33875, July 31, 1992). However, the remaining Federal regulations at 30 CFR 816/817.100 require that reclamation efforts, including backfilling and grading, occur as contemporaneously as practicable with the mining operations. We find that the proposed provisions are reasonable and further limit the amount of disturbed area that can go unreclaimed at any time under the State's contemporaneous reclamation requirements by imposing time and distance limitations on backfilling and grading. Because the proposed revisions are not inconsistent with the Federal regulations at 30 CFR 816/817.100, they can be approved.

5. CSR 38–2–14.15.b.6.B

This provision concerns mountaintop removal mining operations or combination mountaintop removal and contour mining operations that use draglines with a bucket capacity of greater than 45 cubic yards. This provision is amended by deleting existing paragraphs 14.15.b.6.B.1. and B.2, and replacing these provisions with new paragraph 14.15.b.6.B.1. As amended, CSR 38–2–14.15.b.6.B. provides as follows:

14.15.b.6.B. On operations which utilize draglines with a bucket capacity of greater than forty-five (45) cubic yards, the requirements of subparagraph 14.15.b.6.A. of this paragraph is waived and the following contemporaneous reclamation requirements apply:

14.15.b.6.B.1. Pre-stripping or benching operations cannot exceed four hundred (400) acres for any single permit and cannot precede dragline operations more than twenty-four (24) months unless otherwise approved by the Secretary or necessary to satisfy AOC+ requirements, specific post-mining land use requirements or special materials handling facilities requirements. All fill construction must occur during this phase of operation and be conducted in accordance with subdivision 14.15.d. of this rule.

14.15.b.6.B.2. Rough backfilling and regrading shall be completed within one hundred (180) days following coal removal and not more than four (4) spoil ridges behind the pit being worked, the spoil form the active pit constituting the first spoil ridge; and

14.15.b.6.B.3. The ratio of disturbed acreage versus reclaimed or undisturbed acreage shall be shown on progress maps submitted annually or as otherwise required by the Secretary.

Under the proposed rule, mountaintop removal or combination mountaintop removal and contour mining operations that use draglines with a bucket capacity of greater than 45 cubic yards cannot allow pre-stripping activities of more than 400 acres and such activities cannot precede the dragline operation by more than 24 months, unless approved by the Secretary. These criteria represent the maximum amount of acreage disturbance and time that pre-stripping or benching operations can precede the dragline operation. Currently, there are about five draglines operating in West Virginia. Pre-stripping or benching operations include that disturbance which is necessary to prepare an area for the dragline to operate safely and effectively. These operations may involve the mining of one or more coal seams in advance of the dragline in order to prepare for additional coal removal. Under the previous rules, the area of disturbance preceding the dragline could not exceed 400 acres. Under the proposed revision, the State will also impose a time limitation of 24 months on pre-stripping or benching operations, unless otherwise approved by the regulatory authority. In addition, all fill construction is to occur during this phase of the operation.

We must note that, except for pre-stripping or benching operations, the existing requirements at subdivision 14.15.b.6.B. do not impose a limit on the total amount of permitted acreage that can be disturbed at any given time. However, those same provisions do require that backfilling and grading of the area disturbed by the dragline must be completed within 180 days following coal removal and with no more than four spoil ridges behind the pit being worked.

We also note that under subdivision 14.15.a.2, as discussed above, the mining and reclamation operations plan for these kinds of operations will contain detailed, site-specific information concerning the timing, sequence, and areal extent of both the proposed pre-stripping and dragline operations and reflect how the mining and reclamation operations will be coordinated throughout the life of the mining operation. This detailed information, together with the progress maps, should provide the regulatory authority sufficient information to assess the proposed ratio of disturbed versus reclaimed area, and to ensure

compliance with the contemporaneous reclamation rules at CSR 38–2–14.15.

The Federal time and distance standards for backfilling and grading at 30 CFR 816.101 have been indefinitely suspended (57 FR 33875, July 31, 1992). However, the remaining Federal regulations at 30 CFR 816/817.100 require that reclamation efforts, including backfilling and grading, occur as contemporaneously as practicable with the mining operations. For the reasons discussed above, we find that the proposed provision is not inconsistent with the Federal regulations at 30 CFR 816/817.100 and can be approved.

6. CSR 38–2–14.15.c

This provision is amended by adding the words ''and meets Phase I standards'' at the end of the first sentence. As amended, this provision provides as follows:

14.15.c. Reclaimed Area. For purposes of this subsection, reclaimed acreage shall be that portion of the permit area which has at a minimum been fully regraded and stabilized in accordance with the reclamation plan and meets Phase I standards. The following shall not be included in the calculation of disturbed area:

The addition of the phrase ''and meets Phase I standards'' appears to clarify the meaning of reclaimed area as previously approved at CSR 38–2–14.15.c. In addition to being fully regraded and stabilized in accordance with the reclamation plan, the proposed revision will require that reclaimed acreage must also meet the Phase I bond release requirements at CSR 38–2–12.2.c.1. We find that the amendment to this provision does not render the West Virginia rule less effective than the Federal regulations concerning contemporaneous reclamation at 30 CFR 816.100 and can be approved.

7. CSR 38–2–14.15.c.1

This provision concerns the identification of those areas that shall not be included in the calculation of disturbed area. This provision is amended by adding a new proviso at the end of the existing provision that limits, with exceptions, the total acreage of semi-permanent ancillary facilities that shall not be included in the calculation of disturbed area to a total of 10 percent of the permitted acreage. As amended, CSR 38–2–14.15.c.1. provides as follows:

14.15.c.1. Semi-permanent ancillary facilities (haulroads, drainage control systems, parking areas, maintenance, storage and supply areas, etc.), and areas cleared but not grubbed, provided, that such areas have appropriate drainage control systems in place; Provided, that with the exception of permanent haulroads, drainage control systems and material handling facilities (including but are not limited to such facilities as preparation plants, fixed coal stockpiles/transfer areas and commercial forestry topsoil areas) the total acreage of all other semi-permanent ancillary facilities cannot exceed ten percent of the total permit acreage.

The existing rules exempt all semi-permanent ancillary facilities and cleared areas from the contemporaneous reclamation requirements, regardless of size. The revised language limits the size of certain semi-permanent ancillary facilities to no more than 10 percent of the total permitted acreage. Otherwise, the area will have to be considered disturbed area for contemporaneous reclamation purposes. We find that the provision, as amended, is reasonable in that it limits the exemption from the State's contemporaneous reclamation requirements for certain semi-permanent ancillary facilities to not more than 10 percent of the permitted acreage. Because the proposed revision is more restrictive and not inconsistent with the Federal regulations concerning contemporaneous reclamation at 30 CFR 816/817.100, it can be approved.

8. CSR 38–2–14.15.c.3

This provision concerns the identification of cleared and grubbed acreage that shall not be included in the calculation of disturbed area. This provision is amended by adding the following language to the end of the existing provision:

the Secretary may consider larger acreage for clearing operations where it can be demonstrated that it is necessary to comply with applicable National Environmental Policy Act requirements.

As amended, this provision provides as follows:

14.15.c.3. Areas containing 30 aggregate acres or less which have been cleared and grubbed and have the appropriate drainage control (temporary or permanent) installed and certified, and which will become a part of the operational area within six months or less. Failure to incorporate these areas into the operational area within six months may result in the loss of this exemption; the Secretary may consider larger acreage for clearing operations where it can be demonstrated that it is necessary to comply with applicable National Environmental Policy Act requirements.

The purpose of the amendment is to enable the Secretary of WVDEP to allow coal operators to clear (i.e., cut only, not grub) trees on areas larger than 30 acres. The State is trying to protect the Indiana bat and other endangered plant and animal species by minimizing habitat loss at certain times of the year, notably mating season. By allowing larger areas to be timbered and still have the reclamation be considered contemporaneous, the WVDEP hopes to discourage clear cutting operations prior to getting permits, when the practices are not subject to SMCRA's environmental protections and may affect wildlife at critical times. Once permits are issued, operators cannot timber at certain times of the year when certain endangered or threatened species are breeding.

Under SMCRA, the issuance of a SMCRA permit by the State is not considered an action under NEPA. Appendix 8 of the U.S. Department of the Interior Manual provides that ''[p]ermit applications under approved State programs are excluded from NEPA compliance.'' January 19, 1981; 46 FR 2316. In addition, individual States have no authority to require compliance with NEPA and, therefore, the State's proposed reference to NEPA has no effect on the West Virginia program. We find that because the proposed reference to NEPA is a nullity and has no practicable effect on the West Virginia program, we are not rendering a decision on the proposed language. Because we are not rendering a decision on the proposed language, this requirement is not part of the approved West Virginia program. To avoid confusion in the future, we recommend that this language be removed from these rules.

9. CSR 38–2–14.15.c.4

This provision has been deleted in its entirety in the revised rule authorized with the passage of Senate Bill 2002. Prior to being deleted, this provision provided that the following area would not be included in the calculation of disturbed area:

14.15.c.4. Areas that have been cleared and grubbed which exceed the thirty aggregate acres and/or those which will not be included in the operational area within six months may be excluded if the appropriate temporary or permanent drainage control structures are installed and certified and have temporary vegetative cover established; and

We find that the deletion of this provision, which provides an exemption for areas that have been cleared and grubbed from the contemporaneous reclamation requirements, does not render the West Virginia program less effective than the Federal regulations at 30 CFR 816/817.100 concerning contemporaneous reclamation and can be approved.

10. CSR 38–2–14.15.d

CSR 38–2–14.15.d., concerning Applicability, has been deleted, relocated to subdivision 14.15.e., and revised (see below). New subdivision 14.15.d. concerns excess spoil disposal fills, and provides as follows:

14.15.d. Excess Spoil Disposal Fills. All fills must be constructed contemporaneously and contiguously with that segment of the operations that contains the material that is designated to be placed in the fill. In addition to all other standards in effect, the following shall apply to excess spoil disposal fills.

14.15.d.1. All fills must be planned for continuous material placement until designed capacity is reached and cannot have a period of inactivity that exceeds 180 days unless otherwise approved by the secretary on a permit specific basis to accommodate AOC+, post-mining land use or special material handling situations.

14.15.d.2. The areas where contour mining is proposed within the confines of the fill are not eligible for the exemption contained in 14.15.c.2.

14.15.d.3. Operations that propose fills that are designed to use single lift top-down construction shall bond the proposed fill areas based upon the maximum amount per acre specified in WV Code 22–3–12(c)(1).

At subdivision 14.15.d, the proposed provision adds a requirement that all excess spoil disposal fills must be constructed contemporaneously and contiguously with that portion of the operation that contains the material that is to be placed in the fill. This provision is to ensure that the construction of excess spoil disposal fills will be done simultaneously with the mining operation. We note that under proposed subdivision 14.15.a.2, discussed above, the mining and reclamation operations plans submitted with each permit application must include a detailed site-specific description of the timing, sequence, and areal extent of each progressive phase of proposed mining and reclamation operations. This information and these requirements should enable the regulatory authority to ensure more timely construction and reclamation of excess spoil fills.

Subsection 14.15.d.1 provides that both the conventional and end-dump fills must be planned for continuous material placement until design capacity is reached and cannot have a period of inactivity exceeding 180 days. We interpret the latter provision to mean that inactivity during fill construction cannot exceed 180 continuous days. This subdivision also provides for permit-specific waiver of the 180-day criterion, on a permit specific basis, to accommodate AOC+, postmining land use, or special material handling situations. Prior to this proposed provision, there was no time limit on the construction and reclamation of fills. While the proposal does allow for a waiver to the 180-day criterion, it may only be granted on a permit-specific basis.

Subsection 14.15.d.2 provides that the areas where contour mining is proposed within the confines of the fill are not eligible for the exemption contained in subsection 14.15.c.2. Subsection 14.15.c.2 provides that fills that are constructed using conventional methods (constructed in lifts from the toe up) shall not be included in the calculation of disturbed area. Therefore, under subsection 14.15.d.2, areas where contour mining is proposed within the confines of the fill are not eligible to be excluded from the calculation of disturbed area, and are not exempt from the State's contemporaneous reclamation requirements.

Subsection 14.15.d.3 provides that bonds for areas with single lift, top down constructed fills are to be set at the maximum amount per acre ($5 thousand per acre). These fills are often referred to as end-dump fills. Increasing the bond on such fills to the maximum amount will protect the State's special reclamation fund should an operator forfeit the bond and fail to complete reclamation of end-dump fill areas. We note that there is a typographical error in this provision. The site-specific bond amount per acre is specified at W. Va. Code 22–3–12(b)(1), not 12(c)(1) as specified in this provision.

The Federal time and distance standards for backfilling and grading at 30 CFR 816.101 have been indefinitely suspended (57 FR 33875, July 31, 1992). The remaining Federal regulations at 30 CFR 816/817.100 require that reclamation efforts, including backfilling and grading, occur as contemporaneously as practicable with the mining operations. We find that because the proposed excess spoil fill provisions at CSR 38–2–14.15.d., d.1, d.2 and d.3 enhance the State's contemporaneous reclamation standards and are not inconsistent with the Federal regulations at 30 CFR 816/817.100, they can be approved.

11. CSR 38–2–14.15.e

This subdivision, which concerns applicability, has been relocated from subdivision 14.15.d., and has been revised. As amended, subdivision 14.15.e. provides as follows:

14.15.e. Applicability. Permit applications pending approval on the first day of January, two thousand three, shall within 120 days of permit approval have a mining and reclamation plan which is consistent with the criteria set forth in this subdivision. Permit applications which are submitted after the first day of January, two thousand three shall not be issued a permit without a mining and reclamation plan which is consistent with the criteria set forth in this subdivision.

14.15.e.1. After the first day of January, two thousand three, the mining and reclamation plan for all active mining operations must be consistent with the applicable time criteria set forth in this paragraph. Where permit revisions are necessary to satisfy this requirement, the revisions shall be prepared and submitted to the Secretary for approval within 180 days. Full compliance with the revised mining and reclamation plan shall be accomplished within twelve (12) months from the date of the Secretary's approval.

14.15.e.2. After the first day of January, two thousand three, the mining and reclamation plan for mining operations which have approved inactive status or when permits have been issued but the operation has not started must be consistent with the applicable time criteria of this paragraph. Where permit revisions are necessary to satisfy this requirement, the revisions shall be prepared and submitted to the Secretary for approval within 180 days. Full compliance with the revised mining and reclamation plan shall be accomplished within twelve (12) months from the date of the Secretary's approval.

14.15.e.3. The Secretary may consider contemporaneous reclamation plans on multiple permitted areas with contiguous areas of disturbance to ensure that contemporaneous reclamation is practiced on a total operational basis. In order to establish a method of orderly transition between operations, plans submitted on multiple permitted areas cannot add allowable disturbed areas in such a manner as to result in increased disturbed areas on a single operation unless a variance is obtained pursuant to subdivision 14.15.g.

The Federal time and distance standards for backfilling and grading at 30 CFR 816.101 have been indefinitely suspended (57 FR 33875, July 31, 1992). However, these provisions provide reasonable time limits for compliance with these revised contemporaneous reclamation regulations. Therefore, we find that the provisions at CSR 38–2–14.15.e. are not inconsistent with and do not render the West Virginia program less effective than the Federal regulations at 30 CFR 700.11 can be approved.

12. CSR 38–2–14.15.g

This provision, concerning variance, was formerly subdivision 14.15.f. and has been recodified and amended by two deletions, and by adding a requirement to comply with the requirements of subsection 3.32 concerning permit issuance findings, to provide as follows:

14.15.g. Variance—Permit Applications. The Secretary may grant approval of a mining and reclamation plan for a permit which seeks a variance to one or more of the

standards set forth in this subsection, if on the basis of site specific conditions and sound scientific and/or engineering data, the applicant can demonstrate that compliance with one or more of these standards is not technologically or economically feasible. The Secretary shall make written findings in accordance with the applicable provisions of section 3.32 of this rule when granting or denying a request for variance under this section.

We find that the recodification and amendment of this provision does not render the provision less effective than the Federal regulations at 30 CFR 816/817.100 and can be approved, except as follows.

The State deleted from preexisting subdivision 14.15.f. a provision that required that the amount of bond for an operation that requests a variance to one or more of the standards set forth in subsection 14.15 concerning contemporaneous reclamation shall be based on the maximum amount per acre specified in W. Va. Code 22–3–12(c)(1). We initially announced the approval of the State contemporaneous reclamation requirements in the **Federal Register** on February 21, 1996 (61 FR 6525). Since then, the State statute has been amended and the site-specific bonding amounts are now set forth at W. Va. Code 22–3–12(b)(1), not 12(c)(1).

On August 18, 2000, OSM approved in the **Federal Register** the revision to subdivision 14.15.f. which requires the maximum amount of bond for operations that request variances to the State's contemporaneous reclamation standards (65 FR 50409, 50424). In approving the requirement, we noted that the proposed change is to ensure that the bond amount will be sufficient to complete the reclamation plan of a revoked permit with a contemporaneous reclamation variance in the event of bond forfeiture. The effect of eliminating the requirement for the maximum bond amount on operations requesting variances will increase the risk of liability on the State's alternative bonding system (ABS) in the event of bond forfeiture. The State's ABS is funded by a special reclamation tax on each ton of coal mined, plus a site-specific bond that can range from $1,000 to $5,000 per acre.

On May 29, 2002, OSM concluded that recently approved changes to the West Virginia program (66 FR 67446; December 28, 2001) had satisfied a required program amendment concerning the State's ABS (67 FR 37610). The required amendment, codified at 30 CFR 948.16(lll), required that the West Virginia program be amended to eliminate the deficit in the State's ABS and to ensure that sufficient money will be available to complete reclamation, including the treatment of polluted water, at all existing and future bond forfeiture sites. The State's amendments that we approved on December 28, 2001, included an increase in the special reclamation tax from 3 cents per ton of clean coal mined to 7 cents per ton, plus an additional 7 cents per ton would be levied for up to 39 months. In addition, the State created the Special Reclamation Fund Advisory Council (Advisory Council) to monitor the special reclamation fund and bond forfeiture obligations to ensure ''the effective, efficient and financially stable operation of the special reclamation fund.'' One of the main tasks of the Advisory Council is the elimination of the ABS deficit. It must also ensure that the special reclamation fund remains solvent once the deficit is eliminated. It appears to us that the proposed deletion of the requirement to require maximum bond per acre for operations seeking a variance from one or more of the contemporaneous reclamation requirements at subsection 14.15 inappropriately increases the risk of liability to the ABS in the event of bond forfeiture.

As we discussed in the May 29, 2002, **Federal Register** notice, with respect to future reclamation obligations, the Advisory Council has an obligation under State Law to monitor the special reclamation fund, address funding-related issues, and recommend measures to ensure the long-term solvency of the special reclamation fund. We find that the proposed deletion is an example of an action that could adversely affect the ABS and that should be reviewed by the Advisory Council to determine its potential effect on the solvency of the ABS. Therefore, we are deferring decision on the proposed deletion of the requirement to impose the maximum bond amount of $5,000 per acre on operations seeking a variance from one or more of the provisions of subsection 14.15. We will reconsider this proposed deletion after such time as the Advisory Council has assessed the potential impact of the proposed deletion and rendered its opinion to the State Legislature and Governor.

Paragraph 14.15.g lacks the transition sentence contained in former paragraph 14.15.f, which stated that ''[t]he variance request shall be in writing and must contain the following elements.'' Without such a transition sentence, paragraphs 14.15.g.1 through g.5. do not flow logically from the introductory paragraph and do not require that the variance request be in writing. We assume that deletion of the last sentence of former paragraph 14.15.f. was inadvertent. We recommend that the State add the quoted sentence at the end of CSR 38–2–14.15.g. or otherwise amend subsection 14.15.g to improve its clarity and to ensure that the variance request be in writing. The addition of the deleted language will also ensure consistency with subdivision 14.15.h.

13. CSR 38–2–14.15.g.2

This provision identifies part of the required elements for a variance requested under subdivision 14.15.g. This provision was amended by adding the phrase ''including a discussion and feasibility analysis of alternatives that were considered'' at the end of this provision. As amended, subdivision 14.15.g.2 provides as follows:

14.15.g.2. A statement with supporting documentation and scientific and/or engineering data which describes how site specific conditions make compliance with the standard(s) technologically or economically infeasible, including a discussion and feasibility analysis of alternatives that were considered.

The additional requirement of a discussion and feasibility analysis of alternatives that were considered by the operator in evaluating the contemporaneous reclamation standards should provide the regulatory authority with additional information necessary to help determine whether a variance is justified. We find that the provision does not render the West Virginia program less effective than the Federal regulations at 30 CFR 816/817.100 and can be approved.

14. CSR 38–2–14.15.g.5

This provision was added by House Bill 4163 and then deleted in its entirety in the revised rule authorized with the passage of Senate Bill 2002. Prior to being deleted, the provision provided the following:

14.15.g.5. A detailed economic analysis including a discussion and feasibility analysis of possible alternatives that were considered must be submitted for variance requests that use economics as the basis for the request.

The State has provided no justification for the deletion of this provision. Nevertheless, because the deleted provision was never approved by OSM, it was never part of the approved West Virginia program and our approval of its deletion is not necessary.

15. CSR 38–2–14.15.i

This provision is new and provides as follows:

14.15.i. Notwithstanding any provision of this rule to the contrary, revision of the

mining and reclamation plan contained in a permit is required prior to any change in mining methods which would substantially affect the standards contained in this section.

In essence, the provision would require that, prior to an operator changing the method of mining that would substantially affect the contemporaneous reclamation standards, the mining and reclamation plan would have to be revised and approved by the regulatory authority. We find that this provision, which requires a permit revision for a change in mining methods that would substantially affect the State's contemporaneous reclamation standards is consistent with the Federal requirements concerning permit revisions at SMCRA section 511(a)(2) and at 30 CFR 774.13, and can be approved. We are approving this provision to the extent that any significant changes to the mining and reclamation plan would be done as a significant revision to the permit and subject to the public notice requirements as required by CSR 38–2–3.28.b.

IV. Summary and Disposition of Comments

Public Comments

No public comments were received in response to our request for comments from the public on the proposed amendment (see Section II of this preamble).

Federal Agency Comments.

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, on June 14, 2002, and August 7, 2002, we requested comments on these amendments from various Federal agencies with an actual or potential interest in the West Virginia program (Administrative Record Numbers WV–1314 and WV–1321, respectively). By letters dated July 11, 2002, and September 20, 2002, the U.S. Department of Labor, Mine Safety and Health Administration (MSHA) responded (Administrative Record Numbers WV–1320 and WV–1331). In addition, the U.S. Department of the Interior, Fish and Wildlife Service (USFWS) responded to our request for comments on September 10, 2002 (Administrative Record Number WV–1329).

MSHA stated that it finds no changes or issues that impact upon coal miner's health and safety and that there is no conflict with MSHA regulations.

USFWS provided comments pursuant to the Fish and Wildlife Coordination Act and the Endangered Species Act. USFWS stated that the proposed exemptions at subsection CSR 38–2–14.15.c appear to be contrary to the Federal regulations at 30 CFR 701.5 concerning the definition of ''disturbed area.'' In response, the proposed exemption at subsection CSR 38–2–14.15.c that certain areas will not be included in the calculation of disturbed area applies only to the contemporaneous reclamation standards at CSR 38–2–14.15, and not to all of the State's surface mining reclamation requirements. Furthermore, the State has a definition of disturbed area at W. Va. Code section 22–3–3(j) that has been determined to be no less effective than the Federal definition. For these reasons, we disagree that the proposed exemptions at subsection CSR 38–2–14.15.c appear to be contrary to the Federal regulations at 30 CFR 701.5 concerning the definition of ''disturbed area.''

USFWS stated that the meaning of language at subdivision 14.15.c.3 which states that ''[t]he Secretary may consider larger acreage for clearing operations where it can be demonstrated that it is necessary to comply with applicable National Environmental Policy Act requirements' is unclear. This implies, USFWS stated, that NEPA documentation would have to be prepared which is required prior to Federal action. USFWS stated that the sentence should be stricken. USFWS stated that using impacts to fish and wildlife resources as a basis for gauging disturbance, these proposed exemptions from inclusion as disturbed areas are particularly untenable. USFWS recommended that the proposed exemption not be approved.

In response, and for the reasons discussed above in Finding 8, we determined that the State's proposed reference to NEPA has no practicable effect on the West Virginia program. Therefore, we did not render a decision on the proposed language. However, the State will not be allowed to implement this provision as part of its approved program.

USFWS commented on language at CSR 38–2–14.15.g that allows the Secretary of the WVDEP to grant a variance of one or more of the standards set forth at CSR 38–2–14.15. Specifically, USFWS stated that removing the requirement to provide a detailed economic analysis removes the applicant's responsibility to justify a variance based on economic considerations. USFWS stated that under this amendment, conceivably, an applicant could be exempt from all contemporaneous reclamation requirements for any type of mining by merely claiming economic infeasibility. USFWS recommended that the provision requiring economic analysis be retained in the regulations.

In response, the USFWS comment relates to a portion of the proposed rules at CSR 38–2–14.15.g.5, that was never approved by OSM. As discussed above in Finding 14, because the proposed revision has been deleted by the State, our approval of the deletion is not necessary.

Environmental Protection Agency (EPA) Comments

Under 30 CFR 732.17(h)(11)(i) and (ii), we are required to obtain written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). On June 14, 2002, we requested concurrence and comments from EPA on House Bill 4163 (Administrative Record Numbers WV–1313). On August 7, 2002, we requested comments from EPA on Senate Bill 2002 (Administrative Record Number WV–1321).

EPA responded by letter dated October 28, 2002 (Administrative Record Number WV–1340), concurred on the proposed amendments and provided the following comments. EPA stated that CSR 38–2–14.15.d includes a requirement that fills be constructed adjacent to the excavated area where the spoil material originates. EPA stated that it is concerned that this requirement could result in unnecessary construction of fills in waters of the United States where the excavated areas are adjacent to such waters. EPA recommended that fill optimization and minimization efforts be provided to avoid construction of fills in waters of the United States where feasible. In response, we note that this provision is only intended to encourage contemporaneous reclamation of fills. All applicable requirements of the Clean Water Act will continue to apply.

EPA also noted that mining-related discharges into waters of the United States, including excess spoil, are subject to permit requirements under the Clean Water Act. Before conducting such activities, EPA stated, the Corps of Engineers and the West Virginia Department of Environmental protection should be contacted regarding necessary permits. In response, we note that the proposed amendments do not supersede any Clean Water Act requirements. All the existing requirements of the West Virginia program continue to apply.

V. OSM's Decision

Based on the above findings, we are approving the amendments to CSR 38–2–14.15 as submitted to us on April 9, 2002 and June 19, 2002, except as indicated below.

At CSR 38–2–14.15.c.3, we are not rendering a finding on the sentence, ''the Secretary may consider larger acreage for clearing operations where it can be demonstrated that it is necessary to comply with applicable National Environmental Policy Act requirements.''

At CSR 38–2–14.15.g., concerning variance-permit applications, we are deferring our decision on the proposed deletion of the following sentence, ''Furthermore, the amount of bond for the operation shall be based on the maximum amount per acre specified in WV Code section 22–3–12(c)(1).''

We are not rendering a decision concerning CSR 38–2–14.15.g.5 because the deleted provision was never approved by OSM, and therefore never a part of the approved West Virginia program, and our approval of its deletion is not necessary.

CSR 38–2–14.15.i., is approved to the extent that any significant changes to the mining and reclamation plan would be done as a significant permit revision and subject to the public notice requirements as required by CSR 38–2–3.28.b.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 948, which codify decisions concerning the West Virginia program. Our regulations at 30 CFR 732.17(h)(12) specify that all decisions approving or disapproving amendments will be published in the **Federal Register** and that they will be effective upon publication, unless the notice specifies a different date. We are making this final rule effective immediately to expedite the State program amendment process and to assist the State in making its program conform with the Federal standards as required by the Act.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempt from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, Or Use Of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior 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.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the analysis performed under various laws and executive orders for the counterpart Federal regulations.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the analysis performed under various

laws and executive orders for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 1, 2002.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR part 948 is amended as set forth below:

PART 948—WEST VIRGINIA

1. The authority citation for part 948 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 948.15 is amended in the table by adding a new entry in chronological order by ''Date of publication of final rule'' to read as follows:

§ 948.15 Approval of West Virginia regulatory program amendments.

* * * * *

Original amendment submission dates	Date of publication of final rule	Citation/description
*	*	*
April 9, 2002 ..... June 19, 2002	December 3, 2002	CSR 38–2–14.15.a.1, a.2; b.5; b.6.A, b.6.B.1; c, c.1, c.4; d, d.1, d.2, d.3; e, e.1, e.2, e.3; g (partial approval), g.2; i (qualified approval).

[FR Doc. 02–30609 Filed 12–2–02; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 100, 117 and 165

[USCG–2002–13968]

Safety Zones, Security Zones, Drawbridge Operation Regulations and Special Local Regulations

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary rules issued.

SUMMARY: This document provides required notice of substantive rules issued by the Coast Guard and temporarily effective between July 1, 2002 and September 30, 2002, which were not published in the **Federal Register**. This quarterly notice lists temporary local regulations, drawbridge operation regulations, security zones, and safety zones of limited duration and for which timely publication in the **Federal Register** was not possible.

DATES: This notice lists temporary Coast Guard rules that became effective and were terminated between July 1, 2002 and September 30, 2002.

ADDRESSES: The Docket Management Facility maintains the public docket for this notice. Documents indicated in this notice will be available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street SW., Washington, DC 20593–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. You may electronically access the public docket for this notice on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact LT Sean Fahey, Office of Regulations and Administrative Law, at telephone number (202) 267–2830. For questions on viewing, or on submitting material to the docket, contact Dorothy Beard, Chief, Dockets, Department of Transportation at (202) 366–5149.

SUPPLEMENTARY INFORMATION: Coast Guard District Commanders and Captains of the Port (COTP) must be immediately responsive to the safety and security needs of the waters within their jurisdiction; therefore, District Commanders and COTPs have been delegated the authority to issue certain local regulations. Safety zones may be established for safety or environmental purposes. A safety zone may be stationary and described by fixed limits or it may be described as a zone around a vessel in motion. Security zones limit access to prevent injury or damage to vessels, ports, or waterfront facilities. Drawbridge operation regulations authorize changes to drawbridge schedules to accommodate bridge repairs, seasonal vessel traffic, and local public events. Special local regulations are issued to enhance the safety to participants and spectators at regattas and other marine events.

Timely publication of these rules in the **Federal Register** is often precluded when a rule responds to an emergency, or when an event occurs without sufficient advance notice. The affected public is, however, informed of these rules through Local Notices to Mariners, press releases, and other means. Moreover, actual notification is provided by Coast Guard patrol vessels enforcing the restrictions imposed by the rule. Because **Federal Register** publication was not possible before the beginning of the effective period, mariners were personally notified of the contents of these special local regulations, drawbridge operation regulations, security zones, or safety zones by Coast Guard officials on-scene prior to any enforcement action. However, the Coast Guard, by law, must publish in the **Federal Register** notice of all substantive rules adopted. To meet this obligation without imposing undue expense on the public, the Coast Guard periodically publishes a list of these temporary special local regulations, drawbridge operation regulations, security zones, and safety zones.

Permanent rules are not included in this list because they are published in their entirety in the **Federal Register**. Temporary rules may also be published in their entirety if sufficient time is available to do so before they are placed in effect or terminated. The safety zones, special local regulations, drawbridge operation regulations, and security zones listed in this notice have been exempted from review under Executive Order 12866, Regulatory Planning and Review, because of their emergency nature, or limited scope and temporary effectiveness.

The following rules were placed in effect temporarily during the period from July 1, 2002, and through September 30, 2002, unless otherwise indicated. This notice also includes rules that were not received in time to be included on the quarterly notice for the first and second quarters of 2002.

Dated: November 27, 2002.

S.G. Venckus,

Chief, Office of Regulations and Administrative Law.

COTP QUARTERLY REPORT—3RD QUARTER 2002

COTP Docket	Location	Type	Effective date
Charleston 02–089	Cooper River, Port of Charleston, SC	Safety Zone	07/16/2002
Guam 02–019	F–1 Wharf, APRA, Harbor, Guam	Security Zone	07/02/2002
Huntington 02–008	Ohio River, 171.5 To 172.5, Marietta, OH	Safety Zone	07/06/2002
Jacksonville 02–078	St. John's River, Sanford, FL	Safety Zone	07/04/2002
Jacksonville 02–079	Intracoastal Waterway, Melbourne, FL	Safety Zone	07/04/2002
Jacksonville 02–080	Atlantic Ocean, Daytona Beach, FL	Safety Zone	07/04/2002
Jacksonville 02–081	Indian River, Titusville, FL	Safety Zone	07/04/2002
Jacksonville 02–082	St. Johns River, Orange Park, FL	Safety Zone	07/04/2002
Jacksonville 02–083	Indian River, Cocoa, FL	Safety Zone	07/04/2002
Jacksonville 02–084	Matanzas River, St. Augustine, FL	Safety Zone	07/04/2002
Jacksonville 02–085	St. Johns River, Jacksonville, FL	Safety Zone	07/04/2002
Jacksonville 02–086	Intracoastal Waterway, Ormond Beach, FL	Safety Zone	07/04/2002
Jacksonville 02–093	Atlantic Ocean, Cocoa Beach, FL	Safety Zone	07/22/2002
Jacksonville 02–100	St. Johns River, Atlantic Ocean, Mayport, FL	Security Zone	08/16/2002
Jacksonville 02–106	Jacksonville, FL	Safety Zone	08/29/2002
Jacksonville 02–106	St. Johns County, FL	Safety Zone	09/05/2002
LA/Long Beach 02–013	Huntington Beach, CA	Safety Zone	08/18/2002
Louisville 02–006	Ohio River, M. 602 To 604	Safety Zone	09/21/2002
Memphis 02–009	LWR Mississippi River, M. 590.5 To 592	Safety Zone	08/16/2002
Miami 02–075	Miami River, Miami, FL	Safety Zone	07/26/2002
Miami 02–092	Port Of Miami	Safety Zone	08/01/2002
Miami 02–103	Biscayne Bay, Dinner Key Channel, Fl	Safety Zone	08/26/2002
Miami 02–107	Biscayne Bay–Port of Miami, Miami FL	Security Zone	08/26/2002
Miami 02–113	Atlantic Ocean	Safety Zone	09/13/2002
Miami 02–118	Atlantic Ocean Bad Boys II Film Production	Safety Zone	09/27/2002
Mobile 02–016	Pascagoula River, Pascagoula, Mississippi	Safety Zone	09/18/2002
Mobile 02–016	Gulf Intracoastal Waterway, FL	Safety Zone	07/03/2002
Mobile 02–017	Mississippi Sound, Pascagoula, Mississippi	Safety Zone	09/16/2002
Morgan City 02–005	Atchafalaya River, Morgan City, LA	Safety Zone	09/17/2002
New Orleans 02–011	Red River, M. 227.5 To 229.5	Safety Zone	07/04/2002
New Orleans 02–012	LWR Mississippi River, M. 174.5 To 176.5	Safety Zone	07/03/2002
New Orleans 02–013	LWR Mississippi River, M. 362 To 364	Safety Zone	07/04/2002
New Orleans 02–014	Yazoo Diversion Canal, Vicksburg, MS	Safety Zone	07/04/2002
New Orleans 02–015	Casino Magic Marina, Bay St. Louis, MS	Safety Zone	07/03/2002
New Orleans 02–016	LWR Mississippi River, M. 120.5 To 122.5	Safety Zone	07/03/2002
New Orleans 02–017	LWR Mississippi River, M. 137 To 139	Safety Zone	07/03/2002
New Orleans 02–020	SW Pass Sea Buoy To Nashville Ave Wharf	Safety Zone	08/06/2002
New Orleans 02–021	Main Pass, Gulf of Mexico	Safety Zone	07/24/2002
Paducah 02–006	Upper Mississippi River, M. 52 To 53	Safety Zone	07/04/2002
Paducah 02–007	Ohio River, M. 943 To 945	Safety Zone	09/14/2002
Paducah 02–008	Tennessee River, M. 612 To 625	Safety Zone	09/15/2002
Paducah 02–009	Cumberland River, M. 190.5 To 192	Security Zone	09/17/2002
Philadelphia 02–005	Atlantic City, New Jersey	Security Zone	09/21/2002
Philadelphia 02–002	Absecon Inlet, New Jersey	Safety Zone	09/26/2002
Pittsburgh 02–014	Ohio River, M. 90 To 91	Safety Zone	07/27/2002
Pittsburgh 02–015	Monongahela River, M. 22.5 To 23.5	Safety Zone	07/27/2002
Pittsburgh 02–018	Youghiougheny River, M. 0.0 To 0.5	Safety Zone	07/25/2002
Pittsburgh 02–020	Monongahela River, M. 0.0 To 1.3	Safety Zone	08/21/2002
Pittsburgh 02–021	Allegheny River, M. 0.0 To 0.3	Safety Zone	08/31/2002
Port Arthur 02–005	Sabine Jetty Channel, Sabine, Texas	Safety Zone	07/02/2002
Port Arthur 02–006	Sabine River, Port Arthur, Texas	Safety Zone	07/23/2002
San Diego 02–008	Colorado River, Laughlin, NV	Safety Zone	07/04/2002
San Diego 02–014	North San Diego Bay, CA	Safety Zone	07/04/2002
St. Louis 02–007	Illinois River, M. 157.6 To 166.6	Safety Zone	07/04/2002
St. Louis 02–008	Missouri River, M. 29 to 27.5	Safety Zone	07/04/2002
St. Louis 02–009	Upper Mississippi River, M. 179.2 To 180	Security Zone	07/03/2002
St. Louis 02–010	Upper Mississippi River, M. 179.2 To 180	Safety Zone	07/03/2002
St. Louis 02–011	Lake City, MN	Safety Zone	07/04/2002
St. Louis 02–012	Cassville Fire Works, Cassville, WI	Safety Zone	07/20/2002
St. Louis 02–013	UPR Mississippi River, M. 496.4 To 496.6	Safety Zone	08/09/2002
St. Louis 02–014	UPR Mississippi River, M. 497.5 To 497.7	Safety Zone	08/10/2002
St. Louis 02–015	Kansas City Air Show Expo, Kansas City, Mo	Safety Zone	08/16/2002
St. Louis 02–016	UPR Mississippi River, M. 662.5 To 663.6	Safety Zone	07/10/2002
Western Alaska 02–008	Pioneer Dock, Kachemak Bay, Homer, Alaska	Security Zone	07/02/2002
Western Alaska 02–009	Resurrection Bay, Alaska	Security Zone	07/03/2002
Western Alaska 02–010	Resurrection Bay, Alaska	Security Zone	07/03/2002
Western Alaska 02–011	Resurrection Bay, Alaska	Security Zone	07/04/2002
Western Alaska 02–012	Resurrection Bay, Alaska	Security Zone	07/05/2002

DISTRICT QUARTERLY REPORT—3RD QUARTER 2002

District docket	Location	Type	Effective date
01–02–066	Middletown, Connecticut River, CT	Safety Zone	07/04/2002
01–02–079	Orchard Beach, Long Island Sound, NY	Safety Zone	07/02/2002
01–02–080	Marblehead, Massachusetts	Safety Zone	07/03/2002
01–02–081	Triathlon Swim, Hudson River, Ulster Landing	Safety Zone	07/14/2002
01–02–086	New Jersey Pierhead, Channel, NJ	Safety Zone	07/20/2002
01–02–087	Salem, MA	Safety Zone	07/04/2002
01–02–088	Charles River Esplanade, Boston, MA	Safety Zone	07/03/2002
01–02–095	Cashman Park, Newburyport, MA	Safety Zone	08/03/2002
01–02–097	Dorchester Bay, Dorchester, MA	Safety Zone	08/03/2002
01–02–098	Prouts Neck, Scarborough, ME	Safety Zone	08/03/2002
01–02–103	Coast Guard Activities New York	Safety Zone	08/30/2002
01–02–106	Port of New York/New Jersey	Safety Zone	09/14/2002
01–02–109	Port of New York/New Jersey	Safety Zone	09/05/2002
01–02–111	Ellis and Liberty Islands, NY/New Jersey	Safety Zone	09/11/2002
01–02–112	Hudson River, Pier 25, Manhattan, NY	Safety Zone	09/24/2002
01–02–120	Port of New York/New Jersey	Safety Zone	09/10/2002
05–02–044	York River, Yorktown, Virginia	Safety Zone	07/04/2002
05–02–045	Chickahominy River, Williamsburg, Virginia	Safety Zone	07/04/2002
05–02–046	Piankatank River, Hills Bay, Mathews, VA	Safety Zone	07/04/2002
05–02–047	James River, Newport News, Virginia	Safety Zone	07/04/2002
05–02–050	Chesapeake Bay, Hampton, VA	Safety Zone	08/01/2002
05–02–051	Patuxent River, Solomons, MD	Special Local	08/10/2002
05–02–053	James River, Newport News, VA	Safety Zone	07/30/2002
05–02–056	Pamlico River, Washington, North Carolina	Special Local	08/17/2002
05–02–063	James River, Newport News, Virginia	Safety Zone	09/16/2002
05–02–069	Patapsco River, Inner Harbor, Baltimore, MD	Special Local	09/14/2002
05–02–070	Severn River and Spa Creek, Annapolis, MD	Safety Zone	09/05/2002
05–02–073	Susquehanna River, Harford County, MD	Security Zone	09/06/2002
05–02–074	Potomac River, Washington, DC	Safety Zone	09/11/2002
05–02–077	Hampton Roads, Elizabeth River, Virginia	Security Zone	09/16/2002
05–20–066	Delaware Bay and River	Safety Zone	08/15/2002
08–02–020	Mississippi River, Iowa and Illinois	Drawbridge Operation	09/22/2002
09–02–032	Milwaukee Harbor, Milwaukee	Safety Zone	07/19/2002
09–02–044	Maumee River, Toledo, Ohio	Safety Zone	07/04/2002
09–02–048	White Lake, Whitehall, MI	Safety Zone	07/04/2002
09–02–049	Lake Kalamazoo, Saugatuck, MI	Safety Zone	07/04/2002
09–02–050	Lake Michigan, Manistee, MI	Safety Zone	07/04/2002
09–02–051	Michigan City, IN	Safety Zone	07/07/2002
09–02–052	Lake Michigan, Hammond, IN	Safety Zone	07/13/2002
09–02–053	Lake Michigan, Evanston, IL	Safety Zone	07/04/2002
09–02–055	Lake Michigan, Pentwater, MI	Safety Zone	07/03/2002
09–02–057	Cleveland Harbor, Cleveland, OH	Safety Zone	07/04/2002
09–02–061	Thunderfest Powerboat Race, Detroit, MI	Safety Zone	07/11/2002
09–02–062	Lake Michigan, Michigan City, IN	Safety Zone	07/14/2002
09–02–064	Lake Michigan, Ferrysburg, MI	Safety Zone	07/20/2002
09–02–066	Lake Michigan, Michigan City, MI	Safety Zone	07/20/2002
09–02–067	Lake Michigan, St. Joseph, MI	Safety Zone	07/20/2002
09–02–069	Lake Michigan, Chicago, IL	Safety Zone	07/20/2002
09–02–070	Lake Michigan, Chicago, IL	Safety Zone	07/22/2002
09–02–071	Grand River, Grand Haven, MI	Safety Zone	07/27/2002
09–02–072	Kalamazoo Lake, Saugatuck, MI	Safety Zone	07/02/2002
09–02–073	Lake Michigan, Chicago, IL	Safety Zone	07/27/2002
09–02–074	Grand River, Grand Haven, MI	Safety Zone	07/30/2002
09–02–075	Hammond Marina, Hammond, IN	Safety Zone	08/03/2002
09–02–502	Buffalo River, Buffalo, NY	Safety Zone	08/01/2002
09–02–507	Lake Erie, Buffalo, NY	Safety Zone	08/08/2002
09–02–514	Kalamazoo Lake, Saugatuck, MI	Safety Zone	08/31/2002
09–02–516	Detroit Ambassador Bridge	Security Zone	09/09/2002
09–02–517	Detroit Renaissance Waterfront Area	Security Zone	09/09/2002
09–02–518	Illinois River, Morris, IL	Safety Zone	09/28/2002
13–02–013	Puget Sound, Washington	Security Zone	08/12/2002
13–02–014	Portland International Airport	Security Zone	08/22/2002

REGULATIONS NOT ON PREVIOUS 1ST AND 2ND QUARTERLY REPORT

District/COTP	Location	Type	Effective date
District regulation for 1st quarter.			

REGULATIONS NOT ON PREVIOUS 1ST AND 2ND QUARTERLY REPORT—Continued

District/COTP	Location	Type	Effective date
05–02–005	Hampton Roads James River, VA	Safety zone	02/20/02
COTP regulations for 2nd quarter.			
Guam 02–007	COCOS Swim, COCOS Lagoon Guam	Safety zone	05/26/02
Guam 02–013	Commonwealth Port Authority, Saipan	Security zone	05/06/02
Guam 02–014	Commonwealth Port Authority, Saipan	Security zone	05/08/02
Guam 02–015	Port Authority of Guam	Security zone	05/07/02
Guam 02–016	Port Authority of Guam	Security zone	05/07/02
Guam 02–017	APRA Harbor, (Hotel Wharf) Guam	Security zone	05/28/02
Jacksonville 02–076	Indian River, New Smyrna Beach, FL	Safety zone	06/29/02
Memphis 02–008	LWR Mississippi River, M. 0 TO 3	Safety zone	06/08/02
Mobile 02–007	Bayou Casotte, Mississippi	Safety zone	04/14/02
Mobile 02–008	Highway 90 Bridge, Pascagoula River, MS	Safety zone	04/26/02
Mobile 02–009	Bayou Casotte, Mississippi	Safety zone	04/22/02
New Orleans 02–018	Almonaster Bridge, New Orleans, LA	Safety Zone	06/25/02
New Orleans 02–019	Mississippi Rive Gulf Outlet Channel	Safety Zone	06/24/02
Tampa 02–064	Tampa Bay, Florida	Security zone	06/27/02

[FR Doc. 02–30617 Filed 12–2–02; 8:45 am]

BILLING CODE 4910–15–M

POSTAL SERVICE

39 CFR Part 501

Authorization to Manufacture and Distribute Postage Meters; Correction

AGENCY: Postal Service.

ACTION: Final rule; correction.

SUMMARY: The Postal Service published in the **Federal Register** of November 18, 2002, a final rule amending the regulations for inspecting postage meter production facilities that are located outside the continental United States. Inadvertently, some paragraphs of the regulation were designated incorrectly.

DATES: This correction is effective November 18, 2002.

FOR FURTHER INFORMATION CONTACT: Wayne Wilkerson, manager of Postage Technology Management, at 703–292–3782, or by fax at 703–292–4050.

SUPPLEMENTARY INFORMATION: In the final rule published in the **Federal Register** of November 18, 2002 (67 FR 69478–69479), two paragraphs in section 501.2 were designated incorrectly.

§ 501.2 [Corrected]

On page 69479, in the first column, the paragraph designated as (c)(i) should be correctly designated as (c)(1), and in the second column the paragraph designated as (c)(ii) should be correctly designated as (c)(2).

Dated: November 18, 2002.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 02–30650 Filed 12–2–02; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[FRL–7416–3]

Withdrawal of Certain Federal Human Health and Aquatic Life Water Quality Criteria Applicable to Vermont, the District of Columbia, Kansas and New Jersey

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: In 1992, EPA promulgated Federal regulations establishing water quality criteria for toxic pollutants for twelve States and two territories (hereafter ''States''), including Vermont, the District of Columbia, Kansas and New Jersey. These States have now adopted, and EPA has approved, human health and aquatic life water quality criteria for many of these pollutants. In today's action, EPA is amending the Federal regulations to withdraw certain human health and aquatic life water quality criteria applicable to these States. EPA published the proposal to this rulemaking in the **Federal Register** on March 26, 2001 and provided an opportunity for public comment on the proposed withdrawal of the criteria, because the States adopted certain criteria less stringent than the promulgated Federal criteria. Seven comments were received, but no changes were made to the proposed rulemaking and EPA is finalizing the proposed withdrawal.

In addition, New Jersey adopted, and EPA approved, additional water quality criteria no less stringent than the promulgated Federal criteria. EPA is withdrawing these criteria without notice and comment rulemaking because New Jersey's adopted criteria are no less stringent than the promulgated Federal criteria.

DATES: This final rule is effective January 2, 2003.

ADDRESSES: The administrative record for this action in Vermont is available for public inspection at EPA Region 1, Office of Water, 1 Congress Street, Suite 1100, Boston MA 02114–1505 during normal business hours of 9 a.m. to 5 p.m. The administrative record for today's action in the District of Columbia is available at EPA Region 3, Water Protection Division, 1650 Arch Street, Philadelphia PA 19103–2029 during normal business hours of 9 am to 5 pm. The administrative record for today's action in Kansas is available for public inspection at EPA Region 7, Water, Wetland and Pesticides Division, 901 North 5th Street, Kansas City, Kansas 66101 during normal business hours of 8 a.m. to 4:30 p.m. The administrative record for today's action in New Jersey is available for public inspection at EPA Region 2, Division of Environmental Planning and Protection, 290 Broadway, New York, New York 10007 during normal business hours of 8 a.m. to 4:30 p.m.

Comments and EPA's Response to Comments document are also available for review at EPA Headquarters under docket number W–00–23. These records are available for inspection and copying from 8:30 a.m. to 4:30 p.m., excluding

legal holidays at the Water Docket, U.S. EPA, EPA West, 1301 Constitution Ave NW, Room B135, Washington, DC 20460. For access to Docket Materials, please call (202) 566–2426 to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: Thomas J. Gardner at EPA Headquarters, Office of Water (4305T), 1200 Pennsylvania Ave NW., Washington, DC, 20460 (tel: 202–566–0386, fax 202–566–0409) or e-mail *gardner.thomas@epa.gov.* Alternatively, for questions regarding Vermont, contact Bill Beckwith in EPA's Region 1 at 617–918–1544; for questions regarding the District of Columbia, contact Garrison Miller in EPA's Region 3 at 215–814–5745; for questions regarding Kansas, contact Ann Jacobs in EPA's Region 7 at 913–551–7930; and for questions regarding New Jersey, contact Wayne Jackson in EPA's Region 2 at 212–637–3807.

SUPPLEMENTARY INFORMATION:

Potentially Regulated Entities

No one is regulated by this rule. This rule merely withdraws certain Federal water quality criteria applicable in these States.

Background

In 1992, EPA promulgated a final rule (known as the ''National Toxics Rule'', or ''NTR'') to establish numeric water quality criteria for 14 States that had not complied fully with section 303(c)(2)(B) of the Clean Water Act (''CWA'') (57 FR 60848). The criteria, codified at 40 CFR 131.36, became the applicable water quality standards in those 14 States for all purposes and programs under the CWA effective February 5, 1993.

When a State adopts and EPA approves water quality criteria that meet the requirements of the CWA, EPA will issue a rule amending the NTR to withdraw its criteria. If the State's criteria are no less stringent than the promulgated Federal criteria, EPA will withdraw its criteria without notice and comment rulemaking because additional comment on the criteria is unnecessary. However, if a State adopts criteria that are less stringent than the Federally promulgated criteria, but that in the Agency's judgment fully meet the requirements of the Act, EPA will withdraw the Federally promulgated criteria after notice and opportunity for public comment. (see 57 FR 60860)

In today's action, EPA is amending the Federal regulations to withdraw certain human health and aquatic life criteria applicable to these States. In addition, this action makes certain nonsubstantive revisions to the regulatory language at 40 CFR 131.36 to reflect format changes in water quality standards that have occurred in the corresponding State regulations cited at 40 CFR 131.36.

Vermont

On July 12, 1994, Vermont adopted revisions to its surface water quality standards (Appendix C, *Vermont Water Quality Standards,* effective August 1, 1994). EPA Region 1 approved the State's adoption of criteria for all toxics contained in the NTR on December 5, 1996, because they are consistent with the CWA and EPA's implementing regulations at 40 CFR 131.11. EPA Region 1 requested that the Agency withdraw the Federal criteria applicable to Vermont for which the State now has numeric criteria.

In an earlier action, EPA withdrew Vermont from the NTR for certain human health and aquatic life criteria where the State adopted criteria that are no less stringent than the Federal criteria (see 65 FR 19659, April 12, 2000). Today's action addresses an arsenic criterion Vermont adopted that is less stringent than the corresponding Federal criteria in the NTR, but that nonetheless meets the requirements of the CWA and EPA's implementing regulations at 40 CFR 131.11. In reviewing Vermont's submission, EPA Region 1 concluded that the State's calculation of the arsenic human health criterion for the consumption of fish (organisms only) of 1.5 μg/L was scientifically defensible. EPA published a proposed rule to remove this criterion in the **Federal Register** on March 26, 2001 (66 FR 1643) and provided an opportunity for public comment, because the State's adopted criterion was less stringent than the promulgated Federal criterion. No changes were made to the proposed rulemaking, and EPA is finalizing the proposed withdrawal as to Vermont. For a copy of the comments received and EPA's responses, please see the ''Response to Comments'' document in the administrative record for this rulemaking. Today's rule removes the arsenic human health criterion for the consumption of fish (organisms only) applicable to Vermont. Today's rule leaves in place the Federal continuous concentration criterion of 0.08 μg/L for gamma-BHC (Lindane). The current adopted State criterion for this pollutant is apparently the result of a transcription error resulting in a criterion 10 times higher than the promulgated Federal criterion. EPA will initiate action to withdraw the Federally promulgated criterion for this pollutant when the State corrects the error in its standards.

District of Columbia

On March 4, 1994, the District of Columbia adopted revisions to its surface water quality standards [amended Chapter 11 of Title 21 DCMR pursuant to the authority set forth in Section 5 of the Water Pollution Control Act of 1984, D.C. Law 5–188, effective March 16, 1985, D.C. Code Section 6–924 (1988) and Mayor's Order 85–152], adopting human health criteria to protect from effects related to fish consumption and removing the emergency public water supply use designation previously identified for a segment of the Potomac River. EPA Region 3 approved these revisions on November 4, 1996 and April 18, 2000, because the revisions were consistent with the CWA and EPA's implementing regulations at 40 CFR Part 131.11.

For those waters that did not have the previously-designated emergency public water supply use designation, EPA has already acted. That is, EPA withdrew the District of Columbia from the NTR for human health criteria for the consumption of fish (organism only) because the District adopted criteria that are no less stringent than the Federal criteria (see 65 FR 19659, April 12, 2000). For those waters that did have the previously-designated emergency supply use, EPA Region 3 requested that the Agency withdraw the Federal human health criteria applicable to the District.

Today's action withdraws the District from the NTR for human health criteria corresponding to the previously designated emergency public water supply use. The District removed this use and therefore has no need for human health criteria for water and organisms. EPA published a proposed rule to remove these criteria in the **Federal Register** on March 26, 2001 (66 FR 1643) and provided an opportunity for public comment, because the removed Federal criteria were not replaced by District criteria. No changes were made to the proposed rulemaking, and EPA is finalizing the proposed withdrawal as to the District of Columbia. For a copy of the comments received and EPA's responses, please see the ''Response to Comments'' document in the administrative record for this rulemaking.

Kansas

On June 28, 1994, Kansas adopted revisions to its water quality standards (K.A.R. 28–16–28) regarding both human health and aquatic life criteria, and submitted them to EPA Region 7 for

review and approval on October 31, 1994. On February 19, 1998, EPA Region 7 approved certain new or revised water quality criteria for the protection of human health and aquatic life because they are consistent with the CWA and EPA's implementing regulations at 40 CFR 131.11. EPA Region 7 requested that the Agency withdraw the Federal criteria applicable to Kansas for which the State now has numeric criteria. Also, on June 29, 1999, Kansas adopted new and revised ambient water quality criteria for additional pollutants. They were submitted to EPA for review and approval on August 10, 1999. On January 19, 2000, EPA Region 7 approved these additional criteria because they are also consistent with the CWA and EPA's implementing regulations at 40 CFR 131.11. EPA Region 7 requested that the Agency withdraw the Federal criteria applicable to Kansas for which the State now has numeric criteria.

In an earlier action, EPA withdrew Kansas from the NTR for certain human health and aquatic life criteria where the State adopted criteria that are no less stringent than the Federal criteria. (See 65 FR 19659, April 12, 2000) Today's action addresses arsenic and cadmium criteria Kansas adopted that are less stringent than the corresponding criteria in the NTR, but that nonetheless meet the requirements of the CWA and EPA's implementing regulation at 40 CFR 131.11. In reviewing Kansas's submission, EPA Region 7 concluded that the State's calculation of an arsenic human health criteria for the consumption of fish (organisms only) of 20.5 μg/L was scientifically defensible; that the State's calculation of a cadmium freshwater aquatic life criteria (Criteria Maximum Concentration) of 4.5 μg/l was scientifically defensible; that the State's calculation of a cadmium freshwater aquatic life criteria (Criteria Continuous Concentration) of 2.5 μg/L was scientifically defensible, and that these criteria meet the requirements of the CWA and EPA's implementing regulations at 40 CFR 131.11. EPA published a proposed rule to remove these criteria in the **Federal Register** on March 26, 2001 (66 FR 1643) and provided an opportunity for public comment, because the States' adopted criteria were less stringent than the promulgated Federal criteria. No changes were made to the proposed rulemaking, and EPA is finalizing the proposed withdrawal as to Kansas. For a copy of the comments received and EPA's responses, please see the ''Response to Comments'' document in the administrative record for this rulemaking. Today's rule removes the Federal human health criteria for the consumption of fish (organisms only) for arsenic and the Federal freshwater acute and chronic cadmium criteria for Kansas.

New Jersey

On August 4, 1994, New Jersey submitted to EPA Region 2 revisions to its surface water quality standards (New Jersey Administrative Code 7:9B), including aquatic life and human health criteria. New Jersey adopted aquatic life and human health criteria for many of the toxic pollutants contained in the NTR and reorganized certain designated use classifications and requirements pertaining to the Delaware River and Bay. EPA Region 2 approved the State's criteria (with the exception of the State's PCB human health criteria) on March 17, 2000, because New Jersey's numeric criteria for the protection of aquatic life and human health were consistent with the CWA and EPA's implementing regulations at 40 CFR 131.11. EPA Region 2 requested that the Agency withdraw the Federal criteria applicable to New Jersey for which the State now has numeric criteria.

For certain pollutants, New Jersey adopted water quality criteria for aquatic life and human health that are less stringent than the promulgated Federal criteria, but that nonetheless meet the requirements of the CWA and EPA's implementing regulations at 40 CFR 131.11. EPA published a proposed rule to remove these criteria in the **Federal Register** on March 26, 2001 (66 FR 1643) and provided an opportunity for public comment because the State's adopted criteria were less stringent than the promulgated Federal criteria. No changes were made to the proposed rulemaking, and EPA is finalizing the proposed withdrawal as to New Jersey. For a copy of the comments received and EPA's responses, please see the ''Response to Comments'' document in the administrative record for this rulemaking. Today's rule removes the Federal criteria for these pollutants in New Jersey.

In addition, EPA is removing the Federal criteria for a number of pollutants for which New Jersey has adopted water quality criteria for aquatic life and human health that are no less stringent than the promulgated Federal criteria. EPA has determined that New Jersey's criteria are no less stringent than the promulgated Federal criteria either because they are identical, identical when rounded using conventional rounding techniques, or more stringent than the promulgated Federal criteria. Today's rule removes the promulgated Federal criteria for these pollutants without notice and comment rulemaking because additional comment on the criteria is unnecessary (see 57 FR 60860). Section 553 of the Administrative Procedure Act, U.S.C. 553(b)(B) provides that, when an agency for good cause finds that notice and public procedures are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and opportunity for public comment. EPA has determined that there is good cause for removing the Federal criteria for these pollutants without prior proposal and opportunity for public comment because EPA has determined that if a State's adopted and approved criteria are no less stringent than the promulgated Federal criteria, additional comment on the criteria is unnecessary. EPA finds that this constitutes good cause for issuing a final rule removing the Federal criteria for these pollutants without notice and comment. A list of the Federal criteria which had been promulgated for New Jersey by the NTR and are being removed by today's action is included in the Docket for this rulemaking.

In 1994, New Jersey reorganized certain use classification requirements pertaining to the Delaware River and Bay, including a definition of the appropriate points of application for criteria in these waters. EPA is making corresponding revisions to 40 CFR 131.36(d)(3) to be consistent with the State regulations that the Federal regulations are intended to augment. In addition, on November 9, 1999, EPA amended the NTR criteria for PCBs-human health (columns D1 and D2 of the table at 40 CFR 131.36) to provide for a total criteria for this pollutant, in lieu of criteria for individual isomers (see 64 FR 61181). EPA is making corresponding revisions to 40 CFR 131.36(d)(3) to be consistent with this change. These changes do not result in any substantive changes to the Federal criteria applicable to New Jersey. These revisions clarify the existing Federal regulations.

Statutory and Executive Order Review

Executive Order 12866—Regulatory Planning and Review

This action withdraws Federal requirements applicable to Vermont, the District of Columbia, Kansas and New Jersey and imposes no regulatory requirements or costs on any person or entity, does not interfere with the action or planned action of another agency, and does not have any budgetary

impacts or raise novel legal or policy issues. Thus, it has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to OMB review.

Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 because it is administratively withdrawing Federal requirements that no longer need to apply to Vermont, the District of Columbia, Kansas and New Jersey.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally requires an agency to prepare a regulatory flexibility analysis of a rule that is 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 significant economic impact on a substantial number of small entities. This rule imposes no regulatory requirements or costs on any small entity. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act

Title III of the Unfunded Mandates Reform Act (UMRA) (Pub. L. 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. Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, Tribal, or local governments or the private sector because it imposes no enforceable duty on any of these entities. Thus, today's rule is not subject to the requirements of UMRA sections 202 and 205 for a written statement and small government agency plan. Similarly, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments and is therefore not subject to UMRA section 203.

Executive Order 13132—Federalism

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure State and local government officials have an opportunity to provide input in the development of regulatory policies 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 governments. This rule imposes no regulatory requirements or costs on any State or local governments, therefore, it does not have federalism implications under Executive Order 13132.

Executive Order 13175—Consultation and Coordination with Indian Tribal Governments

Again, this rule imposes no regulatory requirements or costs on any Tribal government. It does 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, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000).

Executive Order 13045—Protection of Children from Environmental Health and Safety Risks

This rule is not subject to Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant and EPA has no reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

Executive Order 13211—Actions 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.

National Technology Transfer and Advancement Act

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 because this rule does not involve technical standards.

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. 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) and will be effective on January 2, 2003.

List of Subjects in 40 CFR Part 131

Environmental protection, Indians—lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water pollution control.

Dated: November 26, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble 40 CFR part 131 is amended as follows:

PART 131—WATER QUALITY STANDARDS

1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

§ 131.36 [Amended]

1. Section 131.36 is amended by:

a. Revising the table in paragraph (d)(2)(ii).

b. Revising the table in paragraph (d)(3)(ii).

c. Revising the table in paragraph (d)(5)(ii).

d. Revising the table in paragraph (d)(9)(ii).

The revisions read as follows:

§ 131.36 Toxics criteria for those states not complying with Clean Water Act Section 303(c)(2)(B).

(d) * * *

(2) * * *

(ii) * * *

Use classification	Applicable criteria
1. Classes A1, A2, B1, B2, B3	These classification are assigned the criterion in: Column B2—#105.

* * * * *

(ii) * * *

(3) * * *

Use classification	Applicable criteria
1. Freshwater Pinelands, FW2	These classifications are each assigned the criteria in: i. Column B1—#2, 4, 5a, 5b, 6–11, 13. ii. Column B2—#2, 4, 5a, 5b, 6–10, 13. iii. Column D1— #125b at a 10^{-6} risk level. iv. Column D2—#125b at a 10^{-6} risk level. v. Column D2—#23, 30, 37, 42, 87, 89, 93 and 105 at a 10^{-5} risk level.
2. PL (Saline Water Pinelands), SE1, SE2, SE3, SC, Delaware Bay Zone 6.	These classifications are each assigned the criteria in: i. Column C1—#2, 4, 5b, 6–11, 13. ii. Column C2—#2, 4, 5b, 6–10, 13. iii. Column D1— #125b at a 10^{-6} risk level. iv. Column D2—#125b at a 10^{-6} risk level. v. Column D2—#23, 30, 37, 42, 87, 89, 93 and 105 at a 10^{-5} risk level.
3. Delaware River Zones 1C, 1D, 1E, 2, 3, 4, and 5	i. Column B1—none. ii. Column B2—none. iii. Column D1—none. iv. Column D2—none.
4. Delaware River Zones 3, 4, and 5	These classifications are each assigned the criteria in: i. Column C1—none. ii. Column C2—none. iii. Column D2—none.

* * * * *

(ii) * * *

(5) * * *

Use classification	Applicable criteria
1. Class C	This classification is assigned the additional criteria in: Column B2; #10, 118, 126.

* * * * *

(ii) * * *

(9) * * *

Use classification	Applicable criteria
1. Sections (2)(A), (2)(B), (2)(C), (4)	These classifications are each assigned criteria as follows: i. Column B1, #2. ii. Column D2, #12, 21, 29, 39, 46, 68, 79, 81, 86, 93, 104, 114, 118.
2. Section (3)	This classification is assigned all criteria in: Column D1, all except #1, 9, 12, 14, 15, 17, 22, 33, 36, 39, 44, 75, 77, 79, 90, 112, 113, and 115.

* * * * *

[FR Doc. 02–30599 Filed 12–2–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0278; FRL–6824–2]

Pesticides; Tolerance Exemptions for Active and Inert Ingredients for Use in Antimicrobial Formulations (Food-Contact Surface Sanitizing Solutions)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to add a new section to part 180 which lists the pesticide chemicals that are exempt from the requirement of a tolerance when used in food-contact surface sanitizing solutions. The initial list of exempt pesticide chemicals in the new section is duplicated from the Food and Drug Administration's (FDA) regulations in 21 CFR 178.1010. EPA is also changing FDA's naming

conventions for some of the chemical substances that were duplicated.

Until recently, FDA under the Federal Food, Drug, and Cosmetic Act (FFDCA) section 409, regulated food-contact surface sanitizing solutions. With the amendments to FFDCA by the Food Quality Protection Act (FQPA) of 1996 and by the Antimicrobial Regulation Technical Corrections Act (ARTCA) of 1998, these responsibilities have been restructured. Under FFDCA section 408, EPA will now regulate the pesticide uses of these chemical substances and FDA under FFDCA section 409 will continue to regulate any indirect food additive uses of these chemical substances.

Registrants of existing food-contact surface sanitizing solutions that contain chemical substances other than those listed in this direct final rule should identify these chemical substances and support their claim that the chemical substance is generally recognized as safe (GRAS), or permitted by FDA prior sanction, or approval, or subject to a letter of no objection in order to remain exempt from the requirement of a FFDCA section 408 tolerance.

DATES: This direct final rule is effective on April 2, 2003 without further notice, unless EPA receives a relevant adverse comment by February 3, 2003. If, however, EPA receives a relevant adverse comment during the comment period, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the direct final rule will not take effect. We will also publish a notice of proposed rulemaking in a future issue of the **Federal Register**. We will address the comments on the direct final rule as part of that notice of proposed rulemaking.

Registrants should submit chemical substances not listed in this document and support their claims of GRAS, or prior sanction, or approval, or no objection of these chemical substances on or before June 2, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

Registrants identifying chemical substances not listed in this document and the supporting documentation for their claims of GRAS, or prior sanction, or approval, or no objection of these chemical substances for inclusion in 40 CFR 180.940 should submit the information directly to the person listed under **FOR FURTHER INFORMATION.** Identification of a chemical substance is not a comment and should be identified as ''Submission of Non-designated Prior Approved Chemical Substance.''

FOR FURTHER INFORMATION CONTACT: Kathryn Boyle, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6304; fax number: (703) 305–0599; e-mail address: boyle.kathryn@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are a food manufacturer, or antimicrobial pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	311	Food manufacturing
Producers	32561	Antimicrobial pesticides

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0278. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly

available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2002–0278. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP–2002–0278. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2002–0278.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2002–0278. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the rule or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Authority

A. What is the Agency's Authority for Taking this Action?

This direct final rule is issued under FFDCA section 408, 21 U.S.C. 346a, as amended by FQPA (Public Law 104–170), and ARTCA (Public Law 105–324).

Section 408 of FFDCA authorizes the establishment of tolerances, exemptions from the requirement of a tolerance, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods. Section 408(j)(2) of FFDCA provides that all regulations issued by FDA under FFDCA section 409 that stated conditions for safe use of substances that are now, post-FQPA, considered pesticide chemical residues in or on processed food or that otherwise stated the conditions under which such pesticide chemicals could be safely used, shall be deemed to be regulations issued under FFDCA section 408.

Due to the FQPA and ARTCA amedments to FFDCA, those chemical substances originally regulated by FDA under FFDCA section 409 as food-contact surface sanitizing solutions are now the responsibility of EPA. These pesticide chemicals are now subject to modification or revocation at EPA's initiative under FFDCA section 408(e). This direct final rule duplicates those chemical substances found in 21 CFR 178.1010 which are now pesticide tolerance exemptions to 40 CFR 180.940.

EPA's rulemaking activity will have no effect on any of the FDA regulated FFDCA section 409 food additive regulations in 21 CFR 178.1010.

B. Why is EPA Issuing this as a Direct Final Rule?

EPA is issuing this action as a direct final rule without prior proposal because the Agency believes that this action is not controversial and is not likely to result in any adverse comments, inasmuch as this action simply implements amendments to the statutory authority and reflects the statutory transfer of jurisdiction from FDA to EPA. Its primary effect is to substitute EPA's regulatory procedures for those of FDA in approving food-contact surface sanitizing solutions under FFDCA. The chemical substances were subject to FDA review under FFDCA section 409 and have food additive clearances codified at 21 CFR 178.1010. This direct final rule duplicates the conditions for use of certain pesticide chemical residues that are currently listed in 21 CFR 178.1010 to 40 CFR 180.940. In addition, this direct final rule changes the process by which pesticide registrants obtain approval of food-contact surface sanitizing solutions as well as how those approvals are expressed in the CFR. However, it does not alter the quantity or nature of residues of these food-contact surface sanitizing solutions that might lawfully be present in food. The Agency believes that it is important to make this action effective as soon as possible, in order to clarify the jurisdiction between EPA and FDA over these chemical substances.

This direct final rule is effective on April 2, 2003 without further notice, unless EPA receives a relevant adverse comment by February 3, 2003. If, however, EPA receives a relevant adverse comment during the comment period, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the direct final rule will not take effect. We will also publish a notice of proposed rulemaking in a future issue of the **Federal Register**. We will address the comments on the direct final rule as part of that notice of proposed rulemaking.

III. Summary of this Action

A. Why is There an Overlap of EPA's and FDA's Regulatory Authorities?

Since EPA was created in 1970, EPA and FDA have shared authority under FFDCA over pesticide chemical residues in food. Enactment of FQPA in 1996 amended FFDCA, and shifted to EPA regulatory authority over certain pesticide residues which were previously subject to FDA authority. Prior to 1996, products used to sanitize or disinfect permanent or semi-permanent food-contact surfaces were regulated by FDA as indirect food additives under FFDCA section 409. Under the FQPA and ARTCA amendments to FFDCA, antimicrobial formulations used on permanent or semi-permanent food-contact surfaces other than food packaging are now considered ''pesticide chemicals'' and are regulated by EPA under FFDCA section 408.

FQPA added a provision to FFDCA to assure an orderly transition to the new regulatory system. Section 408(j)(2) of FFDCA provides that all food additive regulations issued under FFDCA section 409 prior to the enactment of FQPA for antimicrobial uses that became pesticide chemical uses subsequent to FQPA and that were not affected by ARTCA shall be deemed to be regulations issued under FFDCA section 408. Thus, FQPA converted existing food additive regulations issued by FDA under FFDCA section 409, for chemical substances that post-FQPA became pesticide chemicals, into FFDCA section 408 pesticide chemical tolerances or tolerance exemptions. This ''grandfather'' provision of FFDCA section 408(j) assures that pesticide chemical residues conforming to regulations issued under the authority of FFDCA section 409 will not render food adulterated as a result of the jurisdictional shift from FDA to EPA.

In 1998, ARTCA amended the definition of ''pesticide chemical'' in FFDCA section 201(q) so as to exclude certain antimicrobial pesticide residues from the authority of FFDCA section 408. Consistent with FFDCA section 408(j)(4), these residues now fall within the authority of FFDCA section 409. As a result, certain uses of food-contact surface sanitizing solutions identified in FDA's regulations at 21 CFR 178.1010 remain subject to FFDCA section 409 regulations just as they did pre-FQPA, while other uses are now subject to EPA's jurisdiction under FFDCA section 408.

B. Why are These Tolerance Exemptions not Subject to Tolerance Reassessment at this Time?

Under FFDCA section 408(q), EPA is required to reassess all tolerance exemptions that were in effect on the day before the enactment of the FQPA. The tolerance exemptions for inert ingredients as well as those active ingredients not yet completed will be reassessed in accordance with EPA's schedule for tolerance reassessment published in the **Federal Register** of August 4, 1997 (62 FR 42019) (FRL–5734–6).

The tolerance exemptions in this direct final rule codified in 40 CFR 180.940 already exist as valid FFDCA section 408 regulations. FDA promulgated the food additive regulations in 21 CFR 178.1010 under the authority of FFDCA section 409 prior to the enactment of FQPA. By operation of FFDCA section 408(j)(2), those portions of 21 CFR 178.1010 that pertain to chemical substances that are pesticide chemicals post-FQPA and remain as such post-ARTCA were converted to FFDCA section 408 tolerance exemptions. EPA's duplication of these tolerance exemptions is not ''establishing, modifying, or revoking a tolerance'' under FFDCA section 408(b). EPA is, therefore, not required to conduct a full reassessment of these tolerance exemptions at this time.

C. Why is 40 CFR 180.940 Being Created?

The Agency is duplicating in 40 CFR 180.940 only those portions of the regulations in 21 CFR 178.1010 that pertain to pesticide chemicals. This duplication will have no effect on any of FDA's regulated FFDCA section 409 food additive regulations in 21 CFR 178.1010.

In establishing food additive regulations for food-contact surface sanitizing solutions in 21 CFR 178.1010, FDA used a formulation-specific approach. Consistent with its authority under FFDCA section 409, FDA issued regulations prescribing the conditions under which food-contact surface sanitizing solutions might be safely used. FDA approved the use of each food-contact surface sanitizing solution formulation as a whole, rather than regulating each component chemical substance individually. In addition, FDA included a generic exemption for any chemical substance considered to be GRAS, and in some cases, issued letters not objecting to certain additional chemical substances in the formulations.

By contrast, FFDCA section 408 authorizes EPA to issue regulations establishing tolerances or exemptions from the requirement of a tolerance. EPA's practice has been to issue these regulations on a chemical-specific basis, whereby each ingredient in the product is the subject of a separate tolerance or exemption regulation. Food-contact surface sanitizing solutions meet the requirements of FFDCA if each ingredient has an appropriate clearance under FFDCA, either a tolerance or an exemption from the requirement of a tolerance, and any conditions on the clearance are observed.

Translating the regulatory decisions made by FDA into a comparable EPA scheme requires considerably greater work on EPA's part than merely copying those portions of the existing regulations in 21 CFR 178.1010 that pertain to pesticide chemicals directly into 40 CFR 180.940. EPA must disaggregate the formulations in 21 CFR 178.1010 that pertain to pesticide chemicals into their component ingredients. EPA must also provide a mechanism to address those ingredients not identified by name in 21 CFR 178.1010 but that were, for example, permitted by prior sanction or approval, not objected to, or generally recognized as safe. This, in fact, places a higher initial demand on EPA resources than would be required to simply copy FDA's approach. However, EPA is convinced that the long-term administrative convenience of using a consistent regulatory scheme for all pesticide chemicals subject to FFDCA section 408 outweighs the initial burdens.

FDA's formulation-specific approach is different from EPA's chemical-specific approach. Under EPA's approach, a tolerance exemption would be approved once for each particular pesticide chemical, and would not need to be repeated as new products containing that chemical substance enter the market. EPA's approval process is not complex, will allow for a wide variety of potential products, and fosters innovative formulation approaches. In addition, by listing in one place (40 CFR 180.940) all chemical substances exempted from the requirement of a tolerance when used in food-contact surface sanitizing solutions, EPA's approach will increase the transparency of its regulatory process.

This duplication will not allow any residues beyond those already permitted by 21 CFR 178.1010. EPA believes that the chemical-specific approach and FDA's formulation-specific approach are equivalent from a risk management perspective, inasmuch as each would result in the same levels of residues from these chemical substances.

As part of the duplication, EPA changed the naming conventions (chemical nomenclature), as well as combining, as appropriate, chemical substances that appear in 21 CFR 178.1010 under two or more names under a single name. The Agency has attempted to identify each of the listed chemical substances using the Chemical Abstracts Service Registry Number (CAS No.). The CAS No. provides one of the most distinct and universally accepted means of identifying chemical substances. Generally, there will be only one CAS No. per listed chemical substance; however, it is possible that more than one CAS No. may be appropriate for some chemical substances. The lack of a CAS No. will not preclude EPA from including chemical substances in 40 CFR 180.940.

The lower-concentration limits specified in 21 CFR 178.1010 are not included in 40 CFR 180.940 because of the differences between FDA's approach and EPA's approach. Although EPA establishes tolerance exemptions for use in food-contact surface sanitizing solutions under FFDCA, all pesticide products must also meet the criteria for registration under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) before being offered for sale. EPA relies on conditions imposed through the FIFRA registration process to address safety and for antimicrobial-formulated products efficacy. Accordingly, the lower limits on concentrations of pesticide chemicals, that appear in 21 CFR 178.1010 will not appear in 40 CFR 180.940.

Three types of food-contact surface sanitizing solutions are described in 21 CFR 178.1010:

- Those used on food-contact surfaces in public eating places.
- Those used on dairy-processing equipment.
- Those used on food-processing equipment and utensils.

According to FDA, food-contact surface sanitizing solutions that are acceptable for use on food-contact surfaces in public eating places can also be used on dairy-processing equipment, and on food-processing equipment and utensils. Food-contact surface sanitizing solutions that are acceptable for use on dairy equipment can also be used on food-processing equipment and utensils. EPA has separated the component ingredients by both chemical and concentration for these three types of food-contact surface sanitizing solutions, which will be included in 40 CFR 180.940.

IV. Addition of Non-Designated Prior Approved Chemical Substances

21 CFR 178.1010 allows the use of GRAS chemical substances and chemical substances ''permitted by prior sanction or approval,'' that are not expressly identified. These chemical substances were subject to the sanitizer formulation approval under FDA's regulation before these uses became FFDCA section 408 tolerance exemptions under FFDCA section 408(j)(2). Accordingly, many food-contact sanitizing solutions that presently are authorized for use under 21 CFR 178.1010 contain ingredients which are not identified in this direct final rule. As discussed in this unit, EPA is asking registrants to identify these other ingredients that they believe should be included in 40 CFR 180.940. EPA intends to publish a revision to 40 CFR 180.940 adding these chemical substances. In the interim, to preserve the use of food-contact surface sanitizing solutions that were cleared for use before FQPA's enactment and that contain chemical substances that are not specifically identified in 21 CFR 178.1010, EPA has decided to honor those approvals under 21 CFR 178.1010 until EPA has received and reviewed registrant's claims with respect to unspecified pesticide chemicals, as discussed in this unit.

FDA's regulations (21 CFR 178.1010(b)) allowed the addition to food-contact surface sanitizing solutions

of GRAS components, and components permitted by prior sanction or approval or subject to a letter of no objection. Much of this information should be in EPA's files. The Agency will access this information. However, EPA may not have ready access to all information on all chemicals in existing food-contact surface sanitizing solution formulations which could meet these criteria. Submission of this information to EPA would also reduce the possibility of an existing food-contact surface sanitizing solution having a component that lacks a tolerance exemption under 40 CFR 180.940. Therefore, registrants who believe that components of their food-contact surface sanitizing solutions are exempted under 21 CFR 178.1010(b) should advise EPA in writing that these chemical substances (along with the CAS No.) should be included in 40 CFR 180.940. The submission of this information facilitates EPA's process for adding these chemical substances cleared under 21 CFR 178.1010(b), but not specifically listed by name, to 40 CFR 180.940. The EPA will also need any available information documenting the claim that the component is GRAS, prior sanctioned or approved, or subject to a letter of no objection.

Claims and supporting documentation should be sent directly to the person listed under **FOR FURTHER INFORMATION CONTACT**. Claims are not comments on this direct final rule and should be identified on the subject line as ''Submission of Non-designated Prior Approved Chemical Substance.'' If you have any questions about the many types of information that could be submitted please consult the person listed under **FOR FURTHER INFORMATION CONTACT**. The Agency does not anticipate that registrants will be required to submit an excessive amount of information, and, in fact, believes that most registrants will be able to submit the necessary information with minimal effort.

EPA will review and evaluate the information provided. Chemical substances identified in claims received not later than June 2, 2003 may be eligible for inclusion in § 180.940 under FFDCA section 408(j)(2). EPA anticipates publishing a notice of proposed rulemaking identifying those chemical substances shortly after that date.

V. Regulatory Assessment Requirements

EPA is taking direct final action to add a new § 180.940 to 40 CFR part 180, subpart D which lists the pesticide chemicals that are exempt from the requirement of a tolerance when used in food-contact surface sanitizing solutions. The initial list duplicates pesticide chemicals in 40 CFR 180.940 that are active and inert ingredients listed in 21 CFR 178.1010. Since this direct final rule does not impose any new requirements, it is not subject to review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), or Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001).

This direct final rule directly regulates food processors, food handlers, and food retailers, but does not affect States, local, or Tribal governments directly. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). This action does not have substantial direct effects on State or tribal governments, on the relationship between the Federal government and States or Indian tribes, or on the distribution of power and responsibilities between the Federal government and States or Indian tribes. As a result, this action does not require any action under Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999), or under Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Nor does it impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

Nor does it require special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or Executive Order 12630, entitled *Governmental Actions and Interference with Constitutionally Protected Property Rights* (53 FR 8859, March 15, 1988).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards under to 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).

Under section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that the creation of a new § 180.940 does not have significant negative economic impact on a substantial number of small entities. The rationale supporting this conclusion is as follows. This direct final rule does not impose any requirements, it establishes exemptions from the requirement for a tolerance. The Agency is, however, also commencing a process whereby EPA will require certain persons to identify chemical substances considered to be GRAS (which could include self-affirmed GRAS chemicals), or permitted by prior sanction or approval in existing food-contact surface sanitizing solutions. The information available to the Agency indicates that fewer than 500 companies have approximately 1,300 products that could fall under this category. EPA anticipates the economic burden on small entities to be minor, since the Agency is only asking for confirmation that the chemical substances considered to be GRAS or permitted by prior sanction or approval in existing food-contact surface sanitizing solutions are in fact part of an existing formulation, and information as to why the chemical is considered to be GRAS, or a copy of an FDA letter not objecting to the use of a chemical substance. By contrast, this direct final rule is beneficial to the regulated community by increasing the number of inert ingredients for use in antimicrobial formulations and by reducing the regulatory burden on persons seeking to market new combinations of ingredients for certain hard surface sanitizing solutions. Additionally, this direct final rule provides a more transparent listing of pesticide chemicals used in food-contact surface sanitizing solutions to the public.

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rule and in addition to its display on any related collection instrument, are listed in 40 CFR part 9.

This direct final rule does not impose any new information collection requirements that would require separate approval by OMB under the PRA. Under 5 CFR 1320.3(h), the request for information discussed in

Unit VII. is not subject to approval under the PRA, and the information collection activities related to the Agency's tolerance exemption process have already been approved by OMB under OMB control numbers 2070–0024 (EPA ICR No. 597). The annual ''respondent'' (petitioner) burden for the pesticide tolerance petitions program is estimated to average 1,726 hours per petition. According to the PRA, ''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. For this collection, it is the time reading the regulations; planning the necessary data collection activities; conducting tests; analyzing data; generating reports and completing other required paperwork; and storing, filing, and maintaining the data. Send comments regarding this burden estimate or any other aspect of the collection activity, including suggestions for reducing the burden to: Director, Collection Strategies Division, Environmental Protection Agency (2822), 1200 Pennsylvania Ave., NW., Washington, DC 20460. Include the OMB control number 2070–0024 in any correspondence about this collection activity, but do not submit the requested information or forms to this address.

VI. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

Environmental protection, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 22, 2002.

James Jones,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

2. A new § 180.940 is added to subpart D of part 180 to read as follows.

§ 180.940 Food-contact surface sanitizing solutions; exemptions from the requirement of a tolerance.

Residues of the following chemical substances are exempted from the requirement of a tolerance when used in accordance with good manufacturing practice as ingredients in an antimicrobial pesticide formulation, provided that the chemical substance is applied on a semipermanent or permanent food-contact surface (other than being applied on food packaging) with adequate draining before contact with food.

(a) The following chemical substances when used as ingredients in an antimicrobial pesticide formulation may be applied to: Food-contact surfaces in public eating places, dairy-processing equipment, and food-processing equipment and utensils.

Pesticide chemical	CAS No.	Limits
Acetic acid	64–19–7	When ready for use, the end-use concentration is not to exceed 290 parts per million (ppm)
α-Alkyl(C_{10}–C_{14})-ω-hydroxypoly(oxyethylene) poly (oxypropylene) average molecular weight (in amu), 768 to 837	None	None
α-Alkyl(C_{12}–C_{18})-ω-hydroxypoly(oxyethylene) poly(oxypropylene) average molecular weight (in amu), 950 to 1,120	None	None
Ammonium chloride	12125–02–9	When ready for use, the end-use concentration is not to exceed 48 ppm
D&C Blue No.1 (methylene blue)	61–73–4	When ready for use, the end-use concentration is not to exceed 0.4 ppm
Dextrin	9004–53–9	When ready for use, the end-use concentration is not to exceed 16 ppm
Ethanol	64–17–5	None
Ethylenediaminetetraacetic acid (EDTA), tetrasodium salt	64–02–8	None
Hydrogen peroxide	7722–84–1	When ready for use, the end-use concentration is not to exceed 91 ppm
Hypochlorous acid, sodium salt	7681–52–9	When ready for use, the end-use concentration is not to exceed 200 ppm determined as total available chlorine
Iodine	7553–56–2	When ready for use, the end-use concentration is not to exceed 25 ppm of titratable iodine
Magnesium oxide	1309–48–4	None

Pesticide chemical	CAS No.	Limits
α-(p-Nonylphenyl)-ω-hydroxypoly(oxyethylene) average poly(oxyethylene) content 11 moles)	None	None
Octadecanoic acid, calcium salt	1592–23–0	When ready for use, the end-use concentration is not to exceed 16 ppm
1-Octanesulfonic acid, sodium salt	5324–84–5	When ready for use, the end-use concentration is not to exceed 46 ppm of total active fatty acids
Octanoic acid	124–07–2	When ready for use, the end-use concentration is not to exceed 52 ppm of total active fatty acids
Oxirane, methyl-, polymer with oxirane, minimum molecular weight (in amu), 1,900	9003–11–6	None
Peroxyacetic acid	79–21–0	When ready for use, the end-use concentration is not to exceed 58 ppm
Peroxyoctanoic acid	33734–57–5	When ready for use, the end-use concentration is not to exceed 52 ppm
Phosphonic acid, (1-hydroxyethylidene)bis-	2809–21–4	When ready for use, the end-use concentration is not to exceed 14 ppm
Phosphoric acid, trisodium salt	7601–54–9	When ready for use, the end-use concentration is not to exceed 5,916 ppm
Potassium bromide	7758–02–3	When ready for use, the end-use concentration is not to exceed 46 ppm total available halogen
Potassium iodide	7681–11–0	When ready for use, the end-use concentration is not to exceed 25 ppm of titratable iodine
Potassium permanganate	7722–64–7	When ready for use, the end-use concentration is not to exceed 0.7 ppm
2-Propanol (isopropanol)	67–63–0	None
Quaternary ammonium compounds, alkyl (C_{12}–C_{16}) benzyldimethyl, chlorides, average molecular weight (in amu), 351 to 380	None	When ready for use, the end-use concentration is not to exceed 150 ppm of active quaternary compound
Quaternary ammonium compounds, alkyl (C_{12}–C_{18}) benzyldimethyl, chlorides	None	When ready for use, the end-use concentration is not to exceed 200 ppm of active quaternary compound in the formulated product
Quaternary ammonium compounds, n-alkyl (C_{12}–C_{14}) dimethyl ethylbenzyl ammonium chloride, average molecular weight (in amu), 377 to 384	None	When ready for use, the end-use concentration is not to exceed 200 ppm of active quaternary compound
Quaternary ammonium compounds n-alkyl (C_{12}–C_{18}) dimethyl ethylbenzyl ammonium chloride average molecular weight (in amu), 384	None	When ready for use, the end-use concentration is not to exceed 200 ppm of active quaternary compound
Quaternary ammonium compounds di-n-alkyl (C_8–C_{10}) dimethyl ammonium chloride, average molecular weight (in amu), 332 to 361	None	When ready for use, the end-use concentration is not to exceed 150 ppm of active quaternary compound
Sodium bicarbonate	144–55–8	When ready for use, the end-use concentration is not to exceed 120 ppm
Starch	9005–25–8	When ready for use, the end-use concentration is not to exceed 16 ppm
Sulfuric acid monododecyl ester, sodium salt (sodium lauryl sulfate)	151–21–3	When ready for use, the end-use concentration is not to exceed 3 ppm
1,3,5-Triazine-2,4,6(1H,3H,5H)-trione, 1,3-dichloro-, sodium salt	2893–78–9	When ready for use, the end-use concentration is not to exceed 100 ppm determined as total available chlorine

(b) The following chemical substances when used as ingredients in an antimicrobial pesticide formulation may be applied to: Dairy-processing equipment, and food-processing equipment and utensils.

Pesticide chemical	CAS No.	Limits
Acetic acid	64–19–7	When ready for use, the end-use concentration is not to exceed 686 ppm
Acetic acid, chloro-, sodium salt, reaction products with 4,5-dihydro-2-undecyl-1H-imidazole-1-ethanol and sodium hydroxide	68608–66–2	When ready for use, the end-use concentration is not to exceed 42 ppm chloroacetic acid
Benzenesulfonic acid, dodecyl-	27176–87–0	When ready for use, the end-use concentration is not to exceed 5.5 ppm
Butanedioic acid, octenyl-	28805–58–5	When ready for use, the end-use concentration is not to exceed 156 ppm
Butoxy monoether of mixed (ethylene-propylene) polyalkylene glycol, minimum average molecular weight (in amu), 2400	None	None
Calcium chloride	10043–52–4	When ready for use, the end-use concentration is not to exceed 17 ppm
n-Carboxylic acids (C_6–C_{12}), consisting of a mixture of not less than 56% octanoic acid and not less than 40% decanoic acid	None	When ready for use, the end-use concentration is not to exceed 39 ppm
Citric acid	77–92–9	None
Decanoic acid	334–48–5	When ready for use, the end-use concentration is not to exceed 90 ppm total active fatty acids
Ethanesulfonic acid, 2-[cyclohexyl (1-oxohexadecyl)amino]-, sodium salt	132–43–4	When ready for use, the end-use concentration is not to exceed 237 ppm
Ethylenediaminetetraacetic acid (EDTA), disodium salt	139–33–3	When ready for use, the end-use concentration is not to exceed 1,400 ppm
FD&C Yellow No. 5 (Tartrazine) (conforming to 21 CFR 74.705)	1934–21–0	None
D-Gluconic acid, monosodium salt	527–07–1	When ready for use, the end-use concentration is not to exceed 760 ppm
Hydriodic acid	10034–85–2	When ready for use, the end-use concentration is not to exceed 25 ppm of titratable iodine
Hydrogen peroxide	7722–84–1	When ready for use, the end-use concentration is not to exceed 465 ppm
Hypochlorous acid	7790–92–3	When ready for use, the end-use concentration is not to exceed 200 ppm determined as total available chlorine
Iodine	7553–56–2	When ready for use, the end-use concentration is not to exceed 25 ppm of titratable iodine
Lactic acid	50–21–5	When ready for use, the end-use concentration is not to exceed 138 ppm
α-Lauroyl-ω-hydroxypoly (oxyethylene) with an average of 8–9 moles ethylene oxide, average molecular weight (in amu), 400	None	None
Nonanoic acid	112–05–0	When ready for use, the end-use concentration is not to exceed 90 ppm
1-Octanamine, N,N-dimethyl-	7378–99–6	When ready for use, the end-use concentration is not to exceed 113 ppm
1,2-Octanedisulfonic acid	113669–58–2	When ready for use, the end-use concentration is not to exceed 102 ppm
1-Octanesulfonic acid	3944–72–7	When ready for use, the end-use concentration is not to exceed 172 ppm
1-Octanesulfonic acid, sodium salt	5324–84–5	When ready for use, the end-use concentration is not to exceed 297 ppm

Pesticide chemical	CAS No.	Limits
1-Octanesulfonic acid, 2-sulfino-	113652–56–5	When ready for use, the end-use concentration is not to exceed 102 ppm
Octanoic acid	124–07–2	When ready for use, the end-use concentration is not to exceed 176 ppm of total active fatty acids
Oxirane, methyl-, polymer with oxirane, ether with (1,2-ethanediyldinitrilo)tetrakis[propanol] (4:1)	11111–34–5	When ready for use, the end-use concentration is not to exceed 20 ppm in the formulated product
Oxychloro species (including chlorine dioxide) generated by acidification of an aqueous solution of sodium chlorite	None	When ready for use, the end-use concentration is not to exceed 200 ppm of chlorine dioxide as determined by the method entitled, ''Iodometric Method for the Determination of Available Chlorine Dioxide'' (50–250 ppm available chlorine dioxide)
Peroxyacetic acid	79–21–0	When ready for use, the end-use concentration is not to exceed 315 ppm
Peroxyoctanoic acid	33734–57–5	When ready for use, the end-use concentration is not to exceed 122 ppm
Phosphonic acid, (1-hydroxyethylidene)bis-	2809–21–4	When ready for use, the end-use concentration is not to exceed 34 ppm
Phosphoric acid	7664–38–2	None
Phosphoric acid, monosodium salt	7558–80–7	When ready for use, the end-use concentration is not to exceed 350 ppm
Potassium iodide	7681–11–0	When ready for use, the end-use concentration is not to exceed 25 ppm of titratable iodine
Propanoic acid	79–09–4	When ready for use, the end-use concentration is not to exceed 297 ppm
2-Propanol (isopropanol)	67–63–0	
2,6-Pyridinedicarboxylic acid	499–83–2	When ready for use, the end-use concentration is not to exceed 1.2 ppm
Sodium mono-and didodecylphenoxy-benzenedisulfonate	None	When ready for use, the end-use concentration is not to exceed 1,920 ppm
Sulfuric acid	7664–93–9	When ready for use, the end-use concentration is not to exceed 288 ppm
Sulfuric acid monododecyl ester, sodium salt (sodium lauryl sulfate)	151–21–3	When ready for use, the end-use concentration is not to exceed 350 ppm

(c) The following chemical substances when used as ingredients in an antimicrobial pesticide formulation may be applied to: Food-processing equipment and utensils.

Pesticide chemical	CAS No.	Limits
Acetic acid	64–19–7	When ready for use, the end-use concentration is not to exceed 686 ppm
Acetic acid, chloro-, sodium salt, reaction products with 4,5-dihydro-2-undecyl-1H-imidazole-1-ethanol and sodium hydroxide	68608–66–2	When ready for use, the end-use concentration is not to exceed 42 ppm chloroacetic acid
α-Alkyl(C_{10}–C_{14})-ω-hydroxypoly(oxyethylene) poly (oxypropylene) average molecular weight (in amu), 768 to 837	None	None
α-Alkyl(C_{11}–C_{15})-ω-hydroxypoly(oxyethylene) with ethylene oxide content 9 to 13 moles	None	None
α-Alkyl(C_{12}–C_{15})-ω-hydroxypoly (oxyethylene) polyoxypropylene, average molecular weight (in amu), 965	None	None

Pesticide chemical	CAS No.	Limits
α-Alkyl(C_{12}–C_{18})-ω-hydroxypoly(oxyethylene) poly(oxypropylene) average molecular weight (in amu), 950 to 1,120	None	None
Alkyl (C_{12}–C_{15}) monoether of mixed (ethylene-propylene) polyalkylene glycol, cloud point of 70–77 °C in 1% aqueous solution, average molecular weight (in amu), 807	None	None
Ammonium chloride	12125–02–9	When ready for use, the end-use concentration is not to exceed 48 ppm
Benzenesulfonamide, N-chloro-4-methyl, sodium salt	127–65–1	None
Benzenesulfonic acid, dodecyl-	27176–87–0	When ready for use, the end-use concentration is not to exceed 400 ppm
Benzenesulfonic acid, dodecyl-, sodium salt	25155–30–0	When ready for use, the end-use concentration is not to exceed 430 ppm
Benzenesulfonic acid, oxybis[dodecyl-	30260–73–2	When ready for use, the end-use concentration is not to exceed 474 ppm
[1,1'-Biphenyl]-2-ol	90–43–7	When ready for use, the end-use concentration is not to exceed 400 ppm
Boric acid, sodium salt	7775–19–1	
Butanedioic acid, octenyl-	28805–58–5	When ready for use, the end-use concentration is not to exceed 156 ppm
Butanedioic acid, sulfo-, 1,4-dioctyl ester, sodium salt	1639–66–3	None
Butoxy monoether of mixed (ethylene-propylene) polyalkylene glycol, cloudpoint of 90–100 °C in 0.5 aqueous solution, average molecular weight (in amu), 3,300	None	None
Butoxy monoether of mixed (ethylene-propylene) polyalkylene glycol, minimum average molecular weight (in amu), 2,400	None	None
Calcium bromide	7789–41–5	When ready for use, the end-use concentration is not to exceed 200 ppm total available halogen
Calcium chloride	10043–52–4	When ready for use, the end-use concentration is not to exceed 17 ppm
n-Carboxylic acids (C_6–C_{12}), consisting of a mixture of not less than 56% octanoic acid and not less than 40% decanoic acid	None	When ready for use, the end-use concentration is not to exceed 39 ppm
Citric acid	77–92–9	None
3-Cyclohexene-1-methanol, α,α,4-trimethyl-	98–55–5	None
D&C Blue No.1 (methylene blue)	61–73–4	When ready for use, the end-use concentration is not to exceed 0.4 ppm
1-Decanaminium, N-decyl-N, N-dimethyl-, chloride	7173–51–5	When ready for use, the end-use concentration is not to exceed 200 ppm of active quaternary compound
Decanoic acid	334–48–5	When ready for use, the end-use concentration is not to exceed 234 ppm total active fatty acids
Dextrin	9004–53–9	When ready for use, the end-use concentration is not to exceed 16 ppm
Ethanesulfonic acid, 2-[cyclohexyl (1-oxohexadecyl)amino]-, sodium salt	132–43–4	When ready for use, the end-use concentration is not to exceed 237 ppm
Ethanol	64–17–5	None
Ethanol, 2 butoxy-	111–76–2	None
Ethanol, 2-(2-ethoxyethoxy)-	111–90–0	None

Pesticide chemical	CAS No.	Limits
Ethylenediaminetetraacetic acid (EDTA), disodium salt	139-33–3	When ready for use, the end-use concentration is not to exceed 1,400 ppm
Ethylenediaminetetraacetic acid (EDTA), tetrasodium salt	64–02–8	None
Fatty acids, coco, potassium salts	61789–30–8	None
Fatty acids, tall-oil, sulfonated, sodium salts	68309–27–3	When ready for use, the end-use concentration is not to exceed 66 ppm
FD&C Yellow No. 5 (Tartrazine) (conforming to 21 CFR 74.705)	1934–21–0	None
D-Gluconic acid, monosodium salt	527–07–1	When ready for use, the end-use concentration is not to exceed 760 ppm
Hydriodic acid	10034–85–2	When ready for use, the end-use concentration is not to exceed 25 ppm of titratable iodine
Hydrogen peroxide	7722–84–1	When ready for use, the end-use concentration is not to exceed 1,100 ppm
Hypochlorous acid	7790–92–3	When ready for use, the end-use concentration is not to exceed 200 ppm determined as total available chlorine
Hypochlorous acid, calcium salt	7778–54–3	When ready for use, the end-use concentration is not to exceed 200 ppm determined as total available chlorine
Hypochlorous acid, lithium salt	13840–33–0	When ready for use, the end-use concentration is not to exceed 200 ppm determined as total available chlorine and 30 ppm lithium
Hypochlorous acid, potassium salt	7778–66–7	When ready for use, the end-use concentration is not to exceed 200 ppm determined as available chlorine
Hypochlorous acid, sodium salt	7681–52–9	When ready for use, the end-use concentration is not to exceed 200 ppm determined as available chlorine
Iodine	7553–56–2	When ready for use, the end-use concentration is not to exceed 25 ppm of titratable iodine
Lactic acid	50–21–5	None
α-Lauroyl-ω-hydroxypoly (oxyethylene) with an average of 8-9 moles ethylene oxide, average molecular weight (in amu), 400	None	None
Magnesium oxide	1309–48–4	None
Naphthalene sulfonic acid, sodium salt	1321–69–3	When ready for use, the end-use concentration is not to exceed 332 ppm total naphthalene sulfonates
Naphthalene sulfonic acid sodium salt, and its methyl, dimethyl and trimethyl derivatives	None	When ready for use, the end-use concentration is not to exceed 332 ppm total naphthalene sulfonates
Naphthalene sulfonic acid sodium salt, and its methyl, dimethyl and trimethyl derivatives alkylated at 3% by weight with C_6–C_9 linear olefins	None	When ready for use, the end-use concentration is not to exceed 332 ppm total naphthalene sulfonates
Neodecanoic acid	26896–20–8	When ready for use, the end-use concentration is not to exceed 174 ppm
Nonanoic acid	112–05–0	When ready for use, the end-use concentration is not to exceed 90 ppm
α-(p-Nonylphenyl)-ω-hydroxypoly(oxyethylene) maximum average molecular weight (in amu), 748	None	None
α-(p-Nonylphenol)-ω-hydroxypoly(oxyethylene) average poly(oxyethylene) content 11 moles	None	None
α-(p-Nonylphenyl)-ω-hydroxypoly(oxyethylene) produced by the condensation of 1 mole p-nonylphenol with 9 to12 moles ethylene oxide	None	None

Pesticide chemical	CAS No.	Limits
α-(p-Nonylphenyl)-ω-hydroxypoly(oxyethylene), 9 to 13 moles ethylene oxide	None	None
Octadecanoic acid, calcium salt	1592–23–0	When ready for use, the end-use concentration is not to exceed 16 ppm
9-Octadecenoic acid (9Z)-, sulfonated	68988–76–1	When ready for use, the end-use concentration is not to exceed 312 ppm
9-Octadecenoic acid (9Z)-sulfonated, sodium salts	68443–05–0	When ready for use, the end-use concentration is not to exceed 200 ppm
1-Octanamine, N,N-dimethyl-	7378–99–6	When ready for use, the end-use concentration is not to exceed 113 ppm
1,2-Octanedisulfonic acid	113669–58–2	When ready for use, the end-use concentration is not to exceed 102 ppm
1-Octanesulfonic acid	3944-72–7	When ready for use, the end-use concentration is not to exceed 172 ppm
1-Octanesulfonic acid, sodium salt	5324–84–5	When ready for use, the end-use concentration is not to exceed 312 ppm
1-Octanesulfonic acid, 2-sulfino-	113652–56–5	When ready for use, the end-use concentration is not to exceed 102 ppm
Octanoic acid	124–07–2	When ready for use, the end-use concentration is not to exceed 234 ppm of total active fatty acids
Oxirane, methyl-, polymer with oxirane, minimum molecular weight (in amu), 1,900	9003–11–6	None
Oxirane, methyl-, polymer with oxirane, block, average molecular weight (in amu), 1,900	106392–12–5	None
Oxirane, methyl-, polymer with oxirane, block, minimum average molecular weight (in amu), 2,000	None	None
Oxirane, methyl-, polymer with oxirane, block, 27 to 31 moles of polyoxypropylene, average molecular weight (in amu) 2,000	None	None
Oxirane, methyl-, polymer with oxirane, ether with (1,2-ethanediyldinitrilo)tetrakis[propanol] (4:1)	11111–34–5	When ready for use, the end-use concentration is not to exceed 20 ppm
Oxychloro species (predominantly chlorite, chlorate and chlorine dioxide in an equilibrium mixture) generated either: By directly metering a concentrated chlorine dioxide solution prepared just prior to use, into potable water, or by acidification of an aqueous alkaline solution of oxychloro species (predominately chlorite and chlorate) followed by dilution with potable water	None	When ready for use, the end-use concentration is not to exceed 200 ppm of chlorine dioxide as determined by the method entitled, ''Iodometric Method for the Determination of Available Chlorine Dioxide'' (50–250 ppm available chlorine dioxide)
Oxychloro species (including chlorine dioxide) generated by acidification of an aqueous solution of sodium chlorite	None	When ready for use, the end-use concentration is not to exceed 200 ppm of chlorine dioxide as determined by the method entitled, ''Iodometric Method for the Determination of Available Chlorine Dioxide'' (50–250 ppm available chlorine dioxide)
2,4-Pentanediol, 2-methyl-	107–41–5	None
Peroxyacetic acid	79–21–0	When ready for use, the end-use concentration is not to exceed 315 ppm in the formulated product
Peroxyoctanoic acid	33734–57–5	When ready for use, the end-use concentration is not to exceed 122 ppm
Phenol, 4-chloro-2-(phenylmethyl)-	120–32–1	When ready for use, the end-use concentration is not to exceed 320 ppm
Phenol, 4-(1,1-dimethylpropyl)-	80–46–6	When ready for use, the end-use concentration is not to exceed 80 ppm

Pesticide chemical	CAS No.	Limits
Phosphonic acid, (1-hydroxyethylidene)bis-	2809–21–4	When ready for use, the end-use concentration is not to exceed 34 ppm
Phosphoric acid	7664–38–2	None
Phosphoric acid, monosodium salt	7558–80–7	When ready for use, the end-use concentration is not to exceed 350 ppm
Phosphoric acid, trisodium salt	7601–54–9	When ready for use, the end-use concentration is not to exceed 5916 ppm in the formulated product
Poly(oxy-1,2-ethanediyl), α-[(1,1,3,3-tetramethylbutyl) phenyl]-ω-hydroxy-, produced with one mole of the phenol and 4 to 14 moles ethylene oxide	None	None
Potassium bromide	7758–02–3	When ready for use, the end-use concentration is not to exceed 200 ppm total available halogen
Potassium iodide	7681–11–0	When ready for use, the end-use concentration is not to exceed 25 ppm of titratable iodine
Potassium permanganate	7722–64–7	When ready for use, the end-use concentration is not to exceed 0.7 ppm
Propanoic acid	79–09–4	When ready for use, the end-use concentration is not to exceed 297 ppm
2-Propanol (isopropanol)	67–63–0	None
2,6-Pyridinedicarboxylic acid	499–83–2	When ready for use, the end-use concentration is not to exceed 1.2 ppm
Quaternary ammonium compounds, alkyl (C_{12}–C_{16}) benzyldimethyl, chlorides,	8001–54–5	When ready for use, the end-use concentration is not to exceed 200 ppm of active quaternary compound
Quaternary ammonium compounds, alkyl (C_{12}–C_{18}) benzyldimethyl, chlorides	8001–54–5	When ready for use, the end-use concentration is not to exceed 200 ppm of active quaternary compound
Quaternary ammonium compounds, n-alkyl (C_{12}–C_{14}) dimethyl ethylbenzyl ammonium chloride, average molecular weight (in amu), 377 to 384	None	When ready for use, the end-use concentration is not to exceed 200 ppm of active quaternary compound
Quaternary ammonium compounds, n-alkyl (C_{12}–C_{18}) dimethyl ethylbenzyl ammonium chloride average molecular weight (in amu) 384	None	When ready for use, the end-use concentration is not to exceed 200 ppm of active quaternary compound
Quaternary ammonium compounds, di-n-Alkyl (C_8–C_{10}) dimethyl ammonium chloride, average molecular weight (in amu), 332 to 361	None	When ready for use, the end-use concentration is not to exceed 240 ppm of active quaternary compound
Sodium-α-alkyl(C_{12}–C_{15})-ω-hydroxypoly (oxyethylene) sulfate with the poly(oxyethylene) content averaging one mole	None	None
Sodium bicarbonate	144–55–8	When ready for use, the end-use concentration is not to exceed 120 ppm
Sodium bromide	7647–15–6	When ready for use, the end-use concentration is not to exceed 200 ppm total available halogen
Sodium iodide	7681–82–5	When ready for use, the end-use concentration is not to exceed 25 ppm of titratable iodine
Sodium mono-and didodecylphenoxy-benzenedisulfonate	None	When ready for use, the end-use concentration is not to exceed 1,920 ppm
Starch	9005–25–8	When ready for use, the end-use concentration is not to exceed 16 ppm
Sulfuric acid	7664–93–9	When ready for use, the end-use concentration is not to exceed 228 ppm
Sulfuric acid monododecyl ester, sodium salt (sodium lauryl sulfate)	151–21–3	None

Pesticide chemical	CAS No.	Limits
1,3,5-Triazine-2,4,6(1H,3H,5H)-trione, 1,3-dichloro-	2782–57–2	When ready for use, the end-use concentration is not to exceed 100 ppm determined as total available chlorine
1,3,5-Triazine-2,4,6(1H,3H,5H)-trione, 1,3-dichloro-, potassium salt	2244–21–5	When ready for use, the end-use concentration is not to exceed 100 ppm determined as total available chlorine
1,3,5-Triazine-2,4,6(1H,3H,5H)-trione, 1,3-dichloro-, sodium salt	2893–78–9	When ready for use, the end-use concentration is not to exceed 100 ppm determined as total available chlorine
1,3,5-Triazine-2,4,6(1H,3H,5H)-trione, 1,3,5-trichloro-	87–90–1	When ready for use, the end-use concentration is not to exceed 100 ppm determined as total available chlorine
1,3,5-Triazine, N,N',N''-trichloro-2,4,6-triamino-	7673–09–8	When ready for use, the end-use concentration is not to exceed 200 ppm as total available chlorine
Xylenesulfonic acid, sodium salt	1300–72–7	When ready for use, the end-use concentration is not to exceed 62 ppm

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 96–128; FCC 02–292]

Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission implemented certain aspects of per-payphone compensation pursuant to a 1997 remand by the U.S. Court of Appeals for the District of Columbia Circuit. To implement the remand, the Commission established a new default compensation amount per payphone per month for access code and subscriber toll-free calls, allocated this monthly amount among the designated payors of per-payphone compensation, resolved some compensation offset issues, determined issues regarding the valuation of payphone assets transferred by local exchange carriers to a separate affiliate or division, and resolved a number of issues raised in petitions for reconsideration.

DATES: Effective January 2, 2003.

FOR FURTHER INFORMATION CONTACT: Lynne Milne, Wireline Competition Bureau, Pricing Policy Division, (202) 418–1520.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Fifth Order on Reconsideration and Order on Remand (Order) in CC Docket No. 96–128, adopted on October 17, 2002, and released on October 23, 2002. The complete text of this Order is available for public inspection Monday through Thursday from 8 a.m. to 4:30 p.m. and Friday from 8 a.m. to 11:30 a.m. in the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC 20554. The complete text is available also on the Commission's Internet site at *www.fcc.gov.* Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365. The complete text of the Order may be purchased from the Commission's duplicating contractor, Qualex International, Room CY–B402, 445 Twelfth Street, SW., Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or e-mail at *qualexint@aol.com.*

Synopsis of Fifth Order on Reconsideration and Order on Remand

1. Instead of revising its approach to estimating monthly call volumes at the average payphone, the Commission retained the estimate of 148 monthly compensable calls as determined in the *Fourth Reconsideration Order,* 67 FR 9610, March 4, 2002. In this regard, the Commission explicitly rejected the reconsideration arguments of: (1) Sprint and WorldCom that per-payphone compensation should be based on the 131 monthly compensable calls estimated by the Commission in 1996, (2) Sprint that the underlying call volumes were unreliable, (3) WorldCom that the Commission should reduce the monthly estimate by a set factor each year after the Interim Period, and (4) Sprint that the Commission should use a weighted averaged, instead of a straight average as used in the *Fourth Reconsideration Order.*

2. The Commission's calculation of a per-call compensation rate in the *Third Report and Order,* 64 FR 13701, March 22, 1999, included a component of $0.009 to reflect an assumed average delay in the rendering of payphone compensation according to the quarterly system established by industry consensus and endorsed by the Commission in the *First Report and Order,* 61 FR 52307, October 7, 1996. APCC requested that the Commission reconsider its deduction in the *Fourth Reconsideration Order* of this $0.009 from the per-call compensation rate. The Commission in this Order granted APCC's request and reinstated this $0.009 component for the purpose of calculating per-payphone compensation. Granting APCC's reconsideration petition on this issue effectively mooted Sprint's request for clarification that the 22.9 cent rate adopted in the *Fourth Reconsideration Order* be applied to all true-ups for the Intermediate Period, whether a carrier paid on a per-payphone or per-call basis. It also mooted WorldCom's request to clarify that the rate of 22.9 cents applies to payments for payphones that do not transmit payphone-specific coding digits, even if the carrier has compensated on a per-call, rather than per-payphone basis, for those payphones. The same 23.8 cent rate that applied to per-call compensation during the Intermediate Period applies to determine per-payphone compensation.

3. The Colorado Payphone Association (CPA) asked the Commission to reconsider the 24-cent compensation rate established in the *Third Report and Order* arguing that the Commission inappropriately used a ''stripped down'' coinless phone model for the purpose of calculating payphone capital costs, inappropriately used 11.25% as the interest rate, and

incorrectly calculated maintenance costs. The Commission denied CPA's reconsideration petition with respect to each of these factors.

4. The Commission denied the RBOC Coalition's reconsideration petition request to add some amount of additional compensation to the per-payphone compensation required in this Order as compensation for 1+ calls originated during the Interim Period for which the payphone service providers (PSPs) were not otherwise compensated. The definition provided of a 1+ call was an interLATA toll call originating at a payphone and carried by an interexchange carrier (IXC), where the IXC's operator or its automated rating system directs that calling party to deposit coins for the call.

5. After considering reconsideration requests regarding the per-payphone compensation calculation, the Commission recalculated a per-payphone compensation amount based on a per-call rate of $0.238 cents. The per-call rate of $0.238 multiplied by the call estimate of 148 calls per month equals a compensation amount of $35.224 per payphone per month for the Interim Period (November 7, 1996, through October 6, 1997) and the Intermediate Period (October 7, 1997, through April 20, 1999). The compensation obligations as shown at Appendices A, B and C are calculated using this increased amount.

6. After determining the amount of compensation to be paid per payphone per month, the Commission next allocated this monthly payphone compensation obligation among the payors of per-payphone compensation, to implement the remand by the U.S. Court of Appeals for the District of Columbia Circuit in *Illinois Pub. Telecomm. Ass'n* v. *FCC,* 117 F.3d 555 (D.C. Cir. 1997), *clarified on reh'g,* 123 F.3d 693 (D.C. Cir. 1997), *cert. denied sub nom. Virginia State Corp. Comm'n* v. *FCC,* 523 U.S. 1046 (1998) (hereinafter *Illinois*). *See Remand Public Notice,* 62 FR 43686, August 15, 1997. During the first four months of 2002, the four Regional Bell Operating Companies (RBOCs) provided the Wireline Competition Bureau with aggregate call data listing the next destination past the RBOC switch of payphone calls placed during 1997, 1998, and October 1, 2000, through September 30, 2001. From that data set, the Commission aggregated the numbers to determine the total number of payphone calls received by each carrier in each of the three time periods, as well as the total number of calls placed in the time period. From there, each carrier's share of the total was calculated, and thus the proportion of the monthly $35.224 per-payphone compensation that each identified carrier should rightfully bear.

7. Once the basic aggregation was completed, the Commission adjusted the data in various ways in order to obtain a reasonable allocation. For example, the Commission excluded unusable data from the final data set, such as, calls routed to destinations not identified in the RBOC data. Another exclusion concerned some RBOC data submitted for payphone calls routed to destinations that were not IXCs or other carriers, including entities with dedicated private line service assigned a carrier identification code (CIC), a four digit number that uniquely identifies the destination of the call, even though they are not ''communications carriers.'' The Commission also excused governmental entities, such as, the Internal Revenue Service, and various state governments, that were in the RBOC data. Because such non-carrier entities had no notice that they could be responsible for payphone compensation, the Commission decided not to hold them liable and removed those calls from the data set. The non-carrier CIC holders eliminated from consideration are: AmVox, Arco Paypoint, Arthur Anderson & Co., Buypass Corp., California State Lottery, Cam-Net, Card Establishment, Compuserve, Contact America, Dean Witter, Department of Treasury (IRS), Discover & Co., EDS, Envoy Corporation, ETSC, First USA, Full Service Computing, Harmonic Systems, HUB Distributing, Idaho State Government, JC Penney Business Services, Landmark Communications, Legal Aid Society of Orange County, MAG Card, MasterCard International, MCSC Access in Canada, Merchant Link, Mobile Oil Credit Corp., Morgan Stanley, National Data Corp., Nexus Communications, Paradise Communications, PaymentTech, Professional Fusion Enterprises, PSA, Inc., Public Service Company of New Mexico and Gas Company of New Mexico, Resource Technology, Southeast Switch, State of California, Stone & Co., Telemoney Services, Transaction Network Services, United Refining, Vacation Villages of America, Visa USA, Vital Processing Services, VoiceCom Systems, VTA, Inc., and Weeks Communications.

8. The Commission may not have identified all of them; thus, some entities in the Tables of Allocations in Appendices A, B, or C may not in fact be carriers. The Commission made the following provision for entities that are not ''communications carriers'' and thus not responsible for per-payphone compensation. Any entity named in the Commission's allocation in this Order that then receives a request for per-payphone compensation from a PSP or other entity may, within 90 days of receiving such a request, file a waiver request with the Wireline Competition Bureau for exclusion from the per-payphone allocation, with a demonstration that the entity provides no communications service to others.

9. In the *First Report and Order,* the Commission decided that local exchange carriers (LECs) must pay payphone compensation to the extent that they carry compensable payphone calls. The Commission in this Order allocated to both RBOC and non-RBOC incumbent LECs 2.19% of the calls originating from payphones within their own service territories because it reflects the fact that an incumbent LEC does receive and carry compensable payphone calls originated within its territory. This percentage and the appropriate compensation amount were listed in Appendices A, B and C. Rather than making each incumbent LEC remit payment to each PSP in the nation the Commission required each incumbent LEC to remit the 2.19% payment to PSPs for each payphone located in its service territory, even if the PSP had/has its payphones connected to a competitive LEC.

10. After an examination of the RBOC data showed that the RBOCs themselves sometimes behaved as IXCs, the Commission concluded that incumbent LECs owe compensation for calls where the incumbent LEC performed the function of an IXC. This compensation obligation was allocated in a manner consistent with other payors of per-payphone compensation. The Allocation Tables reflect compensable payphone calls routed to identified incumbent LECs acting in an IXC capacity, and specify the amount of per-payphone compensation to be paid by that incumbent LEC to all PSPs nationwide.

11. In Appendices A, B and C, the Commission identified payors obligated to pay per-payphone compensation by the names of payors and CICs provided by the RBOCs in the payphone call data. The Commission explained in this Order that given consolidation and change in the telecommunications industry over the last several years, the payor names may fail to accurately identify current per-payphone obligations imposed by this Order. Any failure on the Commission's part in the name identification in Appendices A, B and C does not excuse full payment by any entity of its compensation obligation. According to the Commission, the per-payphone

obligation must be paid by each listed entity, or by its successors in interest, assigns, transferees or their entity legally responsible for the listed entity's obligations under this Order.

12. The Commission noted, moreover, that this name identification was provided for the convenience of carriers and PSPs alike, and was not intended to impose a modification to otherwise appropriate intracorporate relationships. If an entity listed in Appendices A, B or C has provided for payment of its payphone compensation allocations through separate subsidiaries or otherwise, it may, absent some other resolution agreeable to the PSPs to which it owes payment, ask for clarification from the Wireline Competition Bureau, which will promptly provide the appropriate attribution of allocation amounts among subsidiaries or other entities, or otherwise provide clarification of the per-payphone compensation obligation required by this Order. An entity listed in Appendices A, B, or C may not, however, avoid its obligation to pay per-payphone compensation by requesting such clarification.

13. KTNT Communications is an exception in the Commission's listing of entities in Appendices A, B, and C according to the RBOC data. The Commission identified KTNT Communications as the company obligated to pay the per-payphone compensation required by this Order for 39 operator service providers. In explaining this decision, the Commission noted that KTNT Communications filed a notice with the Public Utility Commission of Texas on April 18, 1997 that it was the management company responsible for these other operator service providers. In addition, KTNT Communications and each of the 38 other operator service providers submitted ''concurring carrier'' documentation to qualify to use KTNT Communications tariff submissions. The 38 other operator service providers with payphone call data aggregated with data for KTNT Communications are: Bay TNT Network, Who Ever, U Speak Long Distance, It Doesn't Matter, Zimmer Way, I Don't Care, I Don't Know, Riverbend Communications, Minh Long Distance, Viva Tel L.D., Bryant Service, Rea Long Distance, Signature Network Service, Brown Service Co., Exco Long Distance, Mustang Operators, Far Point, Knox Service Group, Sandell Operator Service, Christine LD Service, Vera Long Distance, Old Laredo Service, Old Home Operator, Andril Service Group, Any One Is Okay, MCV, Brahms Communications, Forest Pine Telcom, Amadeus, Dvorak, KBTN, Callum Long Distance, Sunrise Operator, Wisteria LD Service, World Window, Hickory Grover Group, Alert Operators, and Friendly Voice Network. While KTNT Communications must pay all of the per-payphone compensation required in this Order for itself and each of the 38 entities listed in this paragraph, KTNT Communications has a right of recovery from these listed 38 entities if such recovery does not lead to double recovery by KTNT Communications.

14. In this Order, the Commission granted Sprint's petition for reconsideration regarding the obligation of resellers to pay per-payphone compensation to the following extent. The RBOC call data listed carriers receiving calls by name and by CIC. Because many resellers have their own CICs, numerous resellers are included on these lists, and hence included in the allocation delineated at Appendices A, B and C. Accordingly, the Commission addressed at least part of Sprint's concern by including resellers as well as ''first switch'' carriers, without regard to the label borne by the carrier. Further, the Commission explicitly held that allocating compensation obligations among carriers through the use of this methodology replaces the more general statements made in the *Fourth Reconsideration Order* about requiring first facilities-based carriers to bear the entire burden of per-payphone compensation. Moreover, the Commission reconsidered its decision to use Carrier Locator Reports to distinguish IXCs from resellers and instead made the allocation without regard to whether a company considers itself to be an IXC, a reseller, or some other type of provider of telecommunications services.

15. In contrast, the Commission recognized in this Order that calls routed to facilities-based carriers' CICs may in fact have been ultimately routed to resellers. Given the inclusion of a significant number of resellers in the allocation methodology, the Commission decided that the ultimate impact on the compensation paid by other carriers will most likely not be significant. Sprint's proposed alternative method for allocating per-payphone compensation proposal effectively would have excluded all resellers from compensation and the Commission did not consider it to be fair compensation to PSPs. The Commission stipulated explicitly that, if a carrier has data that payphone calls allocated to them (*i.e.*, routed to its CIC) were actually carried by resellers, nothing in this Order prevents carriers from seeking reimbursement of the cost of these calls from resellers. The Commission added that carriers may in no way delay payment of compensation to PSPs on account of seeking such reimbursement.

16. In adopting its allocation methodology, the Commission explicitly denied reconsideration petitions asking the Commission to establish alternative ways of calculating compensation for the Interim and Intermediate Periods. The Commission also rejected ITC∧DeltaCom's reconsideration petition request to exempt from Interim Period compensation obligations those carriers with revenues below $100 million. In addition, APCC, Sprint Corporation, MCI and Frontier Corporation filed petitions for reconsideration or review of a Bureau-level decision and a Division-level decision, each related to per-payphone compensation for the Intermediate Period. *See Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996,* CC Docket No. 96–128, *Memorandum Opinion & Order,* 63 FR 26497, May 13, 1998; *Order,* 63 FR 26495, May 13, 1998. These petitions attack various aspects of the waiver process by which per-payphone compensation was paid during the Intermediate Period. After establishing in the *Fourth Reconsideration Order* and this Order the methodology for calculating and apportioning per-payphone compensation for the Interim and Intermediate Periods, and allocating the responsibility for per-payphone compensation to as large a group of carriers as possible, the Commission dismissed these petitions as moot.

17. In its reconsideration petition, Sprint Corporation asserted that it did not believe the obligation created in the *Fourth Reconsideration Order* regarding per-payphone compensation for the Intermediate Period was intended to force carriers that previously paid on a per-call basis to now conduct true ups on a per-payphone basis for the Intermediate Period. The Commission declared in this Order that if carriers have already paid per-call compensation on payphones for which they received coding digits in the Interim, Intermediate or any other period, nothing in the *Fourth Reconsideration Order* or this Order requires carriers to now go back and apply per-payphone compensation to these payphones.

18. CPA requested reconsideration of the decision that PSPs must pay refunds for the Intermediate Period. In this Order, the Commission affirmed its decision in the *Third Report and Order* that PSPs must refund the difference

between payments they received at the 28.4 cent rate established in the *Second Report and Order,* 62 FR 58659, October 30, 1997, and payments recalculated at a 23.8 cent rate.

19. The Commission affirmed in this Order the decisions in the *Third Report and Order* and the *Fourth Reconsideration Order* that obligations for payment of outstanding compensation for the Interim and Intermediate Periods, and payment of refunds and any adjustments, shall run from specific carriers to specific PSPs. The Commission declined to adopt APCC's reconsideration petition to the extent it asked for the establishment of a carrier-to-carrier mechanism for resolving payments and refunds. The Commission, however, reiterated its conclusion in the *Fourth Reconsideration Order* that alternative arrangements between or among carriers, with the agreement of the PSP, are not prohibited.

20. The Commission explained how carriers and PSPs should handle the compensation and refund process by providing the following guidelines to clarify the requirements of the *Third Report and Order.* After the effective date of this Order, PSPs and carriers may render bills to one another or otherwise arrange for payment of outstanding Interim and Intermediate Period compensation obligations or refunds. They may use whatever commercially reasonable payment or dispute resolution processes to handle this process they may currently use in their dealings with one another or to which they may otherwise mutually agree, including clearinghouse processes. In accordance with the *Third Report and Order* determination that ''IXCs may recover their overpayments to the PSPs at the same time as the PSPs receive payment from the IXCs for the Interim Period,'' the Commission clarified in this Order that this means IXCs (or other carriers rendering payment) shall initially claim an offset for refunds of overpayments only against amounts claimed by the PSP for Interim and Intermediate Period compensation. Only after the carrier and the PSP have resolved the offset against this amount may the IXC ''deduct the remaining overpayment from future payments to PSPs'' as stipulated in the *Third Report and Order.* The Commission clarified that IXCs (or other carriers claiming refunds) may only withhold undisputed amounts from future payments. Thus, any carrier wishing to deduct a refund out of future payments to PSPs may only do so after providing that specific PSP notice of the refund claimed, and allowing the PSP adequate time to dispute the claim. To the extent a PSP disputes any portion of the refund claimed, the carrier may not deduct that portion from any future payment until it resolves the dispute with the PSP. Again, carriers and PSPs may use existing commercially reasonable processes to handle these disputes and arrange for payment. The only requirement the Commission placed on these processes is that if a carrier is able to apply undisputed amounts against future payments, the carriers must allow PSPs to make payments of refunds over a reasonable number of future payments, subject to ongoing accrual of interest, if reasonably requested by the PSP.

21. The Commission in this Order rejected reconsideration requests and affirmed its decision in the *Fourth Reconsideration Order* to apply the IRS-prescribed interest rate to payments of Interim and Intermediate Period compensation, as well as to refunds owed by PSPs to carriers. The Commission specified, however, that because it had reinstated the $0.009 interest rate component as described above, the IRS-prescribed interest rate will only begin to accrue after the date payment normally would have been rendered under the quarterly payment system applicable to payphone compensation. Consistent with the Commission's assumptions under prior orders in this proceeding, the IRS-prescribed interest rate for payments that should have been made for the first quarter of the year will begin accruing on July 2 of that same year, for the second quarter of the year on October 2 of that same year, for the third quarter on January 2 of the next year, and for the fourth quarter on April 2 of the next year.

22. WorldCom asked the Commission to clarify that, with the exception of Interim Period inmate calls not otherwise compensated, PSPs may not now submit any new claims for any other type of coinless payphone call after the one year deadline for submitting calls for compensation. The Commission decided it was not necessary to further clarify its holding and rejected WorldCom's clarification request.

23. In this Order, the Commission denied CPA's reconsideration petition asking the Commission to require carriers to implement targeted call blocking, the technological ability of an IXC to not accept (or ''block'') a dial-around access code call from one payphone while accepting calls from another payphone.

24. The Commission decided in this Order that it is constrained by the court's holding in *Illinois* to allow LECs to use net book value when valuing payphone assets transferred to a separate affiliate or operating division. The Commission noted that the court's holding, however, was enunciated in the specific context of the transfers at issue in *Illinois.* Thus, to avoid confusion as to the reach of the Commission's implementation of the court's decision, the Commission provided in this Order clarification as follows. If a LEC chooses to retain payphone assets, reclassification of these assets from regulated to nonregulated status must be consistent with § 32.32 and the Commission's part 64 cost allocation rules. If a LEC chooses to make a one-time transfer of payphone assets to a nonregulated affiliate or operating division, then such a transfer would be recorded at net book value. The Commission expressly limited this treatment to only such transfers as may be made pursuant to Commission implementation of section 276(b)(1)(B), as it is only these types of transfers that could reasonably be considered the kind of one-time industry reform contemplated by the court in Illinois. The Commission also explained that, to the extent a transfer of payphone assets does not meet these requirements, the Commission's affiliate transaction rules would apply. In this event, carriers were reminded that they must include in fair market valuations of payphone assets the going concern value associated with location contracts supporting the payphone assets.

25. The Commission also clarified that the effective date of the *Fourth Reconsideration Order* and this Order shall be 30 days after the date that this Order is published in the **Federal Register**. The Commission specifically declined, however, to require compensation payment to be made within thirty days after release of this Order, as the RBOC Coalition requested. According to the Commission, once any PSP or carrier has performed the tasks necessary to render bills for compensation or refunds in accordance with this Order, the PSP or carrier may render such bills as soon as practicable after this Order's effective date, provided that they observe the offset resolution guidelines described in the Order.

26. The Commission delineated the results of its allocations, showing each carrier's pro rata share of the per-payphone payment, in Tables of Allocation located in Appendices A, B and C. In Appendix A, the Commission identified the payors and designated the monthly per-payphone compensation amounts for the Interim Period,

beginning November 7, 1996 through October 6, 1997.

APPENDIX A.—INTERIM PERIOD ALLOCATION LIST

No.	Name	Percentage	Amount
1	AT&T Communications	35.6752385	$12.56624601
2	MCI	27.1012154	9.54613210
3	Sprint	11.8235636	4.16473205
4	WorldCom	11.7792597	4.14912643
5	LCI International	2.5385089	0.89416436
6	Frontier Communications Services	2.3634942	0.83251720
7	ILEC 2.19	2.1900000	0.77140560
8	Cable & Wireless	0.9357654	0.32961401
9	Global Crossing Telecommunications	0.6794139	0.23931675
10	Switched Service Communications	0.5008847	0.17643164
11	U.S. Long Distance	0.4286315	0.15098115
12	Tel America	0.3227813	0.11369647
13	WorldCom Technologies	0.2815205	0.09916277
14	Qwest	0.2801439	0.09867788
15	Long Distance Savers	0.1505964	0.05304608
16	Frontier Communications-North Central Region	0.1446970	0.05096805
17	Pac-West Telecomm dba AmeriCall	0.1425208	0.05020151
18	Frontier Communications Int'l, Inc.	0.1390850	0.04899130
19	Telco Communications Group dba Dial & Save	0.1360130	0.04790920
20	Bell Atlantic Communications	0.1346397	0.04742549
21	Brooks Fiber Communications	0.1134805	0.03997236
22	Business Telecom, Inc. (BTI)	0.1101138	0.03878650
23	NETECH Comm. (US West)	0.0989391	0.03485029
24	One Call Communications	0.0986707	0.03475578
25	ATX Telecommunications Services	0.0941000	0.03314579
26	McLeodUSA	0.0938146	0.03304526
27	WorldXChange	0.0844956	0.02976272
28	American Network Exchange (AMNEX)	0.0666730	0.02348490
29	Broadwing Communications Services Inc.	0.0551409	0.01942282
30	American Telco	0.0534454	0.01882561
31	WesTel	0.0517618	0.01823259
32	West Coast Telecommunications	0.0513034	0.01807112
33	OCI	0.0503072	0.01772023
34	Access Long Distance	0.0448941	0.01581348
35	Total-Tel USA	0.0442117	0.01557311
36	GST Call America	0.0429595	0.01513205
37	NYNEX—Corridor	0.0404028	0.01423148
38	US Long Distance	0.0384286	0.01353608
39	Eastern Telecom International	0.0362242	0.01275963
40	Network Operator Services	0.0351831	0.01239290
41	GTE Communications Corp.	0.0344361	0.01212976
42	Shared Communications Services	0.0329638	0.01161116
43	Long Distance/USA (Sprint)	0.0321199	0.01131393
44	DeltaCom L.D.S.	0.0299628	0.01055411
45	Tandem Access for Database Query	0.0260948	0.00919165
46	The CommuniGroup Of KC	0.0245338	0.00864178
47	Ameritel	0.0244719	0.00861997
48	U.S. WATS	0.0237662	0.00837141
49	LONG DISTANCE OF MICHIGAN	0.0231463	0.00815304
50	Consolidated Network	0.0223181	0.00786132
51	Westinghouse Electric Corp.	0.0210979	0.00743153
52	ICON Communications	0.0205224	0.00722881
53	T–NETIX, Inc.	0.0201631	0.00710224
54	Telecom*USA (MCI)	0.0186833	0.00658099
55	Teltrust	0.0178732	0.00629566
56	EconoPhone	0.0176599	0.00622051
57	Switch 2000	0.0158645	0.00558811
58	VarTec Telecom	0.0153027	0.00539021
59	Chadwick Telephone	0.0149991	0.00528328
60	One Star Long Distance	0.0142973	0.00503608
61	Capital Telecommunications	0.0142091	0.00500501
62	BN1 Telecommunications	0.0141515	0.00498473
63	I-Link Communications	0.0138405	0.00487516
64	American Telecommunications Enterprises	0.0137892	0.00485709
65	Touch America, Inc.	0.0137339	0.00483762
66	U.S. Link	0.0134288	0.00473015
67	Nationwide Communications	0.0133776	0.00471211
68	Deluxe Data Systems	0.0132089	0.00465272
69	Long Distance Management	0.0129085	0.00454690

APPENDIX A.—INTERIM PERIOD ALLOCATION LIST—Continued

No.	Name	Percentage	Amount
70	Intermedia Communications	0.0127663	0.00449680
71	XO Communications	0.0127328	0.00448501
72	NATIONAL Telecom of Florida	0.0122282	0.00430726
73	Feist Long Distance	0.0122252	0.00430620
74	Intercontinental Communications Group (ICG)	0.0119296	0.00420207
75	American Long Lines	0.0114326	0.00402701
76	Call America Business Comm. Corp.	0.0095168	0.00335218
77	IBM (Advantis)	0.0091183	0.00321183
78	Valu-Line of Kansas	0.0081410	0.00286759
79	General Communication	0.0079124	0.00278708
80	North American Communications	0.0077779	0.00273969
81	Eastern Telephone Systems	0.0077552	0.00273169
82	MFS Intelnet	0.0077267	0.00272166
83	Fox Communications	0.0076554	0.00269654
84	Global Crossing Telemanagement	0.0073930	0.00260412
85	ATI Telecom	0.0073558	0.00259101
86	Hedges & Associates	0.0073188	0.00257797
87	Cincinnati Bell Long Distance	0.0060972	0.00214766
88	Telemanagement Consultants Corp.	0.0060399	0.00212750
89	U.S. Communications	0.0059806	0.00210660
90	Network Plus	0.0057186	0.00201433
91	Action Telcom Co.	0.0056086	0.00197558
92	GST Telecom	0.0055754	0.00196386
93	Ciera Network Systems	0.0053358	0.00187949
94	Long Distance Discount	0.0049896	0.00175754
95	Frontier Communications of the Great Lakes	0.0049638	0.00174843
96	Electric Lightwave	0.0048339	0.00170270
97	Long Distance Wholesale Club (Excel)	0.0047378	0.00166884
98	Eclipse Communications	0.0047049	0.00165727
99	ConQuest	0.0045662	0.00160842
100	CUSTOMER TELECOM NET dba CTN	0.0045581	0.00160555
101	POPP Telcom	0.0045046	0.00158671
102	Off Campus Telecommunications	0.0043316	0.00152577
103	Long Distance Telephone Savers	0.0043164	0.00152041
104	PSP Marketing Group	0.0042606	0.00150076
105	Telephone Assoc. Long Distance Svcs.	0.0038594	0.00135945
106	Broadwing Telecommunications Inc.	0.0038149	0.00134377
107	Cooperative Communications	0.0037533	0.00132206
108	Cleartel Communications	0.0036203	0.00127523
109	Austin Bestline	0.0034801	0.00122582
110	KLP, Inc. dba Call-America	0.0033858	0.00119262
111	United Communications	0.0032397	0.00114116
112	Cherry Communications	0.0032314	0.00113822
113	South Carolina Network	0.0031970	0.00112610
114	The CommuniGroup	0.0031261	0.00110112
115	Digital Network, Inc.	0.0028377	0.00099956
116	IDS Long Distance	0.0028330	0.00099791
117	Citizens Communications	0.0025995	0.00091563
118	TCG	0.0024981	0.00087993
119	Arcada Communications	0.0023550	0.00082953
120	American Tel Group	0.0022940	0.00080805
121	Countdown Communications	0.0022744	0.00080114
122	Long Distance USA	0.0022334	0.00078671
123	MRC Telecommunications	0.0022097	0.00077833
124	TCA Long Distance	0.0021371	0.00075277
125	Norlight Telecommunications	0.0020836	0.00073392
126	Global Crossing Bandwidth	0.0017834	0.00062817
127	Capital Network Systems (AMNEX)	0.0016996	0.00059868
128	TransNet	0.0016856	0.00059372
129	LCC	0.0016652	0.00058656
130	Iowa Communications Network	0.0016243	0.00057216
131	Parkway Communications	0.0016207	0.00057087
132	TresCom U.S.A.	0.0015496	0.00054582
133	Convergent Communications	0.0015135	0.00053311
134	NEXTLINK	0.0013910	0.00048996
135	Cypress Telecommunications Corp. (Cytel)	0.0013087	0.00046097
136	Yavapai Telephone Exchange	0.0012903	0.00045451
137	MVP Communications	0.0011185	0.00039398
138	C–COM	0.0011021	0.00038821
139	United Telephone Co.	0.0010314	0.00036331
140	US Comm. dba Southwest L.D.N.	0.0010174	0.00035838
141	CTS Telcom of Florida	0.0010157	0.00035776

APPENDIX A.—INTERIM PERIOD ALLOCATION LIST—Continued

No.	Name	Percentage	Amount
142	Telescan	0.0010114	0.00035625
143	Ionex Telecommunications	0.0010013	0.00035269
144	Logix Communications	0.0009404	0.00033124
145	Phonetel Technologies	0.0009246	0.00032569
146	AT&T Canada Long Distance Services Co.	0.0009223	0.00032489
147	Mon-Cre Long Distance	0.0009146	0.00032217
148	Connect America Communications	0.0008774	0.00030905
149	Concord Telephone Long Distance	0.0008735	0.00030770
150	WATS/800	0.0008587	0.00030248
151	Athena International	0.0008516	0.00029998
152	First Financial Management Corp.	0.0008481	0.00029873
153	International Telcom, Ltd	0.0008441	0.00029734
154	Sunshine Telephone Inc. dba SUNTEL	0.0008324	0.00029319
155	Keystone Telecom	0.0008213	0.00028929
156	Powercom Corp.	0.0008187	0.00028838
157	Midco Communications	0.0007770	0.00027368
158	T-One Communications	0.0007631	0.00026880
159	Star Tel, Inc.	0.0007553	0.00026604
160	Eastern Telecom dba InterQuest	0.0007479	0.00026343
161	American Telesource International	0.0007413	0.00026112
162	Econo. Call Long Distance Services	0.0007150	0.00025186
163	TELUS Communications (Edmonton)	0.0006984	0.00024599
164	Telehop Communications	0.0006840	0.00024092
165	KTNT Communications	0.0006757	0.00023802
166	AT&T EasyLink Services	0.0006601	0.00023251
167	Valuline Long Distance	0.0006399	0.00022538
168	American Express Travel Related Services	0.0006270	0.00022086
169	Interlink Telecommunications	0.0005725	0.00020165
170	US Link Long Distance	0.0005406	0.00019041
171	Americall Communications	0.0005347	0.00018836
172	Intl.800 Telecom dba Telecall Long Dist. (EGLOBE)	0.0005293	0.00018645
173	Union Telephone Co.	0.0004803	0.00016918
174	Western Telecom, Inc.	0.0004568	0.00016092
175	Uni-Tel of Farmington	0.0004503	0.00015860
176	Euronet Communications Corp.	0.0004437	0.00015629
177	Show-Me Long Distance	0.0004221	0.00014869
178	North American Telephone	0.0004139	0.00014579
179	Dial-Net, Inc.	0.0004132	0.00014553
180	USLINK	0.0004120	0.00014512
181	First Communications	0.0004057	0.00014292
182	TelaMarketing Communications	0.0003922	0.00013815
183	TXU Communications	0.0003481	0.00012261
184	Shoreham Telephone	0.0003353	0.00011809
185	U.S. Connect Corp.	0.0003313	0.00011669
186	AT&T Global Network Services (AGNS)	0.0003161	0.00011133
187	Telephone Communications Corp.	0.0003080	0.00010850
188	Alternate Communications Technology	0.0003071	0.00010817
189	Baystar Satellite Paging	0.0003000	0.00010568
190	JSM Tele-Page	0.0002989	0.00010527
191	Systems 1000	0.0002880	0.00010145
192	Operator Service Co.	0.0002539	0.00008944
193	Autumn Communications	0.0002291	0.00008070
194	Call America/Palm Desert	0.0002226	0.00007842
195	NACT	0.0002222	0.00007827
196	ACC Long Distance Corp.	0.0001873	0.00006597
197	NTS Communications	0.0001863	0.00006564
198	TTI Telecommunications	0.0001830	0.00006446
199	Sound Communications West	0.0001828	0.00006439
200	National Network Corp.	0.0001826	0.00006432
201	ARCADA	0.0001798	0.00006332
202	PT–1 Communications	0.0001798	0.00006332
203	LCI	0.0001658	0.00005840
204	TresCom U.S.A., Inc./TresCom Caribbean	0.0001524	0.00005366
205	Execulines of Sacramento	0.0001521	0.00005359
206	Dancris Comm.	0.0001441	0.00005076
207	Midcom of Arizona, Inc	0.0001432	0.00005043
208	Digital Technologies	0.0001397	0.00004922
209	Connect Americom Corp.	0.0001359	0.00004786
210	Communications Options	0.0001329	0.00004680
211	KRB Telecom	0.0001301	0.00004584
212	Connect America Corp.	0.0001199	0.00004224
213	Oncor Communications	0.0001195	0.00004209

APPENDIX A.—INTERIM PERIOD ALLOCATION LIST—Continued

No.	Name	Percentage	Amount
214	Tele Tech	0.0001177	0.00004147
215	ECI Communications	0.0001161	0.00004088
216	NTS Communications/GMW Co.	0.0001116	0.00003930
217	Ameritech	0.0001110	0.00003908
218	Capsule Communications	0.0001063	0.00003743
219	Telenet Comm. Corp.	0.0001055	0.00003717
220	American Telecommunications Holding	0.0001038	0.00003655
221	Citilink of UT	0.0001035	0.00003647
222	NTI	0.0001030	0.00003629
223	Business Discount Plan dba LD Discount Plan	0.0001007	0.00003548
224	Home Owners L.D. dba HOLD Billing Svcs.	0.0000993	0.00003497
225	QCC, Inc.	0.0000964	0.00003394
226	Tele-Sys., Inc.	0.0000953	0.00003357
227	Telecom Affiliates	0.0000894	0.00003148
228	USLink Long Distance	0.0000871	0.00003067
229	Americom Communications	0.0000859	0.00003027
230	L.D. Services	0.0000839	0.00002957
231	Telecommunications Service Center	0.0000824	0.00002902
232	SWITCHED SERVICE	0.0000820	0.00002887
233	Nuestra Telefonica	0.0000715	0.00002520
234	Alternative Long Distance dba Money $avers	0.0000636	0.00002241
235	Call Savers	0.0000592	0.00002086
236	Excel Telecommunications	0.0000554	0.00001950
237	Asia International Services Corp.	0.0000554	0.00001950
238	WestCom Inc. (Western Telecom, Inc.)	0.0000501	0.00001763
239	ComCentral dba Southnet Services	0.0000467	0.00001646
240	ABC Telecom	0.0000465	0.00001638
241	Gulf Long Distance	0.0000463	0.00001631
242	SouthTel Corp.	0.0000461	0.00001624
243	Valu-Line of Amarillo	0.0000456	0.00001605
244	TELECOM WEST	0.0000441	0.00001554
245	Sound Communication	0.0000439	0.00001546
246	DeltaCom Long Distance Services	0.0000429	0.00001510
247	Hi-Rim Communications	0.0000428	0.00001506
248	RSL COM U.S.A.	0.0000421	0.00001484
249	Olympic Telecommunications	0.0000419	0.00001477
250	Communication Cable Laying Co.	0.0000404	0.00001421
251	Atlantic Telephone Co.	0.0000393	0.00001385
252	Integrated Systems Corp.	0.0000373	0.00001315
253	FIRSTEL, INC	0.0000371	0.00001308
254	Access Services dba Pacific NW Telecom	0.0000365	0.00001286
255	Amerinet Communications	0.0000348	0.00001227
256	International Cellular	0.0000348	0.00001227
257	NYNEX	0.0000315	0.00001109
258	Coast to Coast Telecommunications	0.0000293	0.00001032
259	VarTec Telecom dba Clear Choice Communicat	0.0000277	0.00000977
260	CCC Communications Corp. (Z-TEL, Inc.)	0.0000267	0.00000940
261	International Telephone Corp.	0.0000264	0.00000929
262	Light Link Inc dba Taylor Comm. Grp.	0.0000260	0.00000915
263	R,D,&J Communications Mgmt.	0.0000254	0.00000896
264	Sprint Canada, Inc.	0.0000242	0.00000852
265	TEL-SPAN COMMUNICATIONS	0.0000235	0.00000826
266	DeltaCom, Inc.	0.0000235	0.00000826
267	BMG/TELEMANAGEMENT SYSTEMS (BMG)	0.0000230	0.00000812
268	Long Distance International	0.0000221	0.00000779
269	Eclipse Telecommunications	0.0000221	0.00000779
270	Telephone Assoc. dba Thief River Falls LD	0.0000217	0.00000764
271	Tel Serv	0.0000215	0.00000757
272	Roseville Telephone Co.	0.0000210	0.00000738
273	Valu-Line of Longview	0.0000208	0.00000731
274	Working Assets	0.0000191	0.00000672
275	Souris River Telecommunications	0.0000188	0.00000661
276	EGLOBE INC dba INTL.800 TELECOM dba TELECAL	0.0000186	0.00000654
277	Call America of Riverside	0.0000184	0.00000646
278	Independent Network Services	0.0000173	0.00000610
279	TSC Communications	0.0000172	0.00000606
280	Fone America	0.0000172	0.00000606
281	Primus	0.0000165	0.00000580
282	Commonwealth Telecom Services	0.0000164	0.00000577
283	WCS Operators	0.0000163	0.00000573
284	WinStar	0.0000159	0.00000558
285	Hertz Technologies	0.0000156	0.00000551

APPENDIX A.—INTERIM PERIOD ALLOCATION LIST—Continued

No.	Name	Percentage	Amount
286	Iowa Network Services	0.0000151	0.00000533
287	A & N Telecom	0.0000147	0.00000518
288	Matrix Telecom	0.0000146	0.00000514
289	Fones West Digital Systems	0.0000141	0.00000496
290	Data & Electronic Services	0.0000131	0.00000463
291	Payline Systems	0.0000119	0.00000419
292	MIDCOM Communications	0.0000109	0.00000386
293	Nationwide Emergency Telecomm. System	0.0000108	0.00000382
294	GST Net	0.0000107	0.00000378
295	Hi-Plains NTS Communications	0.0000103	0.00000364
296	North County Communications Corp.	0.0000100	0.00000353
297	Intel Communications	0.0000098	0.00000345
298	Coast International	0.0000095	0.00000334
299	fONOROLA	0.0000093	0.00000327
300	ITC Networks	0.0000091	0.00000320
301	PDQ Communications Source	0.0000086	0.00000301
302	Teleport Communications Group	0.0000084	0.00000298
303	Value Tel	0.0000080	0.00000283
304	The Furst Group	0.0000078	0.00000275
305	NexGen 511	0.0000078	0.00000275
306	Telephone Express	0.0000074	0.00000261
307	U S West Long Distance	0.0000073	0.00000257
308	AUC Communications	0.0000072	0.00000253
309	B.R. Communications	0.0000072	0.00000253
310	U.S. Fibercom	0.0000066	0.00000231
311	MetroLink	0.0000065	0.00000228
312	Budget Call Long Distance	0.0000063	0.00000220
313	DTG Communications	0.0000059	0.00000209
314	American Discount Telecommunications	0.0000057	0.00000202
315	U.S. Communications	0.0000057	0.00000202
316	CEO Telecommunications	0.0000055	0.00000195
317	NET-tel Corp.	0.0000055	0.00000195
318	USN Communications	0.0000052	0.00000184
319	EMI Communications Corp.	0.0000051	0.00000180
320	Pacific Gateway Exchange	0.0000051	0.00000180
321	Extelcom dba Express Tel	0.0000050	0.00000176
322	Premier Long Distance Svcs.	0.0000049	0.00000173
323	National Fibernet, Inc.	0.0000049	0.00000173
324	ADDTEL Communications (SA Tel)	0.0000048	0.00000169
325	Affiliated Telecom Svcs.	0.0000045	0.00000158
326	Comwest Communications	0.0000045	0.00000158
327	TTE OF CHARLESTON	0.0000044	0.00000154
328	CoreComm	0.0000044	0.00000154
329	Priority One Long Distance	0.0000043	0.00000151
330	Digital Network Services	0.0000043	0.00000151
331	Econ-A-Call Inc. of Hays	0.0000043	0.00000151
332	National Telephone Communications	0.0000042	0.00000147
333	Manitoba Telephone System	0.0000041	0.00000143
334	ALLTEL Communications, Inc.	0.0000039	0.00000136
335	AmeriVision Communications	0.0000039	0.00000136
336	Interstate Telecom Svcs.	0.0000039	0.00000136
337	SBS/MCI	0.0000038	0.00000132
338	Call Technology Corp. of Philadelphia	0.0000035	0.00000125
339	METRONET Long Distance Communications	0.0000034	0.00000121
340	Tel-One	0.0000026	0.00000092
341	Century Telecommunications	0.0000025	0.00000088
342	USP Communications	0.0000025	0.00000088
343	Fibernet Telecommunications	0.0000024	0.00000084
344	TelVue Corp.	0.0000024	0.00000084
345	Public Phone	0.0000023	0.00000081
346	Touch 1 Communications	0.0000022	0.00000077
347	Trinet	0.0000022	0.00000077
348	ILD Telecommunications	0.0000020	0.00000070
349	Global Tone Communications	0.0000019	0.00000066
350	HOTEL CONNECT	0.0000019	0.00000066
351	ONE–2–ONE Communications	0.0000018	0.00000062
352	United Telephone Co. dba TELAMERICA L.D.	0.0000018	0.00000062
353	Telco Holdings	0.0000016	0.00000055
354	Caribbean Telecommunications Consortium	0.0000016	0.00000055
355	Axces	0.0000016	0.00000055
356	Fiberline Network Communications	0.0000016	0.00000055
357	WorldCom dba Touch One Long Distance	0.0000016	0.00000055

APPENDIX A.—INTERIM PERIOD ALLOCATION LIST—Continued

No.	Name	Percentage	Amount
358	Tel-Optic, Inc. dba Universal Network Services	0.0000016	0.00000055
359	MEANS Telcom	0.0000016	0.00000055
360	United Telephone Long Distance	0.0000016	0.00000055
361	LA CONEXION FAMILIAR, INC.	0.0000014	0.00000048
362	Economy Telephone	0.0000014	0.00000048
363	FiberNet Telemanagement	0.0000013	0.00000044
364	Telecom One	0.0000011	0.00000040
365	National Brands dba Sharenet Communications	0.0000011	0.00000040
366	Empire One Telecommunications	0.0000011	0.00000040
367	American Long Distance Corp.	0.0000010	0.00000037
368	T–NET (Cable & Wireless)	0.0000010	0.00000037
369	North American Telephone Network, Inc.	0.0000010	0.00000037
370	Advanced Telecommunications Network	0.0000010	0.00000037
371	Blue Mountain Cellular dba CellularOne	0.0000010	0.00000037
372	American Long Distance Exchange	0.0000010	0.00000037
373	SB Communications	0.0000010	0.00000037
374	MCI/1–800–COLLECT	0.0000010	0.00000037
375	Telec Inc.	0.0000009	0.00000033
376	LECNet, Inc.	0.0000009	0.00000033
377	L.D. Network, Inc.	0.0000008	0.00000029
378	Aliant Systems	0.0000008	0.00000029
379	EATELNET	0.0000008	0.00000029
380	Trans National Communications	0.0000008	0.00000029
381	Preferred Telecom	0.0000008	0.00000029
382	Star Tel of Abilene	0.0000008	0.00000029
383	First Data Resources, Inc.	0.0000008	0.00000029
384	Central Telephone Co.	0.0000007	0.00000026
385	INFO-TEL, Inc.	0.0000007	0.00000026
386	Commonwealth Telecom, Inc.	0.0000007	0.00000026
387	Phoenix Network	0.0000007	0.00000026
388	Vista Group International	0.0000006	0.00000022
389	VALU–LINE OF ANGLETON	0.0000006	0.00000022
390	Standard Long Distance	0.0000006	0.00000022
391	EqualNet Corp.	0.0000005	0.00000018
392	Farmers Long Distance	0.0000005	0.00000018
393	Select Communications	0.0000005	0.00000018
394	American Fiber Com	0.0000005	0.00000018
395	REAMS COMMUNICATIONS dba VALULINE	0.0000005	0.00000018
396	U.S. Republic Communications	0.0000005	0.00000018
397	The Switchboard	0.0000005	0.00000018
398	Regency Long Distance	0.0000005	0.00000018
399	Future Connect	0.0000005	0.00000018
400	Xtracom	0.0000005	0.00000018
401	TresCom Puerto Rico	0.0000005	0.00000018
402	U.S. Net	0.0000004	0.00000015
403	Thrifty Call	0.0000004	0.00000015
404	KDD America, Inc.	0.0000004	0.00000015
405	ARC Networks	0.0000004	0.00000015
406	Interstate Operators	0.0000004	0.00000015
407	J B Operators	0.0000004	0.00000015
408	Metro One Telecommunications	0.0000004	0.00000015
409	Comtel Tech	0.0000004	0.00000015
410	Telephone Support Systems	0.0000004	0.00000015
411	Century Communications	0.0000004	0.00000015
412	Group Long Distance	0.0000004	0.00000015
413	Call America	0.0000004	0.00000015
414	BC Tel	0.0000004	0.00000015
415	The Phone Co.	0.0000003	0.00000011
416	Century Long Distance	0.0000003	0.00000011
417	STARTEC	0.0000003	0.00000011
418	Friendship Long Distance	0.0000003	0.00000011
419	National Fiber Com	0.0000003	0.00000011
420	Associated Network Partners	0.0000003	0.00000011
421	Northern Arizona Communications Corp.	0.0000003	0.00000011
422	Northwest Telecom	0.0000003	0.00000011
423	Progressive National Telephone Co.	0.0000003	0.00000011
424	World Wide Connect	0.0000003	0.00000011
425	Digital Communications	0.0000003	0.00000011
426	Gala Communications	0.0000003	0.00000011
427	TeleHub Communications Corp.	0.0000003	0.00000011
428	Fastline Communication Network	0.0000003	0.00000011
429	West River Long Distance	0.0000003	0.00000011

APPENDIX A.—INTERIM PERIOD ALLOCATION LIST—Continued

No.	Name	Percentage	Amount
430	Cable & Wireless (TDX)	0.0000003	0.00000011
431	Fibernet, Inc.	0.0000003	0.00000011
432	Incomnet Communications Corp.	0.0000002	0.00000007
433	Tel-Share	0.0000002	0.00000007
434	Coastal Long Distance Services	0.0000002	0.00000007
435	Colorado River Communications	0.0000002	0.00000007
436	TMC Long Distance dba Cherry Communications	0.0000002	0.00000007
437	Nationwide Long Distance	0.0000002	0.00000007
438	Heritage Communications	0.0000002	0.00000007
439	Savemore Network	0.0000002	0.00000007
440	OPTICOM ONE CALL	0.0000002	0.00000007
441	Alascom	0.0000002	0.00000007
442	BKC Telecommunications	0.0000002	0.00000007
443	Network Billing & Collection	0.0000002	0.00000007
444	Vortel Communications	0.0000002	0.00000007
445	Rainier Cable	0.0000002	0.00000007
446	St. Pierre Communication Network	0.0000002	0.00000007
447	PNG Telecomms. dba PowerNet Global Commu	0.0000002	0.00000007
448	BellSouth Long Distance	0.0000002	0.00000007
449	Americatel	0.0000002	0.00000007
450	Basico Group	0.0000002	0.00000007
451	United Communications Assn., Inc.	0.0000002	0.00000007
452	Telamerica Communications	0.0000001	0.00000004
453	Cellnet	0.0000001	0.00000004
454	CapRock Telemanagement	0.0000001	0.00000004
455	Advanced Telecom, Inc.	0.0000001	0.00000004
456	US TeleServices	0.0000001	0.00000004
457	Execulines of North Central Region	0.0000001	0.00000004
458	National Telephone Exchange (PA)	0.0000001	0.00000004
459	SouthWest United Communication	0.0000001	0.00000004
460	National Tele-Sav Inc.	0.0000001	0.00000004
461	Discount Long Distance of America	0.0000001	0.00000004
462	Sprint Local Telecommunications Division	0.0000001	0.00000004
463	Sam's Discount Long Distance	0.0000001	0.00000004
464	Scherers Communications Group	0.0000001	0.00000004
465	BT North America	0.0000001	0.00000004
466	Mountainview Communications	0.0000001	0.00000004
467	TELCO	0.0000001	0.00000004
468	OCOM Long Distance	0.0000001	0.00000004
469	STANDARD TELCOM	0.0000001	0.00000004
470	OmniCall	0.0000001	0.00000004
471	RANGER TELECOMMUNICATIONS	0.0000001	0.00000004
472	Long Distance Assistance	0.0000001	0.00000004
473	Roanoke & Botetourt Telephone Co.	0.0000001	0.00000004
474	Fairview Telecom	0.0000001	0.00000004
475	Bluegrass Long Distance	0.0000001	0.00000004
476	Valu-Line of St. Joseph	0.0000001	0.00000004
477	Telelink	0.0000001	0.00000004
478	TeleCable Corp.	0.0000001	0.00000004
479	Federal TransTel, Inc. (FTT)	0.0000001	0.00000004
480	UI Long Distance	0.0000001	0.00000004
481	Texustel	0.0000001	0.00000004
482	Continental Long Distance	0.0000001	0.00000004
483	Marathon Communications	0.0000001	0.00000004
484	Pioneer Telecom	0.0000001	0.00000004
485	Starcom International Optics Corp.	0.0000001	0.00000004
486	TeleData International	0.0000001	0.00000004
487	ZEPTEL	0.0000001	0.00000004
488	SouthEast Telephone, LTD.	0.0000001	0.00000004
489	TRT Telecommunications Corp.	0.0000001	0.00000004
490	Access-Plus	0.0000001	0.00000004
491	Apple Communications	0.0000001	0.00000004
492	Allgood Taylor Telephone	0.0000001	0.00000004
493	Guide Network International	0.0000001	0.00000004
494	Xnet, Inc.	0.0000001	0.00000004
495	LDI Solutions	0.0000001	0.00000004
496	Teleglobe USA	0.0000001	0.00000004
497	Caribsat Telecommunications	0.0000001	0.00000004
498	Innovative Telecom	0.0000001	0.00000004
499	Bethany Telecom	0.0000001	0.00000004
500	Westel Telecommunications, Ltd.	0.0000001	0.00000004
501	Cincinnati Bell Telephone	0.0000001	0.00000004

APPENDIX A.—INTERIM PERIOD ALLOCATION LIST—Continued

No.	Name	Percentage	Amount
502	World Access Communications Corp.(WACC)	0.0000001	0.00000004
503	BELL SOUTH BUSINESS SYSTEMS	0.0000001	0.00000004

27. In Appendix B, the Commission identified the payors and designated the monthly per-payphone compensation amounts for the Intermediate Period, beginning October 7, 1997, through April 20, 1999.

APPENDIX B.—INTERMEDIATE PERIOD ALLOCATION LIST

No.	Name	Percentage	Amount
1	AT&T Communications	35.24391644	$12.41431713
2	MCI	23.61161155	8.31695405
3	WorldCom	12.96694860	4.56747797
4	Sprint	12.51899810	4.40969189
5	Frontier Communications Services	3.92149599	1.38130775
6	LCI International	2.37673530	0.83718124
7	ILEC 2.19%	2.19000001	0.77140560
8	Cable & Wireless	0.97917273	0.34490380
9	Switched Service Communications	0.49097550	0.17294121
10	Global Crossing Telecommunications	0.42983911	0.15140653
11	U.S Long Distance	0.42561847	0.14991985
12	LCI	0.33335911	0.11742241
13	Telco Communications Group dba Dial & Save	0.31307165	0.11027636
14	PT–1 Communications	0.25384298	0.08941365
15	Business Telecom, Inc (BTI)	0.23496687	0.08276473
16	Long Distance Savers	0.21586112	0.07603492
17	Qwest	0.20372964	0.07176173
18	IXC Communication Services	0.19060904	0.06714013
19	Teltrust	0.18761125	0.06608419
20	One Call Communications	0.14547001	0.05124036
21	EconoPhone	0.14188411	0.04997726
22	ATX Telecommunications Services	0.12896413	0.04542633
23	WorldXChange	0.10813630	0.03808993
24	Tel America	0.10673413	0.03759603
25	American Network Exchange (AMNEX)	0.10326189	0.03637297
26	Bell Atlantic Communications	0.09986097	0.03517503
27	American Telco	0.08260508	0.02909681
28	US Long Distance	0.08048481	0.02834997
29	Total-Tel USA	0.07600848	0.02677323
30	Cincinnati Bell Long Distance	0.06237390	0.02197058
31	WesTel	0.06191358	0.02180844
32	DeltaCom L.D.S	0.06105990	0.02150774
33	Consolidated Network	0.05901859	0.02078871
34	OCI	0.05889480	0.02074511
35	Broadwing Communications Services Inc	0.05419353	0.01908913
36	Network Operator Services	0.05175470	0.01823007
37	NETECH Comm (US West)	0.05022277	0.01769047
38	Pac-West Telecomm dba AmeriCall	0.04830760	0.01701587
39	Tandem Access for Database Query	0.04718756	0.01662135
40	GTE Communications Corp	0.04716124	0.01661208
41	Frontier Communications of the Great Lakes	0.04687323	0.01651063
42	NYNEX—Corridor	0.04680553	0.01648678
43	McLeodUSA	0.04342555	0.01529621
44	LONG DISTANCE OF MICHIGAN	0.04219019	0.01486107
45	The CommuniGroup Of KC	0.04049647	0.01426448
46	Telecom*USA (MCI)	0.03835522	0.01351024
47	ACC Long Distance Corp	0.02988201	0.01052564
48	Network Plus	0.02915011	0.01026784
49	Brooks Fiber Communications	0.02861186	0.01007824
50	U.S WATS	0.02782831	0.00980224
51	American Long Lines	0.02735606	0.00963590
52	Access Long Distance	0.02553887	0.00899581
53	Eclipse Communications	0.02337135	0.00823232
54	VarTec Telecom	0.02292436	0.00807488
55	One Star Long Distance	0.02237160	0.00788017
56	American Telecommunications Enterprises	0.02223350	0.00783153
57	Long Distance/USA (Sprint)	0.02133906	0.00751647
58	T–NETIX, Inc	0.02082489	0.00733536
59	Nationwide Communications	0.02071495	0.00729663
60	Intercontinental Communications Group (ICG)	0.02005349	0.00706364
61	Westinghouse Electric Corp	0.01984365	0.00698973

APPENDIX B.—INTERMEDIATE PERIOD ALLOCATION LIST—Continued

No.	Name	Percentage	Amount
62	Capital Telecommunications	0.01917389	0.00675381
63	NATIONAL Telecom of Florida	0.01833703	0.00645903
64	GST Call America	0.01707555	0.00601469
65	Feist Long Distance	0.01695584	0.00597252
66	Frontier Communications-North Central Region	0.01678545	0.00591251
67	Intermedia Communications	0.01676333	0.00590472
68	WorldCom Technologies	0.01625195	0.00572459
69	Cooperative Communications	0.01598441	0.00563035
70	Chadwick Telephone	0.01517026	0.00534357
71	ATI Telecom	0.01515622	0.00533863
72	BN1 Telecommunications	0.01429701	0.00503598
73	Shared Communications Services	0.01403492	0.00494366
74	Long Distance Management	0.01364685	0.00480697
75	Valu-Line of Kansas	0.01352852	0.00476528
76	ConQuest	0.01224107	0.00431179
77	ICON Communications Corp	0.01171125	0.00412517
78	Long Distance International	0.01170991	0.00412470
79	South Carolina Network	0.01122426	0.00395363
80	Frontier Communications Int'l, Inc	0.00998360	0.00351662
81	Eastern Telephone Systems	0.00966809	0.00340549
82	Electric Lightwave	0.00948198	0.00333993
83	North American Communications	0.00927736	0.00326786
84	Telemanagement Consultants Corp	0.00921237	0.00324496
85	I-Link Communications	0.00892608	0.00314412
86	Action Telcom Co	0.00888023	0.00312797
87	Citizens Telecom	0.00857354	0.00301995
88	Deluxe Data Systems	0.00841646	0.00296461
89	Hedges & Associates	0.00834872	0.00294075
90	PSP Marketing Group	0.00826651	0.00291180
91	Cleartel Communications	0.00788966	0.00277905
92	Telebeam	0.00769037	0.00270885
93	Long Distance Discount	0.00734681	0.00258784
94	Touch America, Inc	0.00694462	0.00244617
95	Cellnet	0.00654483	0.00230535
96	US Link Long Distance	0.00626399	0.00220643
97	XO Communications	0.00608506	0.00214340
98	West Coast Telecommunications	0.00578794	0.00203875
99	LCC	0.00517270	0.00182203
100	The CommuniGroup	0.00471144	0.00165956
101	Austin Bestline	0.00470626	0.00165773
102	CapRock Telemanagement	0.00465249	0.00163879
103	Ameritel	0.00463064	0.00163110
104	FOX COMMUNICATIONS CORP	0.00449544	0.00158347
105	IDT Corp	0.00441009	0.00155341
106	Switch 2000	0.00438008	0.00154284
107	MRC Telecommunications	0.00423041	0.00149012
108	IDS Long Distance	0.00415224	0.00146258
109	VarTec Telecom dba Clear Choice Communications	0.00408850	0.00144013
110	General Communication	0.00383755	0.00135174
111	Global Crossing Telemanagement	0.00370561	0.00130526
112	Excel Telecommunications	0.00369988	0.00130325
113	Amerinet Communications	0.00360841	0.00127103
114	US COMMUNICATIONS, INC	0.00350306	0.00123392
115	GTS Global Link	0.00343038	0.00120832
116	US WATS	0.00316367	0.00111437
117	Call America Business Comm Corp	0.00311844	0.00109844
118	Americatel	0.00300132	0.00105719
119	Coast to Coast Telecommunications	0.00289923	0.00102122
120	Iowa Communications Network	0.00280372	0.00098758
121	Capital Network Systems (AMNEX)	0.00277552	0.00097765
122	TCG	0.00275516	0.00097048
123	Coastal Telephone Co.	0.00274736	0.00096773
124	MVP Communications	0.00265973	0.00093686
125	Communications Options	0.00250057	0.00088080
126	Norlight Telecommunications	0.00243746	0.00085857
127	TresCom U.S.A.	0.00232207	0.00081792
128	Digital Network, Inc.	0.00223911	0.00078870
129	Off Campus Telecommunications	0.00222471	0.00078363
130	GST Telecom	0.00218679	0.00077027
131	Connect America Communications	0.00217267	0.00076530
132	KTNT Communications	0.00203546	0.00071697
133	United Telephone Co.	0.00201083	0.00070830

APPENDIX B.—INTERMEDIATE PERIOD ALLOCATION LIST—Continued

No.	Name	Percentage	Amount
134	ATLANTIC CELL	0.00198526	0.00069929
135	United Communications	0.00196949	0.00069373
136	IBM (Advantis)	0.00194129	0.00068380
137	Concord Telephone Long Distance	0.00189395	0.00066712
138	PhoneTel Technologies	0.00186928	0.00065843
139	Eastern Telecom dba InterQuest	0.00179777	0.00063325
140	Ionex Telecommunications	0.00165422	0.00058268
141	Cypress Telecommunications Corp. (Cytel)	0.00162880	0.00057373
142	KLP, Inc. dba Call-America	0.00161107	0.00056748
143	FRESH START COMMUNICATIONS	0.00157899	0.00055618
144	Parkway Communications	0.00156769	0.00055220
145	SP Telecom	0.00146132	0.00051474
146	Mon-Cre Long Distance	0.00144332	0.00050839
147	Sunshine Telephone Inc. dba SUNTEL	0.00140869	0.00049620
148	TELUS Communications (Edmonton)	0.00137327	0.00048372
149	CCC GlobalCom Corp.	0.00136758	0.00048172
150	TGEC Communications	0.00128349	0.00045210
151	CTS Telcom of Florida	0.00123434	0.00043478
152	POPP Telcom	0.00123242	0.00043411
153	Midco Communications	0.00118147	0.00041616
154	EMI Communications Corp.	0.00116688	0.00041102
155	Coast International	0.00103921	0.00036605
156	WATS/800	0.00103913	0.00036602
157	Valu-Line of Longview	0.00101234	0.00035659
158	American Tel Group	0.00100932	0.00035552
159	Arcada Communications	0.00099292	0.00034975
160	Athena International	0.00095229	0.00033543
161	Interlink Telecommunications	0.00092801	0.00032688
162	CEO TELECOMM (STAR TELECOMM INC)	0.00090459	0.00031863
163	Broadwing Telecommunications Inc.	0.00087624	0.00030865
164	T-One Communications	0.00086753	0.00030558
165	Fibernet Telecommunications	0.00084713	0.00029839
166	First Financial Management Corp.	0.00084148	0.00029640
167	U.S. Connect Corp.	0.00081999	0.00028883
168	Western Telecom, Inc.	0.00080014	0.00028184
169	Connect Americom Corp.	0.00078634	0.00027698
170	Telescan	0.00077979	0.00027467
171	Digital Technologies	0.00077638	0.00027347
172	SouthTel Corp.	0.00077410	0.00027267
173	Keystone Telecom	0.00069907	0.00024624
174	Euronet Communications Corp.	0.00067698	0.00023846
175	WestCom Inc. (Western Telecom, Inc.)	0.00067687	0.00023842
176	Americall Communications	0.00066004	0.00023249
177	C–COM	0.00064098	0.00022578
178	Convergent Communications	0.00063941	0.00022523
179	Ameritech	0.00063117	0.00022232
180	TRESCOM	0.00060717	0.00021387
181	Autumn Communications	0.00059317	0.00020894
182	Shoreham Telephone	0.00058603	0.00020642
183	TransNet	0.00057438	0.00020232
184	AT&T Global Network Services (AGNS)	0.00056967	0.00020066
185	Star Tel, Inc.	0.00056830	0.00020018
186	U.S. Link	0.00054633	0.00019244
187	Dancris Comm.	0.00054320	0.00019134
188	ATLANTIC CONNECTIONS	0.00052002	0.00018317
189	Kelhorn Comm Inc.	0.00050750	0.00017876
190	US Comm. Inc. dba SOUTHWEST L.D.N.	0.00050566	0.00017811
191	STAR TELECOM/ALLSTAR	0.00048154	0.00016962
192	Alternate Communications Technology	0.00047511	0.00016735
193	Logix Communications	0.00045773	0.00016123
194	Long Distance Wholesale Club (Excel)	0.00044612	0.00015714
195	Econo. Call Long Distance Services	0.00043271	0.00015242
196	Powercom Corp.	0.00042537	0.00014983
197	Dial-Net, Inc.	0.00040497	0.00014265
198	XTEL	0.00040043	0.00014105
199	AT&T EasyLink Services	0.00037344	0.00013154
200	Baystar Satellite Paging	0.00034720	0.00012230
201	North American Telephone	0.00033359	0.00011750
202	Yavapai Telephone Exchange	0.00032767	0.00011542
203	Integrated Systems Corp.	0.00032747	0.00011535
204	JSM Tele-Page	0.00032676	0.00011510
205	Payline Systems	0.00032351	0.00011395

APPENDIX B.—INTERMEDIATE PERIOD ALLOCATION LIST—Continued

No.	Name	Percentage	Amount
206	TelaMarketing Communications	0.00031512	0.00011100
207	Valuline Long Distance	0.00029570	0.00010416
208	Midcom of Arizona, Inc	0.00028833	0.00010156
209	Citizens Communications	0.00028589	0.00010070
210	Operator Service Co.	0.00028366	0.00009992
211	Call America	0.00027527	0.00009696
212	Uni-Tel of Farmington	0.00025985	0.00009153
213	Telco Holdings	0.00025911	0.00009127
214	Union Telephone Co.	0.00025279	0.00008904
215	First Communications	0.00024095	0.00008487
216	Telehop Communications	0.00022149	0.00007802
217	Cherry Communications	0.00021977	0.00007741
218	Tele-Sys., Inc.	0.00018517	0.00006522
219	American Telesource International	0.00017886	0.00006300
220	Commonwealth Telecom Services	0.00017156	0.00006043
221	Intl.800 Telecom dba Telecall Long Dist. (EGLOBE)	0.00016776	0.00005909
222	R,D,&J Communications Mgmt.	0.00015442	0.00005439
223	Telecommunications Service Center	0.00014881	0.00005242
224	TEL-SPAN COMMUNICATIONS	0.00014720	0.00005185
225	NACT	0.00014709	0.00005181
226	American Express Travel Related Services	0.00014661	0.00005164
227	Gulf Long Distance	0.00014575	0.00005134
228	IntelCom Group	0.00013991	0.00004928
229	USLink Long Distance	0.00013391	0.00004717
230	ECI Communications	0.00012794	0.00004507
231	DeltaCom Long Distance Services	0.00012559	0.00004424
232	ComCentral dba Southnet Services	0.00012355	0.00004352
233	Brooke Telecom Co-operative	0.00012210	0.00004301
234	TresCom U.S.A., Inc./TresCom Caribbean	0.00012045	0.00004243
235	DeltaCom, Inc.	0.00011053	0.00003893
236	Telephone Assoc. Long Distance Svcs.	0.00010523	0.00003707
237	TSC Communications	0.00010488	0.00003694
238	QCC, Inc.	0.00010276	0.00003620
239	Independence Telephone Co.	0.00010029	0.00003533
240	Citilink of UT	0.00009598	0.00003381
241	Home Owners L.D. dba HOLD Billing Svcs.	0.00009225	0.00003249
242	Tele Tech	0.00008876	0.00003127
243	Systems 1000	0.00008186	0.00002883
244	ALLTEL Communications, Inc.	0.00008080	0.00002846
245	Oncor Communications	0.00007911	0.00002787
246	Americom Communications	0.00007739	0.00002726
247	Eclipse Telecommunications	0.00007597	0.00002676
248	NTS Communications	0.00007499	0.00002642
249	TXU Communications	0.00007323	0.00002579
250	L.D. Services	0.00007001	0.00002466
251	PSA, Inc.	0.00006915	0.00002436
252	International Cellular	0.00006735	0.00002372
253	Capsule Communications	0.00006440	0.00002269
254	Execulines of Sacramento	0.00006425	0.00002263
255	ARCADA	0.00006366	0.00002242
256	Caribbean Telecommunications Consortium	0.00006240	0.00002198
257	Olympic Telecommunications	0.00006013	0.00002118
258	Global Crossing Bandwidth	0.00005907	0.00002081
259	ABC Telecom	0.00005707	0.00002010
260	MIDCOM Communications	0.00005570	0.00001962
261	Long Distance Telephone Savers	0.00005472	0.00001927
262	Business Discount Plan dba LD Discount Plan	0.00005236	0.00001844
263	International Telephone Corp.	0.00004773	0.00001681
264	NTI	0.00004722	0.00001663
265	Iowa Network Services	0.00004648	0.00001637
266	TCA Long Distance	0.00004632	0.00001632
267	Premier Long Distance Svcs.	0.00004617	0.00001626
268	Time Warner	0.00004613	0.00001625
269	Communication Cable Laying Co.	0.00004338	0.00001528
270	Tel Serv	0.00004283	0.00001509
271	Intel Communications	0.00003989	0.00001405
272	Axces	0.00003605	0.00001270
273	Lucky Dog Phone Co.	0.00003585	0.00001263
274	Manitoba Telephone System	0.00003514	0.00001238
275	Telephone Communications Corp.	0.00003357	0.00001183
276	Atlantic Telephone Co.	0.00003322	0.00001170
277	TTI Telecommunications	0.00003267	0.00001151

APPENDIX B.—INTERMEDIATE PERIOD ALLOCATION LIST—Continued

No.	Name	Percentage	Amount
278	Fone America	0.00003020	0.00001064
279	Data & Electronic Services	0.00002938	0.00001035
280	Light Link Inc dba Taylor Comm. Grp.	0.00002851	0.00001004
281	NYNEX	0.00002793	0.00000984
282	RCC Network	0.00002632	0.00000927
283	NET-tel Corp.	0.00002440	0.00000859
284	Incomnet Communications Corp.	0.00002220	0.00000782
285	ITC Networks	0.00002208	0.00000778
286	GST Net	0.00002185	0.00000770
287	AMERICAN TELECOMMUNICATIONS HOLDING	0.00002126	0.00000749
288	Matrix Telecom	0.00002020	0.00000712
289	Show-Me Long Distance	0.00002008	0.00000707
290	Working Assets	0.00001847	0.00000651
291	T-NET (Cable & Wireless)	0.00001800	0.00000634
292	NTS Communications/GMW Co.	0.00001765	0.00000622
293	Asia International Services Corp.	0.00001757	0.00000619
294	Touch 1 Communications	0.00001679	0.00000591
295	TELECOM WEST	0.00001632	0.00000575
296	Teleport Communications Group	0.00001455	0.00000513
297	MetroLink	0.00001432	0.00000504
298	fONOROLA	0.00001424	0.00000502
299	AUC Communications	0.00001408	0.00000496
300	WinStar	0.00001396	0.00000492
301	Call America of Riverside	0.00001369	0.00000482
302	Sprint Canada, Inc.	0.00001357	0.00000478
303	LA CONEXION FAMILIAR, INC.	0.00001334	0.00000470
304	EqualNet Corp.	0.00001294	0.00000456
305	BMG/TELEMANAGEMENT SYSTEMS (BMG)	0.00001294	0.00000456
306	MID ATLANTIC TELECOM	0.00001267	0.00000446
307	National Network Corp.	0.00001181	0.00000416
308	Primus (Primus Telecommunications)	0.00001134	0.00000399
309	Hi-Rim Communications	0.00001106	0.00000390
310	Independent Network Services	0.00001083	0.00000381
311	The Phone Co.	0.00001059	0.00000373
312	Century Telecommunications	0.00001059	0.00000373
313	Roseville Telephone Co.	0.00001047	0.00000369
314	Tel-Share	0.00000992	0.00000350
315	AmeriVision Communications	0.00000992	0.00000350
316	Call Savers	0.00000988	0.00000348
317	Valu-Line of Amarillo	0.00000981	0.00000345
318	AT&T Canada Long Distance Services Co.	0.00000969	0.00000341
319	TTE OF CHARLESTON	0.00000969	0.00000341
320	Telec Inc.	0.00000965	0.00000340
321	Coastal Long Distance Services	0.00000957	0.00000337
322	A & N Telecom	0.00000906	0.00000319
323	PDQ Communications Source	0.00000879	0.00000309
324	Hi-Plains NTS Communications	0.00000843	0.00000297
325	EGLOBE INC dba INTL.800 TELECOM dba TELECAL	0.00000843	0.00000297
326	ADDTEL Communications (SA Tel)	0.00000765	0.00000269
327	DTG Communications	0.00000741	0.00000261
328	Access Services dba Pacific NW Telecom	0.00000741	0.00000261
329	Uni Dial	0.00000722	0.00000254
330	Questar InfoComm	0.00000710	0.00000250
331	Century Long Distance	0.00000706	0.00000249
332	Southwestern Bell Telephone	0.00000686	0.00000242
333	Pacific Bell Interactive Media	0.00000675	0.00000238
334	Nationwide Emergency Telecomm. System	0.00000655	0.00000231
335	GCI Globalcom	0.00000635	0.00000224
336	Priority One Long Distance	0.00000588	0.00000207
337	North County Communications Corp.	0.00000577	0.00000203
338	Souris River Telecommunications	0.00000577	0.00000203
339	National Telephone Communications	0.00000569	0.00000200
340	RSL COM U.S.A.	0.00000569	0.00000200
341	North American Telephone Network, Inc.	0.00000561	0.00000198
342	USN Communications	0.00000549	0.00000193
343	Extelcom dba Express Tel	0.00000541	0.00000191
344	Telecom Affiliates	0.00000530	0.00000187
345	Advanced Telecommunications Network	0.00000530	0.00000187
346	Global Tone Communications	0.00000522	0.00000184
347	US TeleServices	0.00000510	0.00000180
348	CCC Communications Corp. (Z–TEL, Inc.)	0.00000510	0.00000180
349	CoreComm	0.00000486	0.00000171

APPENDIX B.—INTERMEDIATE PERIOD ALLOCATION LIST—Continued

No.	Name	Percentage	Amount
350	Westcom Long Distance	0.00000486	0.00000171
351	L.D. Network, Inc.	0.00000467	0.00000164
352	FiberNet Telemanagement	0.00000443	0.00000156
353	Alternative Long Distance dba Money Savers	0.00000392	0.00000138
354	Dial Long Distance Billing Svcs.	0.00000388	0.00000137
355	Interstate Telecom Svcs.	0.00000377	0.00000133
356	MCI/1–800–COLLECT	0.00000373	0.00000131
357	Call Technology Corp. of Philadelphia	0.00000365	0.00000128
358	National Fibernet, Inc.	0.00000357	0.00000126
359	Nuestra Telefonica	0.00000353	0.00000124
360	Fiberline Network Communications	0.00000341	0.00000120
361	Affiliated Telecom Svcs.	0.00000341	0.00000120
362	WCS Operators	0.00000322	0.00000113
363	Microvoice Applications	0.00000322	0.00000113
364	orldCom dba Touch One Long Distance	0.00000318	0.00000112
365	B.R. Communications	0.00000310	0.00000109
366	Public Phone	0.00000298	0.00000105
367	American Discount Telecommunications	0.00000294	0.00000104
368	Budget Call Long Distance	0.00000294	0.00000104
369	SBS/MCI	0.00000290	0.00000102
370	U.S. Net	0.00000286	0.00000101
371	Thrifty Call	0.00000282	0.00000099
372	Farmers Long Distance	0.00000278	0.00000098
373	KRB Telecom	0.00000275	0.00000097
374	Fones West Digital Systems	0.00000267	0.00000094
375	Hertz Technologies	0.00000263	0.00000093
376	Vista Group International	0.00000255	0.00000090
377	Digital Network Services	0.00000255	0.00000090
378	U.S. Fibercom	0.00000255	0.00000090
379	Aliant Systems	0.00000243	0.00000086
380	CellToll Corp.	0.00000239	0.00000084
381	METRONET Long Distance Communications	0.00000227	0.00000080
382	EATELNET	0.00000204	0.00000072
383	United Telephone Long Distance	0.00000196	0.00000069
384	Trinet	0.00000192	0.00000068
385	ProCom, Inc.	0.00000192	0.00000068
386	Tel-One	0.00000188	0.00000066
387	Escondido Telephone Co.	0.00000188	0.00000066
388	HOTEL CONNECT	0.00000184	0.00000065
389	International Telecommunication Corp.	0.00000180	0.00000064
390	America One Communications	0.00000165	0.00000058
391	Tel-Optic, Inc. dba Universal Network Services	0.00000153	0.00000054
392	Pacific Bell Communications	0.00000153	0.00000054
393	U.S. Communications	0.00000149	0.00000053
394	The Furst Group	0.00000141	0.00000050
395	Easton Telecom Services	0.00000133	0.00000047
396	NTS/HI–PLAINS/MIDCOM AZ	0.00000129	0.00000046
397	Telecom One	0.00000126	0.00000044
398	U S West Long Distance	0.00000126	0.00000044
399	Voice Technology Corp	0.00000122	0.00000043
400	Comwest Communications	0.00000110	0.00000039
401	Telephone Assoc. dba Thief River Falls LD	0.00000110	0.00000039
402	Horry Telephone Long Distance	0.00000110	0.00000039
403	INFO–TEL COMMUNICATIONS	0.00000106	0.00000037
404	BC Tel	0.00000102	0.00000036
405	ONE–2–ONE Communications	0.00000102	0.00000036
406	Pacific Gateway Exchange	0.00000102	0.00000036
407	Long Distance Network	0.00000102	0.00000036
408	Motorola Inc.	0.00000102	0.00000036
409	Star Telecommunications	0.00000102	0.00000036
410	National Telephone Exchange (PA)	0.00000098	0.00000035
411	Economy Telephone	0.00000094	0.00000033
412	North State Telephone Long Distance Co.	0.00000094	0.00000033
413	National Tele-Sav Inc.	0.00000090	0.00000032
414	SouthWest United Communication	0.00000090	0.00000032
415	Central Telephone Co.	0.00000090	0.00000032
416	American Long Distance Corp.	0.00000090	0.00000032
417	Phoenix Network	0.00000086	0.00000030
418	First Data Resources, Inc.	0.00000086	0.00000030
419	Trans National Communications	0.00000082	0.00000029
420	United Telephone Co. dba TELAMERICA L.D.	0.00000082	0.00000029
421	Telaplex Long Distance	0.00000082	0.00000029

APPENDIX B.—INTERMEDIATE PERIOD ALLOCATION LIST—Continued

No.	Name	Percentage	Amount
422	National Brands dba Sharenet Communications	0.00000078	0.00000028
423	People's Telephone	0.00000078	0.00000028
424	LECNet, Inc.	0.00000075	0.00000026
425	NOS Communications	0.00000075	0.00000026
426	Empire One Telecommunications	0.00000067	0.00000023
427	United States Cellular	0.00000067	0.00000023
428	Associated Telenet	0.00000067	0.00000023
429	Innovative Telecom	0.00000063	0.00000022
430	RCN Long Distance	0.00000063	0.00000022
431	North American Digicom Corp.	0.00000063	0.00000022
432	Discount Long Distance of America	0.00000059	0.00000021
433	Blue Mountain Cellular dba CellularOne	0.00000059	0.00000021
434	ARRIVA Communications	0.00000059	0.00000021
435	TMC Long Distance dba Cherry Communications	0.00000055	0.00000019
436	American Long Distance Exchange	0.00000055	0.00000019
437	TelVue Corp.	0.00000055	0.00000019
438	Frontier Communications International	0.00000055	0.00000019
439	KDD America, Inc.	0.00000051	0.00000018
440	Preferred Telecom	0.00000051	0.00000018
441	MEANS Telcom	0.00000051	0.00000018
442	HSS Vending Distributors	0.00000051	0.00000018
443	Alo-USA Corp.	0.00000051	0.00000018
444	Nationwide Long Distance	0.00000047	0.00000017
445	U S P & C, Inc.	0.00000047	0.00000017
446	Low Country Carrier dba Hargray L.D. Co.	0.00000047	0.00000017
447	Call America/Palm Desert	0.00000043	0.00000015
448	Select Communications	0.00000043	0.00000015
449	Chautauqua & Erie Communications	0.00000043	0.00000015
450	Poka-Lambro Telecommunications	0.00000043	0.00000015
451	Telecare	0.00000043	0.00000015
452	International Telcom, Ltd	0.00000039	0.00000014
453	STARTEC	0.00000039	0.00000014
454	Association Communications	0.00000039	0.00000014
455	Ben Lomand Communications	0.00000039	0.00000014
456	Sprint Local Telecommunications Division	0.00000035	0.00000012
457	American Fiber Com	0.00000035	0.00000012
458	INFO–TEL, Inc.	0.00000035	0.00000012
459	USP Communications	0.00000035	0.00000012
460	PBC Long Distance	0.00000035	0.00000012
461	Advanced Telecommunications	0.00000035	0.00000012
462	Advanced Telecom, Inc.	0.00000031	0.00000011
463	U.S. Republic Communications	0.00000031	0.00000011
464	REAMS COMMUNICATIONS dba VALULINE LONG D	0.00000031	0.00000011
465	CoServ	0.00000031	0.00000011
466	Sam's Discount Long Distance	0.00000027	0.00000010
467	ARC Networks	0.00000027	0.00000010
468	VALU–LINE OF ANGLETON	0.00000027	0.00000010
469	Michigan Independent Network	0.00000027	0.00000010
470	Valley Telephone Long Distance	0.00000027	0.00000010
471	Scherers Communications Group	0.00000024	0.00000008
472	Heritage Communications	0.00000024	0.00000008
473	Friendship Long Distance	0.00000024	0.00000008
474	Interstate Operators	0.00000024	0.00000008
475	TELCO	0.00000020	0.00000007
476	Mountainview Communications	0.00000020	0.00000007
477	BT North America	0.00000020	0.00000007
478	The Basico Group	0.00000020	0.00000007
479	Colorado River Communications	0.00000020	0.00000007
480	National Fiber Com	0.00000020	0.00000007
481	J B Operators	0.00000020	0.00000007
482	Westel Telecommunications, Ltd.	0.00000020	0.00000007
483	Atlas Communications & Telephone C.D.	0.00000020	0.00000007
484	Northern Communications	0.00000020	0.00000007
485	Pencor/Palmerton	0.00000020	0.00000007
486	RANGER TELECOMMUNICATIONS	0.00000016	0.00000006
487	OMNICALL COMMUNICATIONS CORPORATION	0.00000016	0.00000006
488	Standard TelCom	0.00000016	0.00000006
489	Alascom	0.00000016	0.00000006
490	OPTICOM ONE CALL	0.00000016	0.00000006
491	Savemore Network	0.00000016	0.00000006
492	Northern Arizona Communications Corp.	0.00000016	0.00000006
493	Associated Network Partners	0.00000016	0.00000006

APPENDIX B.—INTERMEDIATE PERIOD ALLOCATION LIST—Continued

No.	Name	Percentage	Amount
494	Standard Long Distance	0.00000016	0.00000006
495	ABCO Communications	0.00000016	0.00000006
496	Global Com	0.00000016	0.00000006
497	Oneonta Telephone Co.	0.00000016	0.00000006
498	360° Long Distance	0.00000016	0.00000006
499	Verizon Select Services	0.00000016	0.00000006
500	ITC Networks of Utah	0.00000016	0.00000006
501	Southern New England Telephone (SNET)	0.00000016	0.00000006
502	NEXTLINK	0.00000012	0.00000004
503	Texustel	0.00000012	0.00000004
504	Fairview Telecom	0.00000012	0.00000004
505	Long Distance Assistance	0.00000012	0.00000004
506	Progressive National Telephone Co.	0.00000012	0.00000004
507	Northwest Telecom	0.00000012	0.00000004
508	Comtel Tech	0.00000012	0.00000004
509	Metro One Telecommunications	0.00000012	0.00000004
510	Commonwealth Telecom, Inc.	0.00000012	0.00000004
511	Bethany Telecom	0.00000012	0.00000004
512	Covista, Inc.	0.00000012	0.00000004
513	NetLinx Telecommunications Corp.	0.00000012	0.00000004
514	CFW NETWORK	0.00000012	0.00000004
515	Nextel Communications	0.00000012	0.00000004
516	Mid-Com Communications	0.00000012	0.00000004
517	American Fibernet, Inc.	0.00000012	0.00000004
518	Williams Communications	0.00000012	0.00000004
519	Cellular One 800 & Long Distance Services	0.00000012	0.00000004
520	Telephone Systems of Georgia	0.00000012	0.00000004
521	TeleCable Corp.	0.00000008	0.00000003
522	Telelink	0.00000008	0.00000003
523	Valu-Line of St. Joseph	0.00000008	0.00000003
524	Bluegrass Long Distance	0.00000008	0.00000003
525	OCOM Long Distance	0.00000008	0.00000003
526	Vortel Communications	0.00000008	0.00000003
527	BKC Telecommunications	0.00000008	0.00000003
528	Gala Communications	0.00000008	0.00000003
529	Digital Communications	0.00000008	0.00000003
530	World Wide Connect	0.00000008	0.00000003
531	Telephone Support Systems	0.00000008	0.00000003
532	The Switchboard	0.00000008	0.00000003
533	Econ-A-Call Inc. of Hays	0.00000008	0.00000003
534	Metro Telecomm. Svcs.	0.00000008	0.00000003
535	Diamond Communications	0.00000008	0.00000003
536	Long Distance by Cellular One	0.00000008	0.00000003
537	Econocom Long Distance	0.00000008	0.00000003
538	Genesis Communications Int'l	0.00000008	0.00000003
539	Infonet Long Distance	0.00000008	0.00000003
540	Tel-Central of Jefferson City	0.00000008	0.00000003
541	Chibardun Telephone Cooperative	0.00000008	0.00000003
542	Guam Telephone Authority	0.00000008	0.00000003
543	International Telemedia Associates	0.00000008	0.00000003
544	Cominex	0.00000008	0.00000003
545	Standard Communications Inc. dba SCI	0.00000008	0.00000003
546	Partners Telecom	0.00000008	0.00000003
547	Sisk Communications	0.00000008	0.00000003
548	Telecommunications Consultants	0.00000008	0.00000003
549	Valley Star-Tel	0.00000008	0.00000003
550	Western Telenet	0.00000008	0.00000003
551	Willamette Valley Telecom	0.00000008	0.00000003
552	GTE Telephone Operations	0.00000008	0.00000003
553	Communication TeleSystems Intl. (CTS)	0.00000008	0.00000003
554	OCOM Corp.	0.00000008	0.00000003
555	UI Long Distance	0.00000004	0.00000001
556	Federal TransTel, Inc. (FTT)	0.00000004	0.00000001
557	St. Pierre Communication Network	0.00000004	0.00000001
558	Rainier Cable	0.00000004	0.00000001
559	Network Billing & Collection	0.00000004	0.00000001
560	Fastline Communication Network	0.00000004	0.00000001
561	TeleHub Communications Corp.	0.00000004	0.00000001
562	Future Connect	0.00000004	0.00000001
563	Regency Long Distance	0.00000004	0.00000001
564	Telephone Express	0.00000004	0.00000001
565	Firstel	0.00000004	0.00000001

APPENDIX B.—INTERMEDIATE PERIOD ALLOCATION LIST—Continued

No.	Name	Percentage	Amount
566	Cincinnati Bell Telephone	0.00000004	0.00000001
567	HTC Communications	0.00000004	0.00000001
568	American Consultants Alliance	0.00000004	0.00000001
569	Branson Telephone	0.00000004	0.00000001
570	Community Long Distance	0.00000004	0.00000001
571	Digi-Cell, Inc.	0.00000004	0.00000001
572	DigiTel	0.00000004	0.00000001
573	Island Tel, PEI	0.00000004	0.00000001
574	London Telecom Network Corp.	0.00000004	0.00000001
575	Meridian Telecom	0.00000004	0.00000001
576	NETWORK ONE	0.00000004	0.00000001
577	Northland Telephone Systems	0.00000004	0.00000001
578	PBT Communications	0.00000004	0.00000001
579	TCAST Communications, Inc.	0.00000004	0.00000001
580	Telecon Communications Corp.	0.00000004	0.00000001
581	TELEFONICA LARGA DISTANCIA	0.00000004	0.00000001
582	TLD DE PUERTO RICO	0.00000004	0.00000001
583	TransWorld Network Corp.	0.00000004	0.00000001
584	U.S.Fiberline Communications	0.00000004	0.00000001
585	WBC Communications, Inc.	0.00000004	0.00000001
586	WORLD-WIDE TELCO	0.00000004	0.00000001
587	American Communications Technology	0.00000004	0.00000001
588	Western Telephone & Television	0.00000004	0.00000001
589	Cimco Communications	0.00000004	0.00000001
590	Cellular XL Associates	0.00000004	0.00000001
591	CityNet Communications	0.00000004	0.00000001
592	Future Telephone Communications	0.00000004	0.00000001
593	Network Technologies	0.00000004	0.00000001
594	Voyager Networks	0.00000004	0.00000001
595	DIGITRAN CORP.	0.00000004	0.00000001
596	CP-Tel Network Services, Inc.	0.00000004	0.00000001
597	CommNet Cellular	0.00000004	0.00000001
598	Carrier Concepts International Corp.	0.00000004	0.00000001
599	Intelenet Commission	0.00000004	0.00000001
600	METRO TELEPHONE	0.00000004	0.00000001
601	U.S. TELE-COMM, INC.	0.00000004	0.00000001
602	Citizens Long Distance	0.00000004	0.00000001
603	TLD, Inc.	0.00000004	0.00000001
604	Ameritech Communications	0.00000004	0.00000001
605	BizTel Long Distance Telephone Co.	0.00000004	0.00000001
606	Redwood Long Distance	0.00000004	0.00000001
607	Contact America	0.00000004	0.00000001
608	MID MCND dba MIDCOM Communications	0.00000004	0.00000001
609	Off Campus Communications	0.00000004	0.00000001
610	Consolidated Comm. Public Services	0.00000004	0.00000001
611	Beehive Telephone Co.	0.00000004	0.00000001
612	Hawaiian Telephone Co. (GTE)	0.00000004	0.00000001
613	Tel Serve	0.00000004	0.00000001
614	Ray-Tel, Inc.	0.00000004	0.00000001

28. In Appendix C, the Commission identified the payors and designated the monthly per-payphone compensation amounts for the Post-Intermediate Period, beginning April 21, 1999.

APPENDIX C.—POST-INTERMEDIATE PERIOD ALLOCATION LIST

No.	Name	Percentage	Amount
1	AT&T Communications	33.69552735	$11.96865132
2	MCI	17.02639727	6.04777631
3	Sprint	11.11485111	3.94799511
4	WorldCom	10.23852165	3.63672289
5	Global Crossing Telecommunications	7.15106942	2.54005986
6	Qwest	7.12891379	2.53219018
7	WCOM	3.45572976	1.22747521
8	ILEC 2.19	2.19000000	0.77788800
9	Cable & Wireless	0.87472581	0.31070261
10	Global Crossing	0.73143840	0.25980692
11	Frontier Communications Services	0.67982311	0.24147317
12	Broadwing Communications Services Inc.	0.60573560	0.21515729
13	Telco Communications Group dba Dial & Save	0.57331218	0.20364049
14	Touch America, Inc.	0.52556846	0.18668192

APPENDIX C.—POST-INTERMEDIATE PERIOD ALLOCATION LIST—Continued

No.	Name	Percentage	Amount
15	IDT Corp.	0.46487055	0.16512202
16	Business Telecom, Inc. (BTI)	0.41529492	0.14751276
17	LCI International	0.38508503	0.13678220
18	WorldXChange	0.24004960	0.08526562
19	PT–1 Communications	0.19235182	0.06832337
20	McLeodUSA	0.18014775	0.06398848
21	One Call Communications	0.16435648	0.05837942
22	ATX Telecommunications Services	0.16231652	0.05765483
23	Excel Telecommunications	0.11654172	0.04139562
24	DeltaCom L.D.S.	0.11205694	0.03980263
25	Network Plus	0.09200160	0.03267897
26	Long Distance of Michigan (LDMI)	0.09124466	0.03241010
27	EconoPhone	0.08965730	0.03184627
28	Switched Service Communications	0.08282780	0.02942043
29	Intermedia Communications	0.08202164	0.02913409
30	VERIZON (not Verizon IntraLATA—LEC)	0.07539638	0.02678080
31	Total-Tel USA	0.06460627	0.02294815
32	Tel America	0.05266606	0.01870698
33	One Star Long Distance	0.05075153	0.01802694
34	The CommuniGroup Of KC	0.04547681	0.01615336
35	Tandem Access for Database Query	0.04360270	0.01548768
36	American Long Lines	0.04159377	0.01477411
37	Logix Communications	0.04139743	0.01470437
38	Bell Atlantic Communications	0.04136967	0.01469451
39	WesTel	0.03890862	0.01382034
40	NETECH Comm. (US West)	0.03875592	0.01376610
41	US WATS	0.02990079	0.01062076
42	Cooperative Communications	0.02482544	0.00881800
43	Pac-West Telecomm dba AmeriCall	0.02391389	0.00849421
44	Global Crossing Telemanagement	0.02192701	0.00778847
45	Capital Telecommunications	0.02078209	0.00738180
46	Broadwing Telecommunications Inc.	0.01993413	0.00708060
47	South Carolina Network	0.01829131	0.00649707
48	ACC Long Distance Corp.	0.01741376	0.00618537
49	Cincinnati Bell Long Distance	0.01660766	0.00589904
50	Long Distance Savers	0.01650078	0.00586108
51	First Communications	0.01497019	0.00531741
52	TXU Communications	0.01421800	0.00505023
53	Southwestern Bell Telephone	0.01407712	0.00500019
54	TCAST Communications, Inc.	0.01311337	0.00465787
55	Shared Communications Services	0.01300293	0.00461864
56	ITC DeltaCom Communications	0.01299003	0.00461406
57	I-Link Communications	0.01274703	0.00452774
58	Birch Telecom	0.01229039	0.00436555
59	Williams Communications	0.01197243	0.00425261
60	CTS Telcom of Florida	0.01189664	0.00422569
61	WinStar	0.01143703	0.00406243
62	US Xchange	0.00998448	0.00354649
63	SBC	0.00983683	0.00349404
64	IDS Long Distance	0.00948736	0.00336991
65	Long Distance Management	0.00869285	0.00308770
66	Long Distance Telephone Savers	0.00839879	0.00298325
67	Long Distance Discount	0.00775520	0.00275465
68	Powercom Corp.	0.00755607	0.00268392
69	GST Telecom	0.00736841	0.00261726
70	Westinghouse Electric Corp.	0.00725440	0.00257676
71	EATELNET	0.00683467	0.00242768
72	Norlight Telecommunications	0.00667620	0.00237138
73	TeleBeam	0.00652307	0.00231700
74	Frontier Communications Int'l, Inc.	0.00630040	0.00223790
75	Austin Bestline	0.00617985	0.00219508
76	Electric Lightwave	0.00601377	0.00213609
77	Eastern Telephone Systems	0.00567334	0.00201517
78	XTEL	0.00563197	0.00200047
79	US Link Long Distance	0.00526181	0.00186900
80	Destia	0.00523810	0.00186057
81	Williams Local Network	0.00495901	0.00176144
82	Southwestern Bell Comms. Svcs. dba Pacific Bell L.D.	0.00484096	0.00171951
83	GCI Globalcom	0.00478277	0.00169884
84	Atlantic Cell. dba Long Distance by Cellular One	0.00452978	0.00160898
85	XO Communications	0.00449589	0.00159694
86	Arcada Communications	0.00423173	0.00150311

APPENDIX C.—POST-INTERMEDIATE PERIOD ALLOCATION LIST—Continued

No.	Name	Percentage	Amount
87	C–COM	0.00392073	0.00139264
88	RSL COM U.S.A.	0.00379352	0.00134746
89	The CommuniGroup	0.00359706	0.00127768
90	Chadwick Telephone	0.00354778	0.00126017
91	General Communication	0.00352525	0.00125217
92	CapRock Telemanagement	0.00350136	0.00124368
93	Iowa Communications Network	0.00347936	0.00123587
94	FOX COMMUNICATIONS CORP.	0.00305548	0.00108531
95	Capsule Communications	0.00294991	0.00104781
96	COMMUNICATIONS OPTIONS	0.00294503	0.00104608
97	Coast to Coast Telecommunications	0.00279191	0.00099169
98	Cypress Telecommunications Corp. (Cytel)	0.00252727	0.00089769
99	GST ACTION TELECOM	0.00240553	0.00085444
100	Americall Communications	0.00221222	0.00078578
101	KTNT Communications	0.00194140	0.00068959
102	VarTec Telecom	0.00192173	0.00068260
103	Network One	0.00183167	0.00065061
104	QCC, Inc.	0.00173757	0.00061719
105	Valuline Long Distance	0.00171546	0.00060933
106	Concord Telephone Long Distance	0.00155247	0.00055144
107	INFO-TEL COMMUNICATIONS	0.00142883	0.00050752
108	ProCom, Inc.	0.00139191	0.00049441
109	AT&T EasyLink Services	0.00139090	0.00049405
110	RCC Network	0.00136219	0.00048385
111	Digital Telecommunications	0.00111140	0.00039477
112	Midco Communications	0.00111122	0.00039471
113	United Communications	0.00102200	0.00036301
114	Off Campus Telecommunications	0.00096565	0.00034300
115	WorldCom dba Touch One Long Distance	0.00094597	0.00033601
116	BN1 Telecommunications	0.00092659	0.00032913
117	Ionex Telecommunications	0.00085419	0.00030341
118	TresCom U.S.A.	0.00079612	0.00028278
119	American Telco	0.00079392	0.00028200
120	Feist Long Distance	0.00076758	0.00027265
121	Citizens Communications	0.00075159	0.00026697
122	Atlantic Connections	0.00075011	0.00026644
123	MichTel	0.00073091	0.00025962
124	Sunshine Telephone Inc. dba SUNTEL	0.00068983	0.00024503
125	PaeTec Communications	0.00062587	0.00022231
126	Consolidated Comm. Public Services	0.00061838	0.00021965
127	Voice Technology Corp	0.00055514	0.00019718
128	OCI	0.00054735	0.00019442
129	Ameritech	0.00054681	0.00019423
130	Midcom of Arizona, Inc	0.00053647	0.00019055
131	American Telesource International	0.00049450	0.00017565
132	Telescan	0.00048125	0.00017094
133	Long Distance/USA (Sprint)	0.00044856	0.00015933
134	TCG	0.00039761	0.00014123
135	Mon-Cre Long Distance	0.00037193	0.00013211
136	Global Crossing Bandwidth	0.00033686	0.00011965
137	Uni-Tel of Farmington	0.00030690	0.00010901
138	EMI Communications Corp.	0.00030548	0.00010851
139	Shoreham Telephone	0.00030209	0.00010730
140	First Financial Management Corp.	0.00028842	0.00010245
141	Access Point	0.00028663	0.00010181
142	Questar InfoComm	0.00025715	0.00009134
143	Switch 2000	0.00025204	0.00008952
144	Union Telephone Co.	0.00023735	0.00008431
145	Florida Digital Network	0.00022707	0.00008066
146	Motorola Inc.	0.00020811	0.00007392
147	Baystar Satellite Paging	0.00019129	0.00006795
148	NTS Communications/GMW Co.	0.00018778	0.00006670
149	VarTec Telecom dba Clear Choice Communications	0.00018481	0.00006564
150	AT&T Global Network Services (AGNS)	0.00017773	0.00006313
151	NTS Communications	0.00016888	0.00005999
152	Time Warner	0.00016151	0.00005737
153	NACT	0.00014742	0.00005236
154	Full Service Network	0.00014670	0.00005211
155	Primus (Primus Telecommunications)	0.00014445	0.00005131
156	Ameritel	0.00014361	0.00005101
157	ALLTEL Communications, Inc.	0.00014237	0.00005057
158	AT&T Canada Long Distance Services Co.	0.00013880	0.00004930

APPENDIX C.—POST-INTERMEDIATE PERIOD ALLOCATION LIST—Continued

No.	Name	Percentage	Amount
159	GTE Communications Corp.	0.00012691	0.00004508
160	TELUS Communications (Edmonton)	0.00011496	0.00004083
161	Telecom*USA (MCI)	0.00011449	0.00004067
162	Axces	0.00011229	0.00003988
163	NATIONAL Telecom of Florida	0.00010581	0.00003758
164	POPP Telcom	0.00010373	0.00003684
165	BC Tel	0.00009243	0.00003283
166	U.S. Long Distance	0.00009231	0.00003279
167	Tel Serve	0.00008649	0.00003072
168	Oncor Communications	0.00007638	0.00002713
169	CEO Telecommunications Star Telecommunica	0.00007145	0.00002538
170	Tele-Sys., Inc.	0.00006901	0.00002451
171	IPS Telecom	0.00006509	0.00002312
172	Teleport Communications Group	0.00006390	0.00002270
173	American Express Travel Related Services	0.00005290	0.00001879
174	POPP Telecom	0.00005076	0.00001803
175	Coastal Long Distance Services	0.00004720	0.00001676
176	Fibernet Telecommunications	0.00004702	0.00001670
177	Yavapai Telephone Exchange	0.00004345	0.00001543
178	Advanced Mkg. Svcs. dba Dial Anywhere	0.00004155	0.00001476
179	American Telecommunications Enterprises	0.00004066	0.00001444
180	Citizens	0.00004012	0.00001425
181	Touch America Services	0.00003864	0.00001372
182	Canby Telephone Association	0.00003787	0.00001345
183	EASTERNTEL	0.00003323	0.00001180
184	STAR TELECOM/ALLSTAR	0.00003174	0.00001127
185	Iowa Network Services	0.00003032	0.00001077
186	Alliance Group Services	0.00002592	0.00000921
187	SBC Long Distance	0.00002562	0.00000910
188	Cleartel Communications	0.00002550	0.00000906
189	Interloop, Inc.	0.00002503	0.00000889
190	Incomnet Communications Corp.	0.00002342	0.00000832
191	PSA, Inc.	0.00002128	0.00000756
192	United Telephone Co.	0.00002045	0.00000726
193	U.S. Net	0.00002003	0.00000712
194	NetLinx Telecommunications Corp.	0.00001902	0.00000676
195	Cherry Communications	0.00001807	0.00000642
196	Systems 1000	0.00001551	0.00000551
197	Sprint Canada, Inc.	0.00001504	0.00000534
198	Valu-Line of Longview	0.00001391	0.00000494
199	Baltimore-Washington Telephone	0.00001379	0.00000490
200	Parkway Communications	0.00001183	0.00000420
201	CellToll Corp.	0.00001022	0.00000363
202	MTS Communications	0.00000963	0.00000342
203	Matrix Telecom	0.00000915	0.00000325
204	Eastern Telecom dba InterQuest	0.00000898	0.00000319
205	Century Telecommunications	0.00000886	0.00000315
206	Star Tel, Inc.	0.00000862	0.00000306
207	Trinet	0.00000814	0.00000289
208	Deluxe Data Systems	0.00000761	0.00000270
209	Light Link Inc dba Taylor Comm. Grp.	0.00000737	0.00000262
210	West Coast Telecommunications	0.00000713	0.00000253
211	Pacific Bell Communications	0.00000684	0.00000243
212	Horry Telephone Long Distance	0.00000642	0.00000228
213	Phoenix Network	0.00000642	0.00000228
214	Westcom Long Distance	0.00000630	0.00000224
215	Escondido Telephone Co.	0.00000618	0.00000220
216	WorldCom Technologies	0.00000565	0.00000201
217	Intl.800 Telecom dba Telecall Long Dist. (EGLOBE)	0.00000565	0.00000201
218	NEXTLINK	0.00000499	0.00000177
219	Nationwide Communications	0.00000493	0.00000175
220	Coastal Telephone Co.	0.00000493	0.00000175
221	Access Long Distance	0.00000470	0.00000167
222	Tel-Share	0.00000464	0.00000165
223	Genesis Communications Int'l	0.00000464	0.00000165
224	Gulf Long Distance	0.00000440	0.00000156
225	Hi-Plains NTS Communications	0.00000428	0.00000152
226	ARRIVA Communications	0.00000422	0.00000150
227	Network Operator Services	0.00000404	0.00000144
228	American Network Exchange (AMNEX)	0.00000357	0.00000127
229	Pilgrim Telephone	0.00000357	0.00000127
230	Southern New England Telephone (SNET)	0.00000351	0.00000125

APPENDIX C.—POST-INTERMEDIATE PERIOD ALLOCATION LIST—Continued

No.	Name	Percentage	Amount
231	Long Distance Wholesale Club (Excel)	0.00000345	0.00000122
232	Low Country Carrier dba Hargray L.D. Co.	0.00000309	0.00000110
233	People's Telephone	0.00000279	0.00000099
234	NOS Communications	0.00000273	0.00000097
235	North State Telephone Long Distance Co.	0.00000262	0.00000093
236	Star Tel Transmission Co.	0.00000256	0.00000091
237	Frontier Communications-North Central Region	0.00000250	0.00000089
238	Call Savers	0.00000250	0.00000089
239	Century Long Distance	0.00000250	0.00000089
240	Souris River Telecommunications	0.00000250	0.00000089
241	SouthWest United Communication	0.00000250	0.00000089
242	Wholesale Telecom Corp.	0.00000250	0.00000089
243	Uni Dial	0.00000232	0.00000082
244	Texustel	0.00000226	0.00000080
245	ITC Networks	0.00000220	0.00000078
246	Eclipse Communications	0.00000208	0.00000074
247	ConQuest	0.00000190	0.00000068
248	EGLOBE INC dba INTL.800 TELECOM dba TELECAL	0.00000178	0.00000063
249	Telergy	0.00000178	0.00000063
250	Long Distance Network	0.00000172	0.00000061
251	Dial Long Distance Billing Svcs.	0.00000166	0.00000059
252	Fones West Digital Systems	0.00000166	0.00000059
253	Home Long Distance	0.00000166	0.00000059
254	Call America of Riverside	0.00000160	0.00000057
255	Aliant Systems	0.00000160	0.00000057
256	USN Communications	0.00000137	0.00000049
257	HSS Vending Distributors	0.00000131	0.00000046
258	Chautauqua & Erie Communications	0.00000131	0.00000046
259	Star Tel Victoria	0.00000131	0.00000046
260	fONOROLA	0.00000119	0.00000042
261	The Phone Co.	0.00000119	0.00000042
262	REAMS COMMUNICATIONS dba VALULINE LONG D	0.00000113	0.00000040
263	Apple Communications	0.00000113	0.00000040
264	Convergent Communications	0.00000107	0.00000038
265	EqualNet Corp.	0.00000107	0.00000038
266	Central Telephone Co.	0.00000101	0.00000036
267	KRB Telecom	0.00000095	0.00000034
268	Ben Lomand Communications	0.00000083	0.00000030
269	Valu-Line of Amarillo	0.00000077	0.00000027
270	Econo. Call Long Distance Services	0.00000065	0.00000023
271	Public Phone	0.00000065	0.00000023
272	United States Cellular	0.00000065	0.00000023
273	PBC Long Distance	0.00000065	0.00000023
274	Alo-USA Corp.	0.00000059	0.00000021
275	USLink Long Distance	0.00000053	0.00000019
276	Show-Me Long Distance	0.00000053	0.00000019
277	Farmers Long Distance	0.00000053	0.00000019
278	Interlink Telecommunications	0.00000048	0.00000017
279	Fiberline Network Communications	0.00000048	0.00000017
280	TelVue Corp.	0.00000048	0.00000017
281	Association Communications	0.00000048	0.00000017
282	American Tel Enterprises	0.00000048	0.00000017
283	Integrated Systems Corp.	0.00000042	0.00000015
284	L.D. Services	0.00000042	0.00000015
285	United Telephone Co. dba TELAMERICA L.D.	0.00000042	0.00000015
286	Colorado River Communications	0.00000042	0.00000015
287	Metro One Telecommunications	0.00000042	0.00000015
288	Frontier Communications of the Great Lakes	0.00000036	0.00000013
289	Working Assets	0.00000036	0.00000013
290	Brooks Fiber Communications (WorldCom)	0.00000030	0.00000011
291	WATS/800	0.00000030	0.00000011
292	American Tel Group	0.00000030	0.00000011
293	Call America	0.00000030	0.00000011
294	Caribbean Telecommunications Consortium	0.00000030	0.00000011
295	International Telephone Corp.	0.00000030	0.00000011
296	MCI/1–800-COLLECT	0.00000030	0.00000011
297	Verizon Select Services	0.00000030	0.00000011
298	BizTel Long Distance Telephone Co.	0.00000030	0.00000011
299	Cameron Long Distance	0.00000030	0.00000011
300	STARTEC, Inc.	0.00000030	0.00000011
301	Athena International	0.00000024	0.00000008
302	Telephone Assoc. Long Distance Svcs.	0.00000024	0.00000008

APPENDIX C.—POST-INTERMEDIATE PERIOD ALLOCATION LIST—Continued

No.	Name	Percentage	Amount
303	Home Owners L.D. dba HOLD Billing Svcs.	0.00000024	0.00000008
304	Extelcom dba Express Tel	0.00000024	0.00000008
305	SBS/MCI	0.00000024	0.00000008
306	Easton Telecom Services	0.00000024	0.00000008
307	National Brands dba Sharenet Communications	0.00000024	0.00000008
308	Heart of Iowa Communications	0.00000024	0.00000008
309	Consolidated Network	0.00000018	0.00000006
310	BMG/TELEMANAGEMENT SYSTEMS (BMG)	0.00000018	0.00000006
311	Telecom Affiliates	0.00000018	0.00000006
312	Vista Group International	0.00000018	0.00000006
313	OCOM Long Distance	0.00000018	0.00000006
314	Marietta Fibernet	0.00000018	0.00000006
315	NYNEX Long Distance	0.00000018	0.00000006
316	Intercontinental Communications Group (ICG)	0.00000012	0.00000004
317	Americatel	0.00000012	0.00000004
318	U. S. Link	0.00000012	0.00000004
319	Tele Tech	0.00000012	0.00000004
320	TCA Long Distance	0.00000012	0.00000004
321	Intel Communications	0.00000012	0.00000004
322	AUC Communications	0.00000012	0.00000004
323	AmeriVision Communications	0.00000012	0.00000004
324	OPTICOM ONE CALL	0.00000012	0.00000004
325	ABCO Communications	0.00000012	0.00000004
326	MID SEA dba MIDCOM COMMUNICATIONS	0.00000012	0.00000004
327	PBT Communications	0.00000012	0.00000004
328	USLINK	0.00000012	0.00000004
329	Hotel America	0.00000012	0.00000004
330	Lexington Telephone Long Distance	0.00000012	0.00000004
331	Worldlink Long Distance	0.00000012	0.00000004
332	CTS dba WorldXChange	0.00000012	0.00000004
333	AirTouch Cellular	0.00000012	0.00000004
334	VTA, Inc.	0.00000012	0.00000004
335	US Long Distance	0.00000006	0.00000002
336	GST Call America	0.00000006	0.00000002
337	Valu-Line of Kansas	0.00000006	0.00000002
338	Action Telcom Co.	0.00000006	0.00000002
339	Amerinet Communications	0.00000006	0.00000002
340	Connect Americom Corp.	0.00000006	0.00000002
341	IntelCom Group	0.00000006	0.00000002
342	DeltaCom Long Distance Services	0.00000006	0.00000002
343	ComCentral dba Southnet Services	0.00000006	0.00000002
344	Lucky Dog Phone Co.	0.00000006	0.00000002
345	Manitoba Telephone System	0.00000006	0.00000002
346	Telephone Communications Corp.	0.00000006	0.00000002
347	Asia International Services Corp.	0.00000006	0.00000002
348	Touch 1 Communications	0.00000006	0.00000002
349	MetroLink	0.00000006	0.00000002
350	LA CONEXION FAMILIAR, INC.	0.00000006	0.00000002
351	TTE OF CHARLESTON	0.00000006	0.00000002
352	Advanced Telecommunications Network	0.00000006	0.00000002
353	American Discount Telecommunications	0.00000006	0.00000002
354	METRONET Long Distance Communications	0.00000006	0.00000002
355	Tel-Optic, Inc. dba Universal Network Services	0.00000006	0.00000002
356	American Long Distance Corp.	0.00000006	0.00000002
357	RCN Long Distance	0.00000006	0.00000002
358	TMC Long Distance dba Cherry Communications	0.00000006	0.00000002
359	KDD America, Inc.	0.00000006	0.00000002
360	Startec Global Operating Co.	0.00000006	0.00000002
361	Westel Telecommunications, Ltd.	0.00000006	0.00000002
362	ITC Networks of Utah	0.00000006	0.00000002
363	Nextel Communications	0.00000006	0.00000002
364	Telelink	0.00000006	0.00000002
365	Communication TeleSystems Intl.	0.00000006	0.00000002
366	TLD DE PUERTO RICO	0.00000006	0.00000002
367	American Communications Technology	0.00000006	0.00000002
368	Hawaiian Telephone Co. (GTE)	0.00000006	0.00000002
369	TRT Telecommunications Corp.	0.00000006	0.00000002
370	Allcomm Long Distance	0.00000006	0.00000002
371	Beauzile Devereux Communications	0.00000006	0.00000002
372	CCT (California Catalog and Technology)	0.00000006	0.00000002
373	H.G. Telecom	0.00000006	0.00000002
374	Long Distance Direct	0.00000006	0.00000002

APPENDIX C.—POST-INTERMEDIATE PERIOD ALLOCATION LIST—Continued

No.	Name	Percentage	Amount
375	O.L.C. Co.	0.00000006	0.00000002
376	Plant Long Distance Co.	0.00000006	0.00000002
377	Skycomm Technologies	0.00000006	0.00000002
378	Tri-Rural Independent Operations	0.00000006	0.00000002
379	Quest Telecommunications	0.00000006	0.00000002
380	American Lightwave Communications	0.00000006	0.00000002
381	Diversified Communications	0.00000006	0.00000002
382	Metropolitan Telecommunications	0.00000006	0.00000002
383	Monroe Telephone Co. dba Monroe Area Comm	0.00000006	0.00000002
384	Plains Cooperative Telephone Association	0.00000006	0.00000002
385	VISTA–UNITED TELECOMMUNICATIONS	0.00000006	0.00000002
386	World Pass Communications Corp.	0.00000006	0.00000002
387	Econ-o-Call, Inc.	0.00000006	0.00000002
388	Fiberlink Communications Corp	0.00000006	0.00000002
389	Wisconsin Communications Network	0.00000006	0.00000002
390	JAS Networks	0.00000006	0.00000002
391	LAKES STATES COMM	0.00000006	0.00000002
392	NexBell	0.00000006	0.00000002
393	Opticall Communications Services	0.00000006	0.00000002
394	Bell Canada	0.00000006	0.00000002
395	Enhanced Services Billing	0.00000006	0.00000002
396	Innovative Communications	0.00000006	0.00000002
397	Consolidated Communications Network	0.00000006	0.00000002
398	Southwestern Bell Comms. Svcs. dba Ameritech	0.00000006	0.00000002
399	Viatel, Inc.	0.00000006	0.00000002
400	Nexus Communications	0.00000006	0.00000002
401	Net Communications Corp.	0.00000006	0.00000002
402	Communication Services of Colorado	0.00000006	0.00000002
403	Frontier Local Services	0.00000006	0.00000002
404	Omni Communications	0.00000006	0.00000002
405	Total Media Technologies, Inc.	0.00000006	0.00000002
406	Centennial De Puerto Rico	0.00000006	0.00000002
407	Massena Telephone Co.	0.00000006	0.00000002
408	Paradise Communications	0.00000006	0.00000002
409	LDC Telecommunications Co.	0.00000006	0.00000002

Paperwork Reduction Act Analysis

29. This Order was analyzed with respect to the Paperwork Reduction Act of 1995, Public Law 104–13. It contains no new or modified information collections subject to Office of Management and Budget review.

Supplemental Final Regulatory Flexibility Act Analysis

30. As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, an Initial Regulatory Flexibility Analysis (IRFA) was provided in the *Notice of Proposed Rulemaking* in CC Docket No. 96–128, 61 FR 31481, June 20, 1996. The Commission sought written public comment on the proposals in the *Notice of Proposed Rulemaking*, including comment on the IRFA. A Final Regulatory Flexibility Analysis (FRFA) was provided in the *First Report and Order*, 61 FR 52307, October 7, 1996, the *First Reconsideration Order*, 61 FR 65341, December 12, 1996, the *Second Report and Order*, 62 FR 58659, October 30, 1997, the *Third Report and Order*, 64 FR 13701, March 22, 1999, and the *Fourth Reconsideration Order*, 67 FR 9610, March 4, 2002.

31. This present Supplemental FRFA conforms to the RFA, as amended. *See* 5 U.S.C. 604. The RFA, 5 U.S.C. 601 *et seq.*, has been amended by the Contract with America Advancement Act of 1996, Public Law No. 104–121, 110 Stat. 847 (1996) (CWAA). Title II of the CWAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

32. To the extent that any statement in this Supplemental FRFA is perceived as creating ambiguity with respect to Commission rules or statements made in the sections of the Order preceding the Supplemental FRFA, the rules and statements set forth in those preceding sections are controlling.

Need for, and Objectives of, the Rules

33. In adopting section 276 in 1996, Public Law No. 104–104, 110 Stat. 56 (1996) (codified at 47 U.S.C. 276), Congress mandated inter alia that the Commission ''establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone. * * *'' In this Order, the Commission redetermined certain aspects of the per-payphone compensation to be paid to payphone service providers (PSPs) pursuant to the remand by the U.S. Court of Appeals for the District of Columbia Circuit in *Illinois*, 117 F.3d. at 555. To implement the remand, the Commission calculated a per-call allocation for each carrier and clarified the manner in which the true up and offset procedures are to be applied to determine refunds and overpayments.

Summary of Significant Issues Raised by Public Comments in Response to the FRFA

34. The Commission received no comments in direct response to the FRFA in the *Fourth Reconsideration Order*. The Commission believes that the rules as adopted in this Order minimize the burdens of the per-payphone compensation procedure to the benefit of all parties, including small entities. *See* ''Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered,'' *infra*.

Description and Estimate of the Number of Small Entities to which Rules Will Apply

35. The RFA directs agencies to provide a description of, and an estimate of, the number of small entities that may be affected by the rules adopted herein, where feasible. 5 U.S.C. 604(a)(3). The RFA generally defines ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' 5 U.S.C. 601(6). In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act, unless the Commission has developed one or more definitions that are more appropriate to its activities. 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in 5 U.S.C. 632). Under the Small Business Act, a ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA). 5 U.S.C. 632. Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition in the **Federal Register**.''

36. The Commission included small incumbent LECs in this RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' 5 U.S.C. 601(3). The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. *See* letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to Chairman William E. Kennard, FCC (May 27, 1999). The Small Business Act contains a definition of ''small business concern,'' which the RFA incorporates into its own definition of ''small business.'' *See* 5 U.S.C. 632(a) (Small Business Act); 5 U.S.C. 601(3) (RFA). SBA regulations interpret ''small business concern'' to include the concept of dominance on a national basis. 13 CFR 121.102(b). The Commission therefore included small incumbent LECs in this RFA analysis, although the Commission emphasizes that this RFA action has no effect on the Commission's analyses and determinations in other, non-RFA contexts.

37. *Incumbent Local Exchange Carriers.* Neither the Commission nor the SBA has developed a specific size standard for small providers of incumbent local exchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, North American Industry Classification System (NAICS) code 513310. According to the most recent *Telephone Trends Report* data, 1,329 incumbent local exchange carriers (LECs) reported that they were engaged in the provision of local exchange services. FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, *Trends in Telephone Service* (May 2002) (hereinafter *Telephone Trends Report*), Table 5.3. Of these 1,329 carriers, an estimated 1,024 have 1,500 or fewer employees and 305 have more than 1,500 employees. *Id.* Consequently, the Commission estimates that most providers of local exchange service are small businesses that may be affected by the rules and policies adopted herein.

38. *Competitive Local Exchange Carriers or Competitive Access Providers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to providers of competitive local exchange services or to competitive access providers (CAPs) or to ''Other Local Exchange Carriers.'' The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that SBA standard, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 513310. According to the Commission's most recent *Telephone Trends Report* data, 532 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services. *Telephone Trends Report,* Table 5.3. Of these 532 companies, an estimated 411 have 1,500 or fewer employees and 121 have more than 1,500 employees. *Id.* In addition, 55 carriers reported that they were ''Other Local Exchange Carriers.'' *Id.* Of the 55 ''Other Local Exchange Carriers,'' an estimated 53 have 1,500 or fewer employees and two have more than 1,500 employees. *Id.* Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, and ''Other Local Exchange Carriers'' are small entities that may be affected by the rules and policies adopted herein.

39. *Local Resellers.* The SBA has developed a size standard for small businesses within the category of Telecommunications Resellers. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 513330. According to the Commission's most recent *Telephone Trends Report* data, 134 companies reported that they were engaged in the provision of local resale services. *Telephone Trends Report,* Table 5.3. Of these 134 companies, an estimated 131 have 1,500 or fewer employees and three have more than 1,500 employees. *Id.* Consequently, the Commission estimates that the great majority of local resellers are small entities that may be affected by the rules and policies adopted herein.

40. *Toll Resellers.* The SBA has developed a size standard for small businesses within the category of Telecommunications Resellers. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 513330. According to the Commission's most recent *Telephone Trends Report* data, 576 companies reported that they were engaged in the provision of toll resale services. *Telephone Trends Report,* Table 5.3. Of these 576 companies, an estimated 538 have 1,500 or fewer employees and 38 have more than 1,500 employees. *Id.* Consequently, the Commission estimates that the great majority of toll resellers are small entities that may be affected by the rules and policies adopted herein.

41. *Payphone Service Providers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to payphone service providers (PSPs). The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 513310. According to the Commission's most recent *Telephone Trends Report* data, 936 PSPs reported that they were engaged in the provision of payphone services. *Telephone Trends Report,* Table 5.3. Of these 936 PSPs, an estimated 933 have 1,500 or fewer employees and three have more than 1,500 employees. *Id.* Consequently, the

Commission estimates that the great majority of PSPs are small entities that may be affected by the rules and policies adopted herein.

42. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to providers of interexchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 513310. According to the most recent *Telephone Trends Report* data, 229 carriers reported that their primary telecommunications service activity was the provision of interexchange services. *Telephone Trends Report,* Table 5.3. Of these 229 carriers, an estimated 181 have 1,500 or fewer employees and 48 have more than 1,500 employees. *Id.* Consequently, the Commission estimates that the majority of interexchange carriers are small entities that may be affected by the rules and policies adopted herein.

43. *Operator Service Providers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to operator service providers. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 513310. According to the Commission's most recent *Telephone Trends Report* data, 22 companies reported that they were engaged in the provision of operator services. *Telephone Trends Report,* Table 5.3. Of these 22 companies, an estimated 20 have 1,500 or fewer employees and two have more than 1,500 employees. *Id.* Consequently, the Commission estimates that the great majority of operator service providers are small entities that may be affected by the rules and policies adopted herein.

44. *Prepaid Calling Card Providers.* The SBA has developed a size standard for small businesses within the category of Telecommunications Resellers. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 513330. According to the Commission's most recent *Telephone Trends Report* data, 32 companies reported that they were engaged in the provision of prepaid calling cards. *Telephone Trends Report,* Table 5.3. Of these 32 companies, an estimated 31 have 1,500 or fewer employees and one has more than 1,500 employees. *Id.* Consequently, the Commission estimates that the great majority of prepaid calling card providers are small entities that may be affected by the rules and policies adopted herein.

45. *Satellite Service Carriers.* The SBA has developed a size standard for small businesses within the category of Satellite Telecommunications. Under that SBA size standard, such a business is small if it has $12.5 million or less in average annual receipts. 13 CFR 121.201, NAICS code 513340. According to the Commission's most recent *Telephone Trends Report* data, 31 carriers reported that they were engaged in the provision of satellite services. *Telephone Trends Report,* Table 5.3. Of these 31 carriers, an estimated 25 have 1,500 or fewer employees and six have more than 1,500 employees. *Id.* Consequently, the Commission estimates that most satellite service carriers are small entities that may be affected by the rules and policies adopted herein.

46. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to ''Other Toll Carriers.'' This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 513310. According to the Commission's most recent *Telephone Trends Report* data, 42 carriers reported that they were engaged in the provision of ''Other Toll'' services. *Telephone Trends Report,* Table 5.3. Of these 42 carriers, an estimated 37 have 1,500 or fewer employees and five have more than 1,500 employees. *Id.* Consequently, the Commission estimates that most ''Other Toll Carriers'' are small entities that may be affected by the rules and policies adopted herein.

47. *Wireless Service Providers.* The SBA has developed a size standard for wireless small businesses within the two separate categories of Paging and of Cellular and Other Wireless Telecommunications. Under those SBA size standards, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 513322. According to the Commission's most recent *Telephone Trends Report* data, 1,761 companies reported that they were engaged in the provision of wireless service. *Telephone Trends Report,* Table 5.3. Of these 1,761 companies, an estimated 1,175 have 1,500 or fewer employees and 586 have more than 1,500 employees. *Id.* Consequently, the Commission estimates that most wireless service providers are small entities that may be affected by the rules and policies adopted herein.

48. *Broadband Personal Communications Service.* The broadband personal communications service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of $40 million or less in the three previous calendar years. *See Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap,* WT Docket No. 96–59, *Report and Order,* 61 FR 33859, July 1, 1996; see also 47 CFR 24.720(b). For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. *See Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap,* WT Docket No. 96–59, *Report and Order,* 61 FR 33859, July 1, 1996. These standards defining ''small entity'' in the context of broadband PCS auctions have been approved by the SBA. *See, e.g., Implementation of Section 309(j) of the Communications Act—Competitive Bidding,* PP Docket No. 93–253, *Fifth Report and Order,* 59 FR 37566, July 22, 1994. No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. FCC News, Broadband PCS, D, E and F Block Auction Closes, No. 71744 (rel. Jan. 14, 1997); *see also Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees,* WT Docket No. 97–82, *Second Report and Order,* 62 FR 55348, October 24, 1997. On March 23, 1999, the Commission reauctioned 347 C, D, E, and F Block licenses. There were 48 small business winning bidders. On January 26, 2001, the Commission

completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as ''small'' or ''very small'' businesses. Based on this information, the Commission concludes that the number of small broadband PCS licensees will include the 90 winning C Block bidders, the 93 qualifying bidders in the D, E, and F Block auctions, the 48 winning bidders in the 1999 re-auction, and the 29 winning bidders in the 2001 re-auction, for a total of 260 small entity broadband PCS providers, as defined by the SBA small business size standards and the Commission's auction rules. Consequently, the Commission estimates that 260 broadband PCS providers are small entities that may be affected by the rules and policies adopted herein.

49. *800 MHz and 900 MHz Specialized Mobile Radio Licensees.* The Commission awards ''small entity'' and ''very small entity'' bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years, or that had revenues of no more than $3 million in each of the three previous calendar years, respectively. 47 CFR 90.814. In the context of both the 800 MHz and 900 MHz SMR service, the definitions of ''small entity'' and ''very small entity'' have been approved by the SBA. These bidding credits apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. The Commission assumes, for its purposes here, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz SMR bands. There were 60 winning bidders that qualified as small and very small entities in the 900 MHz auctions. Of the 1,020 licenses won in the 900 MHz auction, bidders qualifying as small and very small entities won 263 licenses. In the 800 MHz SMR auction, 38 of the 524 licenses won were won by small and very small entities. Consequently, the Commission estimates that there are 301 or fewer small entity SMR licensees in the 800 MHz and 900 MHz bands that may be affected by the rules and policies adopted herein.

50. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service. The service is defined in 47 CFR 22.99. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS). BETRS is defined in 47 CFR 22.757, 22.759. For purposes of this Supplemental FRFA, the Commission uses the SBA's size standard applicable to wireless service providers, *supra*—an entity employing no more than 1,500 persons. 13 CFR 121.201, NAICS codes 513321, 513322. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that almost all of them qualify as small entities under the SBA's size standard. Consequently, the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelphone Service that may be affected by the rules and policies adopted herein.

51. *Fixed Microwave Services.* Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. For common carrier fixed microwave services (except Multipoint Distribution Service), *see* 47 CFR part 101 (formerly 47 CFR part 21). Persons eligible under parts 80 and 90 of the Commission's rules can use Private Operational-Fixed Microwave services. *See* 47 CFR parts 80, 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations. Auxiliary Microwave Service is governed by 47 CFR part 74. The Auxiliary Microwave Service is available to licensees of broadcast stations and to broadcast and cable network entities. Broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points, such as, a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

52. At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to microwave services. For purposes of this Supplemental FRFA, the Commission uses the SBA's size standard applicable to wireless service providers, *supra*—an entity with no more than 1,500 persons. 13 CFR 121.201, NAICS codes 513321, 513322. The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are 22,015 or fewer small common carrier fixed microwave licensees and 61,670 or fewer small private operational-fixed microwave licensees and small broadcast auxiliary radio licensees in the microwave services that may be affected by the rules and policies adopted herein. The Commission notes, however, that the common carrier microwave fixed licensee category includes some large entities.

53. *39 GHz Licensees.* The Commission has created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of $40 million or less in the three previous calendar years. *See Amendment of the Commission's Rules Regarding the 37.0–38.6 GHz and 38.6–40.0 GHz Bands,* ET Docket No. 95–183, *Report and Order,* 63 FR 6079, February 6, 1998. An additional size standard for ''very small business'' is: An entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. *Id.* The SBA has approved these size standards. *See* Letter to Kathleen O'Brien Ham, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Feb. 4, 1998). The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by the rules and policies adopted herein.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

54. As mandated by the court in the *Illinois* decision, the Commission established in this Order a compensation procedure for resolving monthly payments and refunds between PSPs and carriers for the Interim Period,

beginning November 7, 1996, through October 6, 1997, where PSPs and carriers may have been overpaid or underpaid for per-payphone compensation. The Commission also applied the Interim Period procedures to cover the subsequent Intermediate Period, beginning October 7, 1997, through April 20, 1999. With this exception, this Order imposes no new reporting, recordkeeping or other compliance requirements not previously adopted in this or related payphone proceedings.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

55. Although the Commission rejected a proposal to establish a carrier-to-carrier payment mechanism for resolving payments and refunds due to the degree of regulatory intervention it would require, the Commission specified carrier-specific per-call costs that can be used by carriers and PSPs to calculate total overpayments or underpayments. The Commission also affirmed the conclusions reached in the *Fourth Reconsideration Order* that alternative payment arrangements can be made between or among carriers, provided affected PSPs agree. Adoption of this payment scheme will minimize the economic impact and administrative burden for both payors and recipients of per-payphone compensation, including small entities.

56. The Commission recognized in this Order that small entities such as PSPs would be disadvantaged by true up and offset mechanisms used in the per-call compensation process because carriers could use a self-help remedy of withholding future payments from PSPs and would have no incentive to resolve such disputes in a timely manner. *See* paragraph 20, *supra.* The Commission affirmed the conclusion reached in the *Third Report and Order* that carriers may deduct the remaining overpayments from future payments to PSPs, but clarified that it may only be done as follows: (1) Carriers may only withhold undisputed amounts from future payments; (2) carriers may not withhold any amounts from future payments until PSPs and carriers have had an opportunity to apply the refund against Interim and Intermediate Period compensation claimed by the PSP; and (3) carriers must allow PSPs to make payments of refunds over multiple future payments subject to ongoing accrual of interest, if reasonably requested by the PSP. These procedural safeguards will restore necessary measures of fairness to the process for small entities.

Report to Congress

57. The Commission will send a copy of this Order, including this Supplemental FRFA, in a report to Congress pursuant to the Congressional Review Act. 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of this Order, including this Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 604(b).

Ordering Clauses

58. Accordingly, pursuant to the authority contained in 47 U.S.C. 151, 154, 201–205, 215, 218, 219, 220, 226, 276 and 405, it is ordered that the policies, rules and requirements set forth herein are adopted.

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

List of Subjects in 47 CFR Part 64

Communications common carriers, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rules Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 47 U.S.C. 225, 47 U.S.C. 251(e)(1), 47 U.S.C. 276. 151, 154, 201, 202, 205, 218–220, 254, 276, 302, 303, and 337 unless otherwise noted. Interpret or apply sections 201, 218, 225, 226, 227, 229, 332, 48 Stat. 1070, as amended. 47 U.S.C. 201–204, 208, 225, 226, 227, 229, 332, 501 and 503 unless otherwise noted.

2. Revise § 64.1301 to read as follows:

§ 64.1301 Per-payphone compensation.

(a) *Interim access code and subscriber 800 calls.* In the absence of a negotiated agreement to pay a different amount, each entity listed in Appendix A of the *Fifth Order on Reconsideration and Order on Remand* in CC Docket No. 96–128, FCC 02–292, must pay default compensation to payphone service providers for payphone access code calls and payphone subscriber 800 calls for the period beginning November 7, 1996, and ending October 6, 1997, in the amount listed in Appendix A per payphone per month. A complete copy of Appendix A is available at *www.fcc.gov.*

(b) *Interim payphone compensation for inmate calls.* In the absence of a negotiated agreement to pay a different amount, if a payphone service provider providing inmate service was not compensated for calls originating at an inmate telephone during the period starting on November 7, 1996, and ending on October 6, 1997, an interexchange carrier to which the inmate telephone was presubscribed during this same time period must compensate the payphone service provider providing inmate service at the default rate of $0.238 per inmate call originating during the same time period, except that a payphone service provider that is affiliated with a local exchange carrier is not eligible to receive payphone compensation prior to April 16, 1997, or, in the alternative, the first day following both the termination of subsidies and payphone reclassification and transfer, whichever date is latest.

(c) *Interim compensation for 0+ payphone calls.* In the absence of a negotiated agreement to pay a different amount, if a payphone service provider was not compensated for 0+ calls originating during the period starting on November 7, 1996, and ending on October 6, 1997, an interexchange carrier to which the payphone was presubscribed during this same time period must compensate the payphone service provider in the default amount of $4.2747 per payphone per month during the same time period, except that a payphone service provider that is affiliated with a local exchange carrier is not eligible to receive payphone compensation prior to April 16, 1997, or, in the alternative, the first day following both the termination of subsidies and payphone reclassification and transfer, whichever date is latest.

(d) *Intermediate access code and subscriber 800 calls.* In the absence of a negotiated agreement to pay a different amount, each entity listed in Appendix B of the *Fifth Order on Reconsideration and Order on Remand* in CC Docket No. 96–128, FCC 02–292, must pay default compensation to payphone service providers for access code calls and payphone subscriber 800 calls for the period beginning October 7, 1997, and ending April 20, 1999, in the amount listed in Appendix B for any payphone for any month during which per-call compensation for that payphone for that month was not paid by the listed entity.

A complete copy of Appendix B is available at *www.fcc.gov.*

(e) *Post-intermediate access code and subscriber 800 calls.* In the absence of a negotiated agreement to pay a different amount, each entity listed in Appendix C of the *Fifth Order on Reconsideration and Order on Remand* in CC Docket No. 96–128, FCC 02–292, must pay default compensation to payphone service providers for access code calls and payphone subscriber 800 calls for the period beginning April 21, 1999, in the amount listed in Appendix C for any payphone for any month during which per-call compensation for that payphone for that month was or is not paid by the listed entity. A complete copy of Appendix C is available at *www.fcc.gov.*

[FR Doc. 02–30499 Filed 12–2–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–2929; MM Docket No. 01–155 RM–10176]

Radio Broadcasting Services; Goliad, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission allots Channel 282A at Goliad, Texas, as the community's second FM transmission service. *See* 66 FR 39128 (July 27, 2001). Channel 282A is allotted at Goliad, Texas, with a site restriction of 4.6 kilometers (2.9 miles) north of the community. Since this proposal is within 320 kilometers (199 miles) of the U.S.-Mexico border, concurrence of the Mexican government to the proposed allotment has been received. Coordinates for Channel 282A at Goliad are 28–42–35 NL and 97–23–02 WL.

DATES: Effective December 23, 2002.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–155, adopted October 23, 2002, and released November 8, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. This document 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.*

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.

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 282A at Goliad.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–30507 Filed 12–2–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–3170, MB Docket No. 02–58; RM–10415]

Radio Broadcasting Services; Buttonwillow and Shafter, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: At the request of American General Media of Texas, Inc., this document substitutes Channel 226A for Channel 282A at Shafter, California, and modifies the Station KCOO license to specify operation on Channel 226A. This document also allots Channel 265A to Buttonwillow, California, as a first local service. *See* 67 FR 52925, published August 14, 2002. The reference coordinates for the Channel 226A allotment at Shafter, California are 35–30–06 and 119–16–18. The reference coordinates for the Channel 265A allotment at Buttonwillow, California, are 35–23–56 and 119–29–52. With this action, the proceeding is terminated.

DATES: Effective December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Media Bureau (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order* in MM Docket No. 02–58, adopted November 13, 2002, and released November 16, 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.*

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Buttonwillow, Channel 265A; by removing Channel 282A, and adding Channel 226A at Shafter.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–30505 Filed 12–2–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–3166; MB Docket No. 02–192; RM–10507]

Radio Broadcasting Services; Albany, VT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 233A to Albany, Vermont, in response to a petition filed by Lutterloh Community Broadcasters. *See* 67 FR 50850, August 6, 2002. The coordinates for Channel 233A at Albany are 44–45–26 and 72–20–09. There is a site restriction 4.6 kilometers (2.8 miles) northeast of the community. Although concurrence has been requested for the allotment of Channel 233A at Albany as

a specially negotiated short-spaced allotment, concurrence from the Canadian Government has not been received. Therefore, operation with the facilities specified for the allotment of Channel 233A at Albany herein is subject to modification, suspension, or termination without right to hearing, if found by the Commission to be necessary in order to conform to the USA-Canadian FM Broadcast Agreement or if specifically objected to by Canada. With this action, this proceeding is terminated. A filing window for Channel 233A at Albany will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent order.

DATES: Effective December 30, 2002.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MB Docket No. 02–192, adopted November 6, 2002, and released November 15, 2002. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC Information Center, Portals II, 445 12th 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, (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Vermont, is amended by adding Albany, Channel 233A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–30501 Filed 12–2–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–3165; MB Docket No. 02–204; RM–10314]

Radio Broadcasting Services; Pampa, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 277C2 to Pampa, Texas, in response to a petition filed by Katherine Pyeatt. *See* 67 FR 53902, August 20, 2002. The coordinates for Channel 277C2 at Pampa are 35–42–07 and 100–50–28. There is a site restriction 21.3 kilometers (13.2 miles) northeast of the community. With this action, this proceeding is terminated. A filing window for Channel 277C2 at Pampa will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent order.

DATES: Effective December 30, 2002.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MB Docket No. 02–204, adopted November 6, 2002, and released November 15, 2002. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC Information Center, Portals II, 445 12th 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, (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 277C2 at Pampa.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–30502 Filed 12–2–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–3164; MB Docket No. 02–205; RM–10470; MB Docket No. 02–206; RM–10469; MB Docket No. 02–207; RM–10468]

Radio Broadcasting Services; Big Lake, TX, Leakey, TX, and Vici, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM channels Big Lake, Texas (MB Docket No. 02–206), Leakey, Texas (MB Docket No. 02–207), and Vici, Oklahoma (MB Docket No. 02–205), in response to three separate petitions filed by Robert Fabian that were combined in a multiple *Notice of Proposed Rule Making. See* 67 FR 53901, August 20, 2002. The coordinates for Channel 249A at Vici, OK are 36–08–59 and 99–17–53. The coordinates for Channel 246A at Big Lake, Texas, are 31–11–33 and 101–20–53. The coordinates for Channel 275A at Leakey, Texas, are 29–41–30 and 99–50–07. Although Mexican concurrence has been requested for the allotments at Big Lake and Leakey, Texas, notification has not been received. Therefore, operation with the facilities specified for Big Lake and Leakey herein are subject to modification, suspension, or termination without right to hearing, if found by the Commission to be necessary in order to conform to the 1992 USA-Mexico FM Broadcast Agreement or if specifically objected to by Mexico. With this action, this proceeding is terminated. A filing window for Channel 249A, Vici, OK, Channel 246A, Big Lake, TX and Channel 275A, Leakey, TX will not be opened at this time. Instead, the issue of opening these allotments for auction will be addressed by the Commission in a subsequent order.

DATES: Effective December 30, 2002.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MB Dockets 02–205, 02–206 and 02–207, adopted November 6, 2002, and released November 15, 2002. The full text of this Commission decision is

available for inspection and copying during regular business hours in the FCC Information Center, Portals II, 445 12th 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, (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by adding Vici, Channel 249A.

3. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 246A at Big Lake and Channel 275A at Leakey.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–30503 Filed 12–2–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–3167; MB Docket No. 02–226; RM–10459; MB Docket No. 02–227; RM–10467; MB Docket No. 02–228; RM–10460]

Radio Broadcasting Services; Groom, TX, Sonora, TX and Spur, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 223A at Groom, Texas, in response to a petition filed by Maurice Salsa (MB Docket No. 02–226), allots FM Channel 272A at Sonora, Texas, in response to a petition filed by Katherine Pyeatt (MB Docket No. 02–227), and allots Channel 254A at Spur, Texas, in response to a petition filed by Maurice Salsa (MB Docket No. 02–228). See 67 FR 53901, August 20, 2002. The coordinates for Channel 223A at Groom, TX, are 35–10–49 and 101–01–46. The coordinates for Channel 272A at Sonora, TX, are 30–28–07 and 100–36–54. Mexican concurrence has been received for the allotment of Channel 272A at Sonora. The coordinates for Channel 254A at Spur, TX, are 33–28–35 and 100–51–19. With this action, this proceeding is terminated. A filing window for Channel 223A, Groom, TX, Channel 272A, Sonora, TX, and Channel 254A, Spur, TX, will not be opened at this time. Instead, the issue of opening these allotments for auction will be addressed by the Commission in a subsequent order.

DATES: Effective December 30, 2002.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MB Dockets 02–226, 02–227 and 02–228, adopted November 6, 2002, and released November 15, 2002. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC Information Center, Portals II, 445 12th 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, (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Groom, Channel 223A, Spur, Channel 254A and Channel 272A at Sonora.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–30504 Filed 12–2–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–3068; MB Docket No. 02–203; RM–10466]

Radio Broadcasting Services; Hooks, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 231A to Hooks, Texas, in response to a petition filed by Katherine Pyeatt. *See* 67 FR 53902, August 20, 2002. The coordinates for Channel 231A at Hooks are 33–28–30 and 94–21–32. There is a site restriction 6.6 kilometers (4.1 miles) west of the community. With this action, this proceeding is terminated. A filing window for Channel 231A at Hooks will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent order.

DATES: Effective December 23, 2002.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MB Docket No. 02–203, adopted October 30, 2002, and released November 8, 2002. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC Information Center, Portals II, 445 12th 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, (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 231A at Hooks.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–30511 Filed 12–2–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–3067; MB Docket No. 02–258, RM–10500; MB Docket No. 02–259, RM–10501; MB Docket No. 02–262, RM–10504; MB Docket No. 02–264, RM–10505; MB Docket No. 02–265, RM–10556]

Radio Broadcasting Services; Dickens, Floydada, Rankin, San Diego, and Westbrook, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document grants five proposals that allot new channels to Dickens, Texas, Floydada, Texas, Rankin, Texas, San Diego, Texas, and Westbrook, Texas. The Audio Division, at the request of Maurice Salsa, allots Channel 294A at Dickens, Texas, as the community's first local aural transmission service. *See* 67 FR 57781, September 12, 2002. Channel 294A can be allotted to Dickens in compliance with the Commission's minimum distance separation requirements with a site restriction of 10.1 kilometers (6.3 miles) northeast to avoid a short-spacing to the license site of Station KEJS, Channel 293C2, Lubbock, Texas. The coordinates for Channel 294A at Dickens are 33–40–43 North Latitude and 100–45–00 West Longitude. Filing windows for Channel 294A at Dickens, Texas, Channel 255A at Floydada, Texas, Channel 229C3 at Rankin, Texas, Channel 273A at San Diego, Texas, and Channel 272A at Westbrook, Texas, will not be opened at this time. Instead, the issue of opening a filing window for these channels will be addressed by the Commission in a subsequent order. *See* Supplementary Information, *infra.*

DATES: Effective December 23, 2002.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

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. 02–258, 02–259, 02–262, 02–264, 02–265, adopted November 6, 2002, and released November 8, 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.*

The Audio Division, at the request of Linda Crawford, allots Channel 255A at Floydada, Texas, as the community's second local aural transmission service. *See* 67 FR 57781, September 12, 2002. Channel 255A can be allotted to Floydada in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.3 kilometers (2.7 miles) northeast to avoid a short-spacing to the license site of Station KQBR, Channel 258C1, Lubbock, Texas. The coordinates for Channel 255A at Floydada are 34–00–54 North Latitude and 101–18–29 West Longitude.

The Audio Division, at the request of Robert Fabian, allots Channel 229C3 at Rankin, Texas, as the community's first local aural transmission service. *See* 67 FR 57781, September 12, 2002. Channel 229C3 can be allotted to Rankin in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.6 kilometers (7.8 miles) east of Rankin, Texas. The coordinates for Channel 229C3 at Rankin are 31–11–24 North Latitude and 101–48–39 West Longitude. Although concurrence has been requested for Channel 229C3 at Rankin, notification has not been received. If a construction permit is granted prior to the receipt of formal concurrence in the allotment by the Mexican government, the construction permit will include the following condition: ''Operation with the facilities specified for Rankin herein is subject to modification, suspension or, termination without right to hearing, if found by the Commission to be necessary in order to conform to the 1992 USA-Mexico FM Broadcast Agreement.''

The Audio Division, at the request of Charles Crawford, allots Channel 273A at San Diego, Texas, as the community's second local aural transmission service. *See* 67 FR 57781, September 12, 2002. Channel 273A can be allotted to San Diego in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.6 kilometers (5.9 miles) west to avoid a short-spacing to the license site of Station KNDA, Channel 275C2, Alice, Texas. The coordinates for Channel 273A at San Diego are 27–46–29 North Latitude and 98–20–04 West Longitude. Although concurrence has been requested for Channel 273A at San Diego, Texas, notification has not been received. If a construction permit is granted prior to the receipt of formal concurrence in the allotment by the Mexican government, the construction permit will include the following condition: ''Operation with the facilities specified for San Diego herein is subject to modification, suspension or, termination without right to hearing, if found by the Commission to be necessary in order to conform to the 1992 USA-Mexico FM Broadcast Agreement.''

The Audio Division, at the request of Maurice Salsa, allots Channel 272A at Westbrook, Texas, as the community's first local aural transmission service. *See* 67 FR 57781, September 12, 2002. Channel 272A can be allotted to Westbrook in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.8 kilometers (4.2 miles) west to avoid a short-spacing to the license site of Station KFZX, Channel 271C, Gardendale, Texas. The coordinates for Channel 272A at Westbrook are 32–22–24 North Latitude and 101–04–58 West Longitude. Although concurrence has been requested for Channel 272A at Westbrook, Texas, notification has not been received. If a construction permit is granted prior to the receipt of formal concurrence in the allotment by the Mexican government, the construction permit will include the following condition: ''Operation with the facilities specified for Westbrook herein is subject to modification, suspension or, termination without right to hearing, if found by the Commission to be necessary in order to conform to the 1992 USA-Mexico FM Broadcast Agreement.''

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.

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 Texas, is amended by adding Dickens, Channel 294A; by adding Channel 255A at Floydada; by adding Rankin, Channel 229C3; by adding Channel 273A at San Diego; by adding Westbrook, Channel 272A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–30512 Filed 12–2–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 223

[Docket 020313057–2278–02; I.D. 031102E]

RIN 0648–AP91

Sea Turtle Conservation; Restrictions to Fishing Activities

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

ACTION: Final rule.

SUMMARY: NMFS is enacting a seasonally adjusted gear restriction by closing portions of the Mid-Atlantic Exclusive Economic Zone (EEZ) waters to fishing with gillnets with a mesh size larger than 8–inch (20.3 cm) stretched mesh. The purpose of this action is to reduce the impact of large-mesh gillnet fisheries on endangered and threatened species of sea turtles, primarily the monkfish fishery which uses large-mesh gillnet gear and operates in the area when sea turtles are present.

DATES: This final rule is effective on January 2, 2003.

FOR FURTHER INFORMATION CONTACT: Dennis L. Klemm (address: 9721 Executive Center Drive N., St. Petersburg, FL 33702; ph. 727–570–5312, fax 727–570–5517, e-mail *Dennis.Klemm@noaa.gov*), or Barbara A. Schroeder (address: 1315 East-West Highway, Silver Springs, MD 20910; ph. 301–713–1401, fax 301–713–0376, e-mail *Barbara.Schroeder@noaa.gov*).

SUPPLEMENTARY INFORMATION: All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973 (ESA). The Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) are listed as endangered. The loggerhead (*Caretta caretta*) and green turtle (*Chelonia mydas*) are listed as threatened, except for populations of green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered.

Under the ESA and its implementing regulations, taking sea turtles— even incidentally—is prohibited, with exceptions for takes of threatened species identified in 50 CFR 223.206. The incidental take of endangered species may be authorized only by an incidental take statement provided, or an incidental take permit issued, pursuant to section 7 or 10 of the ESA, respectively.

Background

Beginning in 1995, sea turtle strandings along the coast of North Carolina suddenly and dramatically increased during April and May, and this pattern continued in subsequent years. The increase in strandings coincided with increasing effort in the monkfish gillnet fishery, which first began off North Carolina in 1995. In the spring of 2000, 280 sea turtles stranded in two short time periods, coincident with the monkfish and dogfish gillnet fisheries operating offshore. Four of the carcasses were carrying gillnet gear measuring 10–12 inches (25.4–30.5 cm) stretched mesh, which is consistent with the gear used in the monkfish fishery. Large mesh gillnets are known to be highly effective at catching sea turtles and were the gear of choice in the historical sea turtle fishery. The majority of the turtles stranded in the 2000 event were loggerheads, but Kemp's ridleys were also documented. The northern subpopulation of loggerheads is disproportionately represented in the mid-Atlantic waters off North Carolina, and a number of the stranded loggerheads likely came from this subpopulation. The northern subpopulation is not showing evidence of recovery and continuous mortality as a result of large mesh gillnet fisheries is likely to impede recovery efforts (TEWG 2000).

A number of changes to the Fishery Management Plan (FMP) for the monkfish fishery over the past few years have resulted in changes in effort and timing of the fishery, and additional changes are expected as part of future FMP revisions. Various temporary protections to reduce sea turtle mortality in large mesh gillnets have been enacted by NMFS since the 2000 stranding event (65 FR 31500, May 18, 2000; 66 FR 28842, May 25, 2001; and 67 FR 13098, March 21, 2002). Detailed background information on the events leading to these restrictions may be found in each notice and is not repeated here. The most recent of these temporary protections, an interim final rule effective from March 15 to November 10, 2002, implemented a series of seasonally-adjusted closures in federal waters to move large-mesh gillnetting north in advance of sea turtle migrations. In the interim final rule, NMFS stated that it was considering adopting those restrictions as a final rule and took comments on that proposal through June 19, 2002 (67 FR 13098).

Seasonally Adjusted Closure of Large-mesh Gillnet Fishing in the Mid-Atlantic

The provisions of the interim final rule (67 FR 13098, March 21, 2002) established seasonally adjusted gear restrictions by closing portions of the Mid-Atlantic Exclusive Economic Zone (EEZ) waters to fishing with gillnets with a mesh size larger than 8–inch (20.3–cm) stretched mesh to protect migrating sea turtles. The areas and times closed to fishing with gillnets larger than 8–inch (20.3–cm) stretched mesh were as follows: waters north of 33°51.0′ N (North Carolina/South Carolina border at the coast) and south of 35° 46.0′ N (Oregon Inlet) - at all times; waters north of 35°46.0′ N (Oregon Inlet) and south of 36° 22.5′ N (Currituck Beach Light, NC) - from March 16 through January 14; waters north of 36°22.5′ N (Currituck Beach Light, NC) and south of 37°34.6′ N (Wachapreague Inlet, VA) - from April 1 through January 14; waters north of 37° 34.6' N (Wachapreague Inlet, VA) and south of 37°56.0′ N (Chincoteague, VA) - from April 16 through January 14. Waters north of 37°56.0′ N (Chincoteague, VA) were not affected by the interim final rule. NMFS promulgated the interim final rule to prevent further mortalities and other takes of listed species in large-mesh gillnet fisheries, of which the federal monkfish fishery is the most likely to be

affected. NMFS limited the interim final rule to Federal waters only, as the monkfish fishery was not thought to be prosecuted in state waters, and to avoid unintentionally affecting the black drum gillnet fishery which occurs in the nearshore waters of the Eastern Shore of Virginia, and which was cooperating with NMFS observers to document sea turtle interactions. Gillnets with 10- and 12–inch (25.4- and 30.5–cm) mesh were clearly associated with the 2000 mass stranding in that four of the carcasses were carrying gillnet gear measuring 10 to 12 inches (25.4 to 30.5 cm) stretched mesh, which is consistent with the gear used in the monkfish fishery. Although the monkfish gillnet fishery currently uses 12–inch (30.5–cm) stretched mesh as their primary gear type, the Fishery Management Plan for the monkfish fishery allows use of gillnets with stretched mesh as small as 10 inches (25.4 cm). The potential exists, however, for other fisheries to utilize large-mesh gillnets with smaller size mesh that could still pose a serious risk of entanglement to sea turtles. The 8–inch (20.3–cm) cutoff size as mentioned above is, therefore, being enacted in this rule. Although gillnets with mesh sizes smaller than 8 inches (20.3 cm) are known to capture and kill sea turtles, NMFS selected an 8–inch (20.3–cm) cut-off size for the interim final rule. NMFS considered prohibiting smaller mesh sizes, but the size range chosen is believed to have the highest impact on sea turtles. If new information indicates otherwise, NMFS will consider amending the rule to include smaller mesh sizes. The timing of the restrictions was based upon an analysis of sea surface temperatures for the above areas. Sea turtles are known to migrate into and through these waters when the sea surface temperature is 11 degrees Celsius or greater (Epperly and Braun-McNeill 2002). The January 15 date for the reopening of the areas north of Oregon Inlet (35o 46.0' N) to the large-mesh gillnet fisheries was also based upon the 11 degree Celsius threshold and is consistent with the seasonal boundary established for the Summer flounder fishery-sea turtle protection area (50 CFR 223.206(d)(2)(iii)(A)).

Response to Comments

Comments were received from five sources: The Mid-Atlantic Fishery Management Council (Council); an individual Council member; a North Carolina commercial fisherman; the North Carolina Department of Marine Fisheries (NCDMF); and a joint letter from environmental organizations (EOs). Below are the individual comments and NMFS' responses.

Comment 1: The EOs and the individual Council member expressed support for the permanent enactment of the final rule. The Council and the fisherman, on the other hand, felt that there is no need for a final rule and that there was no scientific evidence to support the gillnet restrictions.

Response: The three previous temporary restrictions (65 FR 31500, May 18, 2000; 66 FR 28842, May 25, 2001; and 67 FR 13098, March 21, 2002) present in detail the scientific information (e.g., analysis of stranding patterns vs. sea surface temperature regimes and fishing effort) that was considered in determining that large mesh gillnetting, particularly for monkfish, was the likely cause of mass sea turtle strandings in the Mid-Atlantic and that large mesh gillnetting poses a significant risk of capture and death, particularly to migrating sea turtles. That information and analysis is not repeated here, and NMFS has received no new information that would lead it to change those determinations.

The restrictions in 2001 and 2002 appeared to be effective, in that repetition of the mass strandings of 2000 was avoided. Strandings in reporting zone 35, for example, (the zone in eastern North Carolina that experienced most of the 2000 stranding event) were lower in the spring months in 2001 and 2002. In March, offshore sea turtle strandings declined from 16 in 2000 to three in 2001 and zero in 2002. In April, strandings also declined from 81 in 2000 to one in 2001 and 19 in 2002. In May, they declined most significantly, from 223 in 2000 to 11 in 2001 and 25 in 2002.

NMFS agrees with the EOs and the Council member that the restrictions on large-mesh gillnetting are warranted and that permanent restrictions are necessary to replace the series of temporary restrictions and to provide long-term protection to sea turtles by reducing the potential for a serious impact to sea turtle populations. This final rule, therefore, will make permanent the restrictions of the interim final rule.

Comment 2: The EOs expressed concern that the restrictions need to be extended to North Carolina state waters to prevent gillnetters from relocating effort and contributing substantially to the mortality of sea turtles in those waters.

Response: NMFS limited the interim final rule to Federal waters only, as the monkfish fishery was not thought to be prosecuted in state waters, and to avoid unintentionally affecting the black drum gillnet fishery which occurs in the nearshore waters of the Eastern Shore of Virginia, and which was cooperating with NMFS observers to document sea turtle interactions. Following the implementation of the interim final rule, several fishermen shifted monkfish gillnet effort to North Carolina state waters. NMFS has reviewed North Carolina landings data comparing gillnet landings for monkfish caught in state waters and Federal waters. From 1995 to 2000, state waters only accounted for one to ten percent of the monkfish landings. In 2002, though, when the interim final rule was in place, state waters have accounted for 92 percent of the monkfish landings. The amount of monkfish landed from state waters in 2002 to date is five times higher than the average state waters landings for 1995 to 2000. This large shift in fishery effort to North Carolina state waters was not foreseen by NMFS, and if the 2002 data represent a real change in fishing behavior, leaving state waters out of the restrictions would pose a substantial risk to sea turtles in state waters.

Because state waters were not included in the interim final rule, NMFS would need to issue a new proposed rule for public comment in order to expand the restrictions to state waters. NMFS will investigate the significance, if any, of the 2002 state monkfish landings. If restrictions on large-mesh offshore gillnetting in state waters appear warranted to protect turtles, NMFS will consider alternative actions and seek public comment on a proposed rule.

Comment 3: The EOs recommended that NMFS support research on the seasonal distribution, abundance, and habitat use of sea turtles in state and adjacent Federal waters.

Response: NMFS already has a large body of knowledge on these topics and continues to collect new data. The North Carolina and Virginia cape regions are very important for overwintering, migrating, and foraging sea turtles, and they are also very complex and dynamic oceanographically. Aerial surveys, review of new scientific literature and state reports, and behavioral studies are all ongoing efforts aimed at expanding this knowledge.

Comment 4: The fisherman and the Council questioned the assertion that strandings may be disproportionately composed of northern subpopulation loggerheads. In contrast, the individual Council member expressed concern with the potential impact to the northern subpopulation, which has not shown signs of recovery and may be declining.

Response: Studies support the assertion made by NMFS. Genetic data from live sea turtles off North Carolina (Bass *et al.*, in press), and from stranded turtles in North Carolina through New Jersey (Norrgard 1995, Bass *et al.*, 1998, Rankin-Baransky *et al.*, 2001), indicate that the northern-nesting subpopulation is disproportionally represented in Mid-Atlantic and North Atlantic coastal waters compared to the small size of that subpopulation. Between 25 to 59 percent of the loggerheads found foraging from the Northeast U.S. to Georgia come from this nesting subpopulation, yet the northern-nesting subpopulation only represents around 8 percent of the total nesting in the U.S.

Comment 5: The fisherman and the Council commented that there was no support for the assumption that the number of turtles killed during the 2000 mass stranding was actually greater than the 280 stranded individuals.

Response: Multiple studies have found that the majority of sea turtle carcasses at-sea will not strand on shore and that stranding numbers are only a portion of the total deaths. The Turtle Expert Working Group (TEWG 1998) reviewed various studies on shrimp trawl mortalities and stranding records prior to the NMFS implementation of turtle excluder device (TED) requirements and estimated that 5 to 6 percent of the total mortality due to shrimp trawls was reflected in strandings from 1986 through 1989. Murphy and Hopkins-Murphy (1989) released marked sea turtle carcasses offshore of South Carolina, of which only 28 percent were later recorded as strandings. In one particular study focusing on the same area as the 2000 mass stranding, Epperly *et al.* (1996) reported that turtles dying offshore of the northern North Carolina coast during the winter and spring likely would be transported offshore by bottom currents. It was reported that, at best, strandings represented 7 to 13 percent of the individuals killed by the winter trawl fishery for flounder during November 1991–1992. Moorside (2000) reported that strandings may represent at best, approximately 40 percent, 30 percent, and less than 1 percent of the total number of at-sea carcasses during the summer, fall/spring, and winter, respectively, in the waters off North Carolina.

Comment 6: The EOs commented that gillnet restrictions should be in place throughout the year. They especially felt this was applicable to inland/nearshore North Carolina waters which are known to be important developmental grounds for immature sea turtles on a year-round basis. The EOs also recommended working closely with other states in the Mid-Atlantic to reduce sea turtle take in other gillnet fisheries and to establish incidental take limits and thresholds for closing the fisheries.

Response: NMFS has enacted seasonal closures for the inshore large-mesh (greater than 4.25 inches (10.8 cm) stretched mesh) gillnet fisheries in Pamlico Sound, NC. In 2001, NMFS published a notice of intent to prepare an Environmental Impact Statement for a comprehensive approach and ordered strategy for addressing incidental take of sea turtles by fishing gear type, which would include working closely with states (66 FR 39474, July 31, 2001). Broader fishery-turtle interaction problems will be addressed through that process. The intent of this final rule is to address a particular gear type with a known, and high, threat to sea turtles.

Comment 7: The EOs urged NMFS to move forward quickly with the reinitiation of the ESA section 7 consultation for the monkfish fishery.

Response: The consultation, which resulted in a no jeopardy opinion, was concluded on May 14, 2002.

Comment 8: The Council and the fisherman commented that they felt there was improper notification of the issuance of the interim final rule. The fishing industry was not notified of any changes until publication in the **Federal Register**.

Response: NMFS makes every effort to provide early notification to the public and the affected constituents of its rulemakings whenever practicable. The interim final rule was enacted on an emergency basis because of changes in the fishery, some resulting from a court order, which necessitated quick action to prevent mass sea turtle takes. NMFS made every effort to immediately notify the public, and particularly the fishing industry, when the interim final rule became effective. Notification was accomplished via NOAA Weather Radio announcements, a Fishery Bulletin release, and e-mail announcements to the appropriate state agency personnel and fishery management councils.

Comment 9: The Council and the fisherman commented that the mass strandings cited in the rule summary could have been the result of cold-water stunning and that there is no proof that the 280 turtles found were a result of fisheries activity given that only 4 were found stranded with portions of net still attached. Conversely, the individual Council member commented that the strandings occurred too late in the year to be attributed to cold-water stunning and that lack of gear on the turtles would be expected since no fisherman would leave evidence of gear on a dead turtle.

Response: Based upon the timing of the mass stranding incidents in 2000 as well as other evidence, NMFS remains confident in its conclusion that a large-mesh gillnet fishery was the primary source of mortality to listed sea turtles during the referenced event. The 2000 strandings occurred in April and May, which is likely too late in the year for a large cold-water stunning event. NMFS also reviewed satellite sea-surface temperature images and found no data to support cold-stunning at that time. During the mass stranding event 4 individuals were found entangled in large-mesh gillnet gear and no other fisheries were operating at that time which could have contributed to such large impacts. It is unusual to find stranded sea turtles entangled in gillnet gear. The occurrence of these four turtles carrying gillnet gear in the same stranding event is suggestive of how high the level of turtle interaction may have been. In addition, strandings began increasing dramatically during April and May since 1995, concurrent with the start of the monkfish gillnet fishery off North Carolina.

Comment 10: The Council and the fisherman commented on the fishing effort and stranding differences between 2000 and 2001. The Council felt that there was no support for the statement that monkfish gillnet fishing occurred farther north in 2001, when there were few turtle strandings, compared to 2000 when the mass stranding occurred. They also stated that few sea turtle takes aboard monkfish gillnet boats were observed in 2001 despite nearly 100–percent observer coverage. The commenters used a straight-line extrapolation based on 2000 stranding levels and fishing effort and concluded that the 2001 fishing effort should have resulted in 59 observed strandings instead of 11, thus demonstrating that the 2000 levels cannot be attributed to the fishery.

Response: Observer data and vessel trip reporting (VTR) data support NMFS' assertion that the fishery moved north earlier in the season in 2001 compared to 2000. In 2001, with observers on board a large percentage of the monkfish gillnet trips, the latest trips in North Carolina occurred on April 23 and 24. All monkfish vessels had pulled their gear and headed to Chincoteague, VA by April 24, 2001 at the latest, with most heading north at least a week or more prior to that date. In 2000, based upon VTR data, monkfish boats continued gillnetting in North Carolina waters south of the 36th parallel as late as May 13th. In addition,

despite the intent to do so, observer coverage did not reach 100 percent in 2001. From March 27 to June 20, observer coverage in North Carolina and Virginia was 70 percent for boats that possessed limited access permits and 90 percent for boats that were operating under an Exempted Fishery Permit (the blackfin monkfish EFP). There were a total of 4 loggerhead takes observed over 171 trips, but additional takes may have occurred on trips that did not have observer coverage and therefore were not documented. A straight-line extrapolation based on strandings is not an appropriate means of determining the take from one year to the next. As stated in the response to comment 5, strandings likely represent less than 13 percent of the actual at-sea mortality (Epperly *et al.* (1996). Many carcasses never reach the beach and are transported offshore by bottom currents. Fluctuations in weather patterns that affect offshore winds or currents may determine the level of carcasses that wash ashore each year. Sea turtle presence, abundance, and distribution are also affected by oceanographic features such as sea surface temperatures and convergence zones which may vary year to year. Changes in these environmental parameters affect both the proportion of at-sea mortality represented in beach strandings and the probability that a fishing operation will interact with a sea turtle.

Comment 11: The Council, the fisherman, and NCDMF all commented that they felt the original rolling closure proposal by the North Carolina fishermen was sound and should be enacted instead of the restrictions in the interim final rule. They felt that NMFS' utilization of a stricter version of a closure based upon the fishermen's proposal was a violation of a good faith, proactive effort by the fishermen. NCDMF also requested that in addition to using the fishermen's version of the restrictions, the rule should expire every December 31 to review the effectiveness and impact of the rule.

Response: NMFS recognizes and appreciates the fact that the North Carolina fishermen were taking a proactive approach to an important problem. However, the restrictions proposed by the fishermen were not sufficient to provide the necessary protections for sea turtles. Analysis of data on water temperature and turtle distributions resulted in the timing and areas chosen for the rolling closures. The fishermen's plan that closures be based upon three consecutive days of 60 degrees Fahrenheit (15.6 degrees Celsius) sea surface temperature does not reflect the temperature cutoff that sea turtles avoid. Data have shown that sea turtles can regularly be found in water as low as 11 degrees Celsius (approximately 52 degrees Fahrenheit). In addition, the fishermen's plan was based on measuring sea surface temperatures for 3 consecutive days prior to enacting a closure. This plan would result in a delay in implementing restrictions when they are needed to protect turtles. A yearly expiration for the final rule would be impracticable. Implementing a new rule every year would be a very time intensive process, would potentially result in delays in implementing the necessary restrictions, and would be unnecessary based upon the information available. However, rules are always open to review and amendment based upon new information.

Comment 12: The EOs commented that NMFS should implement and fund an observer program of 20–percent coverage for all small-mesh gillnet fisheries during the times of year when previous mass strandings have occurred.

Response: NMFS is continually exploring ways to obtain more data on fishery interactions with protected species. While not necessarily 20 percent coverage, small-mesh gillnet trips are observed annually in Virginia and North Carolina. Some observer coverage of gillnet fisheries using gear with stretched mesh smaller than 8 inches (20.3 cm) is occurring in Pamlico Sound under an ESA section 10 permit with the state of North Carolina. Observer coverage under that permit is 10 percent. Funding and manpower availability constraints do not currently allow for a full-scale observer program to cover all small-mesh fisheries.

Comment 13: NCDMF commented that the mesh size for the rule should be changed to 7 (17.8 cm) inches instead of 8 inches (20.3 cm) because some fisheries that have the same impact may have been left out of the restrictions.

Response: NMFS agrees that gillnets with 7 inch (17.8 cm) mesh size can pose a threat of capturing and killing sea turtles. However, when NMFS was developing the interim final rule, the primary concern was the fishing effort in the monkfish fishery, based on recent turtle strandings and the management changes in the fishery. NMFS attempted to limit the effect of the interim final rule to gear that is, or might be used to target monkfish and that had been shown to have the highest impact on sea turtles. NMFS intends to investigate the need for an amendment to this rule that would consider, as one alternative, extending the restrictions for gillnets with stretched mesh greater than 8 inches (20.3 cm) into North Carolina and Virginia state waters. NMFS will also investigate and consider additional mesh-size restrictions for both Federal and state waters (See Comment and Response #2). NMFS recognizes the complexity of addressing the impacts of fishing activities, particularly gillnet fisheries, on sea turtles. NMFS has previously announced its intent to implement a comprehensive, gear-based management approach (see 66 FR 39474, July 31, 2001) but believes that the degree of threat to sea turtles from large-mesh gillnets is so significant that measures must be taken now, in advance of the more comprehensive strategy.

Comment 14: The Council commented that because Framework 1 of the FMP, which limited monkfish trips per vessel, was adopted by the Councils, no action is needed and this rule is not necessary.

Response: Although the emergency measures (67 FR 35928; effective May 17, 2002) which replaced Framework 1 reduced the Southern Fishery Management Area (SFMA) monkfish trip limits as originally approved by the Councils, these measures are in effect through November 18, 2002, only. In addition, the emergency measures did not further limit the number of monkfish vessels that could fish in the SFMA. Therefore, even if these trip limits were extended by final rule, an influx of monkfish vessels to the SFMA in the spring, as has been seen in the past, could result in an increase in gillnet fishing effort despite the reduction in trip limits. For example, in light of recent changes to the multispecies fishery, the Councils are considering a measure that would enable vessels to use their allocated monkfish days-at-sea (DAS) separate from multispecies DAS (currently vessels possessing both have to use a multispecies DAS when fishing under a monkfish DAS). Finally, although the interim final rule makes main reference to the monkfish fishery, the restrictions are not specific to one fishery. Large-mesh gillnet gear poses an entanglement risk to sea turtles wherever this gear type and sea turtles occur. Given the occurrence of sea turtles in Federal waters off of North Carolina and Virginia, these measures are necessary to reduce the risk of sea turtle interactions with large-mesh gillnet gear.

Adoption of the Seasonally Adjusted Closure of Large-mesh Gillnet Fishing in the Mid-Atlantic as a Final Rule

After considering public comment received on NMFS' proposal to

permanently adopt the seasonal restrictions on large-mesh gillnetting in the Mid-Atlantic EEZ, NMFS has determined that the restrictions are necessary to adequately protect endangered and threatened species of sea turtles and that the restrictions should be enacted permanently, without change, through this final rule. Some comments suggested more restrictive actions to regulate gillnet fishing for sea turtle protection (see Comments #2 and 13). NMFS is not enacting more restrictive measures than those originally proposed but will investigate the necessity for additional measures to protect sea turtles, and, if warranted, will consider alternative actions and seek public comment on a proposed rule.

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Epperly, S.P.and J. Braun-McNeill. 2002. The Use of AVHRR Imagery and the Management of Sea Turtle Interactions in the Mid Atlantic Bight. NMFS Southeast Fisheries Science Center. Unpublished.

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Norrgard, J. 1995. Determination of stock composition and natal origin of a juvenile loggerhead turtle population (*Caretta caretta*) in Chesapeake Bay using mitochondrial DNA analysis. M.S. Thesis, College of William and Mary, Gloucester Point, Virginia, 47 pp.

Rankin-Baransky, K., C.J. Williams, A.L. Bass, B.W. Bowen, and J.R. Spotila. 2001. Origin of loggerhead turtle (*Caretta caretta*) strandings in the northwest Atlantic as determined by mtDNA analysis. J. Herpetology.

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TEWG (Turtle Expert Working Group). 2000. Assessment update for the Kemp's ridley and loggerhead sea turtle populations in the western North Atlantic. U.S. Dep. Commer. NOAA Tech. Mem. NMFS-SEFSC–444, 115 pp.

Classification

NMFS prepared an Environmental Assessment (EA) for the final rule and concluded that these regulations would neither pose a significant adverse environmental impact nor have a significant effect on the quality of the human environment. The actions implemented by this final rule are expected to impact approximately 20 to 25 monkfish gillnet vessel owners and operators. Seven alternatives were evaluated in the EA prepared for this rule, including a ''no action'' alternative. For a description and analysis of the alternatives, copies of the EA may be requested at the addresses listed above.

Because a general notice of proposed rulemaking was not required 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. However, the total cost to the monkfish fishery is expected to be minimal. The primary effect of this final rule will be to establish restrictions in an area which is not heavily used by the fishery and to set required dates for the northward movement of the fishery up through 37°56.0′ N (Chincoteague, VA) in order to avoid sea turtle interactions. Based on VTR data from May 1998 through April 2001, the Virginia and North Carolina trips make up a small part of the total effort in the monkfish sink gillnet fishery. Together they represent 5.1 percent of the monkfish tail weight, 0.9 percent of the liver weight, and 4.1 percent of the total gillnet trips. The fishery normally migrates northward anyway as it follows the monkfish movements. This rule does not prevent or limit fishermen from moving north of 37°56.0′N (Chincoteague, VA) to prosecute the fishery, although the small number of vessels in this fishery that are based in North Carolina and Virginia would have extra fuel costs that would impact profitability. In 2002, a number of trips were landed in Virginia waters during the time frame of the large mesh gillnet restrictions, indicating that these vessels were likely fishing north of the closed area. This rule does not impact any available DAS or catch limits established under previous regulations.

This final rule does not contain collection-of-information requirements subject to the Paperwork Reduction Act.

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

This final rule is consistent with the ESA and other applicable laws.

In keeping with the intent of Executive Order 13132 to provide continuing and meaningful dialogue on issues of mutual state and Federal interest, NMFS has conferred with the States of North Carolina and Virginia regarding the need for NMFS to implement this rule to protect listed sea turtles.

List of Subjects

50 CFR Part 222

Administrative practice and procedure, Endangered and threatened Species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

50 CFR Part 223

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and record keeping requirements.

Dated: November 26, 2002.

Rebecca Lent,

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

For the reasons set out in the preamble, 50 CFR parts 222 and 223 are amended to read as follows:

PART 222—GENERAL ENDANGERED AND THREATENED MARINE SPECIES

1. The authority citation for part 222 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*; 16 U.S.C. 742a *et seq.*; and 31 U.S.C. 9701 *et seq.*

2. In § 222.102, add the definition for ''Gillnet'' in alphabetical order to read as follows:

§ 222.102 Definitions.

* * * * *

Gillnet means a panel of netting, suspended vertically in the water by floats along the top and weights along the bottom, to entangle fish that attempt to pass through it.

* * * * *

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

2. In § 223.206, paragraph (d) introductory text is revised and paragraph (d)(8) is added to read as follows:

§ 222.206 Exceptions to prohibitions relating to sea turtles.

* * * * *

(d) *Exception for incidental taking.* The prohibitions against taking in

§ 223.205(a) do not apply to the incidental take of any member of a threatened species of sea turtle (i.e., a take not directed toward such member) during fishing or scientific research activities, to the extent that those involved are in compliance with all applicable requirements of paragraphs (d)(1) through (d)(8) of this section, or in compliance with the terms and conditions of an incidental take permit issued pursuant to paragraph (a)(2) of this section.

* * * * *

(8) *Restrictions applicable to large-mesh gillnet fisheries in the mid-Atlantic region*. No person may fish (including, but not limited to, setting, hauling back, or leaving in the ocean) with, or possess any gillnet with a stretched mesh size larger than 8 inches (20.3 cm), unless all gillnets are covered with canvas or other similar material and lashed or otherwise securely fastened to the deck or the rail, and all buoys larger than 6 inches (15.24 cm) in diameter, high flyers, and anchors are disconnected. This restriction applies in the Atlantic Exclusive Economic Zone (as defined in 50 CFR 600.10) during the following time periods and in the following areas:

(i) Waters north of 33°51.0′ N (North Carolina/South Carolina border at the coast) and south of 35°46.0′ N (Oregon Inlet) at any time;

(ii) Waters north of 35°46.0′ N (Oregon Inlet) and south of 36°22.5′ N (Currituck Beach Light, NC) from March 16 through January 14;

(iii) Waters north of 36°22.5′ N (Currituck Beach Light, NC) and south of 37°34.6′ N (Wachapreague Inlet, VA) from April 1 through January 14; and

(iv) Waters north of 37°34.6′ N (Wachapreague Inlet, VA) and south of 37°56.0′ N (Chincoteague, VA) from April 16 through January 14.

[FR Doc. 02–30605 Filed 12–2–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 001128334–2292–10; I.D. 112702B]

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

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

ACTION: Temporary rule.

SUMMARY: The Assistant Administrator for Fisheries (AA), NOAA, announces temporary restrictions consistent with the requirements of the Atlantic Large Whale Take Reduction Plan's (ALWTRP) implementing regulations. These restrictions apply to lobster trap and anchored gillnet fishermen in an area totaling approximately 1,600 square nautical miles (nm^2) (2,965 km^2), east of Portsmouth, NH, called Jeffreys Ledge, for 15 days. The purpose of this action is to provide immediate protection to an aggregation of North Atlantic right whales (right whales).

DATES: Effective beginning at 0001 hours December 5, 2002, through 2400 hours December 20, 2002.

ADDRESSES: Copies of the proposed and final Dynamic Area Management rules, Environmental Assessment (EA), Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, and progress reports on implementation of the ALWTRP may also be obtained by writing Diane Borggaard, NMFS/Northeast Region, One Blackburn Drive, Gloucester, MA 01930.

Several of the background documents for the ALWTRP and the take reduction planning process can be downloaded from the ALWTRP web site at *http://www.nero.nmfs.gov/whaletrp/.*

FOR FURTHER INFORMATION CONTACT: Diane Borggaard, NMFS/Northeast Region, 978–281–9145; or Patricia Lawson, NMFS, Office of Protected Resources, 301–713–2322.

SUPPLEMENTARY INFORMATION: The ALWTRP was developed pursuant to section 118 of the Marine Mammal Protection Act (MMPA) to reduce the incidental mortality and serious injury of four species of whales (right whales, fin, humpback, and minke) due to incidental interaction with commercial fishing activities. The ALWTRP, implemented through regulations codified at 50 CFR 229.32, relies on a combination of fishing gear modifications and time/area closures to reduce the risk of whales becoming entangled in commercial fishing gear (and potentially suffering serious injury or mortality as a result).

On January 9, 2002, NMFS published the final rule to implement the ALWTRP's Dynamic Area Management (DAM) program (67 FR 1133). The DAM program provides specific authority for NMFS to temporarily restrict the use of lobster trap and anchored gillnet fishing gear in areas north of 40°N. lat. on an expedited basis to protect right whales. Under the DAM program, NMFS may: (1) require the removal of all lobster trap and anchored gillnet fishing gear for a 15–day period; (2) allow lobster trap and anchored gillnet fishing within a DAM zone with gear modifications determined by NMFS to sufficiently reduce the risk of entanglement; or (3) issue an alert to fishermen requesting the voluntary removal of all lobster trap and anchored gillnet gear for a 15–day period, and asking fishermen not to set any additional gear in the DAM zone during the 15–day period.

A DAM zone is triggered when NMFS receives a reliable report from a qualified individual of three or more right whales sighted within an area (75nm^2 (139 km^2)) such that right whale density is equal to or greater than 0.04 right whales per nm^2 (1.85 km^2). A qualified individual is an individual ascertained by NMFS to be reasonably able, through training or experience, to identify a right whale. Such individuals include, but are not limited to, NMFS staff, U.S. Coast Guard and Navy personnel trained in whale identification, scientific research survey personnel, whale watch operators and naturalists, and mariners trained in whale species identification through disentanglement training or some other training program deemed adequate by NMFS. A reliable report would be a credible right whale sighting.

On November 20, 2002, NMFS Aerial Survey Team reported a sighting of 8 right whales in the proximity of 43° 00′ N lat. and 70° 08′ W long. This position lies east of Portsmouth, NH, in an area called Jeffreys Ledge.

Once a DAM zone is triggered, NMFS determines whether to impose restrictions on fishing and/or fishing gear in the zone. This determination is based on the following factors, including but not limited to: the location of the DAM zone with respect to other fishery closure areas, weather conditions as they relate to the safety of human life at sea, the type and amount of gear already present in the area, and a review of recent right whale entanglement and mortality data.

NMFS has reviewed the factors and management options noted above and, through this action, restricts lobster trap and gillnet gear set in the waters bounded by:

43°19′N, 70°35′W (NW Corner)
43°19′N, 69°40′W
42°39′N, 69°40′′W
42°39′N, 70°35′W (SW Corner)

Please note that the western DAM boundary (70°35′W) from 43°11′N due north to 43°19′N will follow the coastline.

The restrictions for the DAM zone are as follows: All anchored gillnet and lobster trap gear must be removed from these waters and no new gear may be set during the 15–day restricted period. The restrictions will be in effect beginning at 0001 hours December 5, 2002, through 2400 hours December 20, 2002, unless terminated sooner or extended by NMFS, through another notification in the **Federal Register**. The restrictions will be announced to state officials, fishermen, Atlantic Large Whale Take Reduction Team (ALWTRT) members, and other interested parties through e-mail, phone contact, NOAA website, and other appropriate media immediately upon filing with the **Federal Register**.

Classification

In accordance with section 118(f)(9) of the MMPA, the Assistant Administrator (AA) has determined that this action is necessary to implement a take reduction plan to protect North Atlantic right whales.

This action falls within the scope of alternatives and impacts analyzed in the Final EA prepared for the ALWTRP's DAM program. Further analysis under the National Environmental Policy Act (NEPA) is not required.

Providing prior notice and an opportunity for public comment on this action would prevent NMFS from executing its functions to protect and reduce serious injury and mortality of endangered right whales. To meet the goals of the DAM program, the agency needs to be able to create a DAM zone and implement restrictions on fishing gear as soon as possible once the criteria are triggered and NMFS determines that a DAM restricted zone is appropriate. The criteria were triggered with respect to this temporary rule on November 20, 2002. If NMFS were to provide notice and an opportunity for public comment prior to the creation of a DAM restricted zone, the aggregated right whales would be vulnerable to entanglement which could result in serious injury and mortality. Therefore, pursuant to 5 U.S.C. 553(b)(B), the AA finds that good cause exists to waive notice and an opportunity to comment on this action to implement a DAM restricted zone to reduce the risk of entanglement of endangered right whales in commercial lobster trap and anchored gillnet gear as such procedures would be impracticable.

For the same reasons, the AA finds that, under 5 U.S.C. 553(d)(3), good cause exists to waive the 30–day delay in effective date. If NMFS were to delay for 30 days the effective date of this action, the aggregated right whales would be vulnerable to entanglement which could result in serious injury and mortality. Nevertheless, NMFS recognizes the need for fishermen to have time to remove their gear from a DAM zone once one is approved. Thus, NMFS makes this action effective beginning at 0001 hours December 5, 2002, through 2400 hours December 20, 2002. NMFS will also endeavor to provide notice of this action to fishermen through other means as soon as possible.

NMFS determined that the regulations establishing the DAM program and actions such as this one taken pursuant to those regulations are consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of the U.S. Atlantic coastal states. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. Following state review of the regulations creating the DAM program, no state disagreed with NMFS' conclusion that the DAM program is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program for that state.

The DAM program under which NMFS is taking this action contains policies with federalism implications warranting preparation of a federalism assessment under Executive Order 13132. Accordingly, in October 2001, the Assistant Secretary for Intergovernmental and Legislative Affairs, DOC, provided notice of the DAM program to the appropriate elected officials in states to be affected by actions taken pursuant to the DAM program. Federalism issues raised by state officials were addressed in the final rule implementing the DAM program. A copy of the federalism Summary Impact Statement for that final rule is available upon request (**ADDRESSES**).

This rule has been determined to be not significant under Executive Order 12866.

Authority: 16 U.S.C. 1361 *et seq.* and 50 CFR 229.32(g)(3)

Dated: November 29, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory ProgramsNational Marine Fisheries Service.

[FR Doc. 02–30774 Filed 11–29–02; 2:54 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 001005281–0369–02; I.D. 112602D]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Closure

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

ACTION: Closure.

SUMMARY: NMFS closes the commercial fishery for king mackerel in the exclusive economic zone (EEZ) in the northern Florida west coast subzone. This closure is necessary to protect the Gulf king mackerel resource.

DATES: The closure is effective 12:01 a.m., local time, November 30, 2002, through June 30, 2003.

FOR FURTHER INFORMATION CONTACT: Mark Godcharles, telephone 727–570–5305, fax 727–570–5583, e-mail *Mark.Godcharles@noaa.gov.*

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Based on the Councils' recommended total allowable catch and the allocation ratios in the FMP, on April 30, 2001 (66 FR 17368, March 30, 2001), NMFS implemented a commercial quota of 2.25 million lb (1.02 million kg) for the eastern zone (Florida) of the Gulf migratory group of king mackerel. That quota is further divided into separate quotas for the Florida east coast subzone and the northern and southern Florida west coast subzones. On April 27, 2000, NMFS implemented the final rule (65 FR 16336, March 28, 2000) that divided the Florida west coast subzone of the eastern zone into northern and southern subzones, and established their separate

quotas. The quota implemented for the northern Florida west coast subzone is 168,750 lb (76,544 kg)(50 CFR 622.42(c)(1)(i)(A)(*2*)(*ii*)).

Under 50 CFR 622.43(a)(3), NMFS is required to close any segment of the king mackerel commercial fishery when its quota has been reached, or is projected to be reached, by filing a notification at the Office of the **Federal Register**. NMFS has determined that the commercial quota of 168,750 lb (76,544 kg) for Gulf group king mackerel in the northern Florida west coast subzone was reached on November 30, 2002. Accordingly, the commercial fishery for king mackerel in the northern Florida west coast subzone is closed at 12:01 a.m., local time, November 30, 2002, through June 30, 2003, the end of the fishing year.

The Florida west coast subzone is that part of the eastern zone south and west of 25°20.4′ N. lat. (a line directly east from the Miami-Dade County, FL, boundary). The Florida west coast subzone is further divided into northern and southern subzones. The northern subzone is that part of the Florida west coast subzone that is between 26°19.8′ N. lat. (a line directly west from the Lee/Collier County, FL boundary) and 87°31′06'' W. long. (a line directly south from the Alabama/Florida boundary).

NMFS previously determined that the commercial quota for king mackerel from the western zone of the Gulf of Mexico was reached and closed that segment of the fishery on October 25, 2002 (67 FR 65902, October 29, 2002). Thus, with this closure, all commercial fisheries for Gulf group king mackerel in the EEZ are closed from the U.S./Mexico border through the northern Florida west coast subzone through June 30, 2003.

Except for a person aboard a charter vessel or headboat, during the closure, no person aboard a vessel for which a commercial permit for king mackerel has been issued may fish for Gulf group king mackerel in the EEZ in the closed zones or subzones. A person aboard a vessel that has a valid charter vessel/headboat permit for coastal migratory pelagic fish may continue to retain king mackerel in or from the closed zones or subzones under the bag and possession limits set forth in 50 CFR 622.39(c)(1)(ii) and (c)(2), provided the vessel is operating as a charter vessel or headboat. A charter vessel or headboat that also has a commercial king mackerel permit is considered to be operating as a charter vessel or headboat when it carries a passenger who pays a fee or when there are more than three persons aboard, including operator and crew.

During the closure, king mackerel from the closed zones or subzones taken in the EEZ, including those harvested under the bag and possession limits, may not be purchased or sold. This prohibition does not apply to trade in king mackerel from the closed zones or subzones that were harvested, landed ashore, and sold prior to the closure and were held in cold storage by a dealer or processor.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to close the fishery constitutes good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(3)(B), as such procedures would be unnecessary and contrary to the public interest. Similarly, there is a need to implement these measures in a timely fashion to prevent an overrun of the commercial quota of Gulf group king mackerel, given the capacity of the fishing fleet to harvest the quota quickly. Any delay in implementing this action would be impractical and contradictory to the Magnuson-Stevens Act, the FMP, and the public interest. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is waived.

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

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

Dated: November 27, 2002.

Bruce C. Morehead,

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

[FR Doc. 02–30603 Filed 11–27–02; 2:42 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 112602E]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Trip Limit Reduction

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

ACTION: Trip limit reduction.

SUMMARY: NMFS reduces the trip limit in the commercial hook-and-line fishery for king mackerel in the northern Florida west coast subzone to 500 lb (227 kg) of king mackerel per day in or from the exclusive economic zone (EEZ). This trip limit reduction is necessary to protect the Gulf king mackerel resource.

DATES: This rule is effective 12:01 a.m., local time, November 30, 2002, through June 30, 2003, unless changed by further notification in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mark Godcharles, telephone 727–570–5305, fax 727–570–5583, e-mail *Mark.Godcharles@noaa.gov*.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Based on the Councils' recommended total allowable catch and the allocation ratios in the FMP, on April 30, 2001 (66 FR 17368, March 30, 2001), NMFS implemented a commercial quota of 2.25 million lb (1.02 million kg) for the eastern zone (Florida) of the Gulf migratory group of king mackerel. That quota is further divided into separate quotas for the Florida east coast subzone and the northern and southern Florida west coast subzones. On April 27, 2000, NMFS implemented the final rule (65 FR 16336, March 28, 2000) that divided the Florida west coast subzone of the eastern zone into northern and southern subzones, and established their separate quotas. The quota for the northern Florida west coast subzone is 168,750 lb (76,544 kg)(50 CFR 622.42(c)(1)(i)(A)(*2*)(*ii*)).

In accordance with 50 CFR 622.44(a)(2)(ii)(B), from the date that 75 percent of the northern Florida west coast subzone's quota has been harvested until a closure of the subzone's fishery has been effected or the fishing year ends, king mackerel in or from the EEZ may be possessed on board or landed from a permitted vessel

in amounts not exceeding 500 lb (227 kg) per day.

NMFS has determined that 75 percent of the quota for Gulf group king mackerel from the northern Florida west coast subzone has been reached. Accordingly, a 500–lb (227–kg) trip limit applies to vessels in the commercial fishery for king mackerel in or from the EEZ in the northern Florida west coast subzone effective 12:01 a.m., local time, November 30, 2002. The 500–lb (227–kg) trip limit will remain in effect until the fishery closes or until the end of the current fishing year (June 30, 2003), whichever occurs first.

The Florida west coast subzone is that part of the eastern zone south and west of 25°20.4′ N. lat. (a line directly east from the Miami-Dade County, FL, boundary). The Florida west coast subzone is further divided into northern and southern subzones. The northern subzone is that part of the Florida west coast subzone that is between 26°19.8′ N. lat. (a line directly west from the Lee/Collier County, FL boundary) and 87°31′06′ W. long. (a line directly south from the Alabama/Florida boundary).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to reduce the trip limit constitutes good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(3)(B), as such procedures would be unnecessary and contrary to the public interest. Similarly, there is a need to implement these measures in a timely fashion to prevent an overrun of the commercial quota of Gulf group king mackerel, given the capacity of the fishing fleet to harvest the quota quickly. Any delay in implementing this action would be impractical and contradictory to the Magnuson-Stevens Act, the FMP, and the public interest. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is waived.This action is taken under 50 CFR 622.44(a)(2)(iii) and is exempt from review under Executive Order 12866.

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

Dated: November 27, 2002.

Bruce C. Morehead,

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

[FR Doc. 02–30604 Filed 11–27–02; 2:42 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 232
Tuesday, December 3, 2002

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–56–AD]

RIN 2120–AA64

Airworthiness Directives; Twin Commander Aircraft Corporation Models 690D, 695A, and 695B Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Twin Commander Aircraft Corporation (TCAC) Models 690D, 695A, and 695B airplanes. The proposed AD would require you to initially inspect and modify and repetitively inspect areas of the wing and fuselage structure for fatigue damage and modify or replace any damaged parts. The proposed AD is the result of tests that show that the service life of certain airplane parts cannot be reached unless an inspection and modification program (with any necessary replacements or modifications if fatigue damage is found) is incorporated. The actions specified by the proposed AD are intended to detect and correct fatigue damage in the wing and fuselage areas without reducing the service life of the airplane. Such undetected and uncorrected damage could result in structural failure with consequent loss of control of the airplane.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule by January 31, 2003.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–56–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9-ACE–7-Docket@faa.gov.* Comments sent electronically must contain ''Docket No. 2000–CE–56–AD'' in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get the service information referenced in the proposed AD from the Twin Commander Aircraft Corporation, 19010 59th Drive NE., Arlington, Washington 98223–7832; telephone: (360) 435–9797; facsimile: (360) 435–1112. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Della Swartz, Aerospace Engineer, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW, Renton, Washington 98055–4065; telephone: (425) 687–4246; facsimile: (425) 687–4248.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention To?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the proposed rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I Be Sure FAA Receives My Comment?

If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 2000–CE–56–AD.'' We will date stamp and mail the postcard back to you.

Discussion

What Events Have Caused This Proposed AD?

The FAA has received results of fatigue testing of the wing and fuselage structure on Models 690D, 695A, and 695B airplanes. These results reveal that fatigue damage could occur prior to the published service lives.

TCAC has developed an inspection and modification program to detect and correct fatigue damage in the wing and fuselage areas without reducing the service life of the airplanes.

What Are the Consequences if the Condition Is Not Corrected?

Such fatigue damage, if not detected and corrected, could result in structural failure with consequent loss of control of the airplane.

Relevant Service Information

Is There Service Information That Applies to This Subject?

TCAC has issued the following service information:

—Twin Commander Aircraft Corporation Mandatory Service Bulletin No. 214, dated January 26, 2000, which includes procedures, schedules, and drawings for repetitively inspecting and modifying the wing and fuselage areas of the affected airplanes;

—Twin Commander Aircraft Corporation Service Publications revision notice to Service Bulletin No. 214, Revision 1, Release Date: April 19, 2000, which changes compliance schedules and clarifies information presented in Twin Commander Aircraft Corporation Mandatory Service Bulletin No. 214, dated January 26, 2000; and

—Twin Commander Aircraft Corporation Service Publications

revision notice to Service Bulletin No. 214, Revision 2, Release Date: May 21, 2001, which changes compliance schedules and clarifies information presented in Twin Commander Aircraft Corporation Mandatory Service Bulletin No. 214, dated January 26, 2000.

The FAA's Determination and an Explanation of the Provisions of the Proposed AD

What Has FAA Decided?

After examining the circumstances and reviewing all available information related to the incidents described above, we have determined that:

—The unsafe condition referenced in this document exists or could develop on other TCAC Model 690D, 695A, and 695B airplanes of the same type design;

—The inspections and modifications (and necessary replacements or modifications if fatigue damage is found) specified in the service information should be accomplished on the affected airplanes; and

—FAA should take AD action to correct this unsafe condition.

What Would the Proposed AD Require?

The proposed AD would require you to repetitively inspect areas of the wing and fuselage structure for fatigue damage and modify or replace any damaged parts.

Compliance Time

Why Is the Initial Compliance Time Presented in Hours Time-in-service (TIS) and Calendar Time?

Normally, fatigue problems would carry a compliance time based solely upon hours TIS, *e.g.*, upon accumulating a certain amount of hours TIS. However, the number of airplanes that still need to have the initial actions of the proposed AD accomplished compared to the number of authorized repair centers justifies a compliance time of both hours TIS and calendar time, whichever occurs first.

TCAC estimates 125 airplanes worldwide (about 87 percent of the worldwide fleet) that still need to have the initial proposed inspections accomplished. This 87 percent would amount to 94 of the 108 U.S.- registered airplanes with only 7 authorized service centers accredited to do the work. The FAA has worked with TCAC in establishing a compliance table that categorizes the airplanes based upon the amount of hours TIS each airplane has accumulated.

This would ensure that the service centers have adequate time to accomplish the proposed actions.

Cost Impact

How Many Airplanes Does This Proposed AD Impact?

We estimate the proposed AD would affect 108 airplanes in the U.S. registry.

What Would Be the Cost Impact of the Proposed AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to do the proposed inspection for TCAC Models 690D, 695A, and 695B airplanes:

Inspection only labor cost for each airplane	Total inspection cost on U.S. Operators
Minimum 270 workhours × $60 per hour = $16,200	Minimum: $1,749,600.
Maximum 416 workhours × $60 each hour = $24,960	Maximum: $2,695,680.

We estimate the following costs to do any necessary modifications that would be required based on the results of the proposed inspection. We have no way of finding out the number of airplanes that may need modifications:

Costs	Minimum	Maximum
Labor Costs	81 workhours × $60 per hour = $4,860	2,790 workhours × $60 per hour = $167,400.
Estimated Parts Cost	$2,847	$65,978.
Estimated Total Cost for Each Airplane	$7,707	$233,378.
Total Cost on U.S. Operators	$832,356	$25,204,824.

Regulatory Impact

Would This Proposed AD Impact Various Entities?

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

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

Twin Commander Aircraft Corporation:

Docket No. 2000–CE–56–AD.

(a) *What airplanes are affected by this AD?* The following Twin Commander Aviation Corporation (TCAC) airplane models and serial numbers that are certificated in any category:

Model	Serial numbers
690D	15001 through 15036 and 15038 through 15040.
695A	96001 through 96062, 96065 through 96068, 96070, 96071, 96073, 96074, 96076, 96077, and 96079 through 96084, 96086, 96087, and 96089 through 96100.
695B	96063, 96069, 96075, 96078, 96085, and 96204 through 96208.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct fatigue damage in the wing and fuselage areas without reducing the service life of the airplane. Such undetected and uncorrected damage could result in structural failure with consequent loss of control of the airplane.

(d) *What must I do to address this problem?* To address this problem, you must initially inspect and modify the wing and fuselage areas (Part 1 Inspection/Modifications as identified in Twin Commander Aircraft Corporation Mandatory Service Bulletin No. 214, dated January 26, 2000) and repetitively inspect with necessary modification or replacement of damaged parts (Part 2 Recurrent Inspections as identified in Twin Commander Aircraft Corporation Mandatory Service Bulletin No. 214, dated January 26, 2000) in accordance with the following schedules:

(1) *Part 1 Initial Inspections/Modifications:* Initially (unless already done) accomplish the Part 1 Inspections/Modifications at whichever compliance time in paragraph (d)(1)(i) or (d)(1)(ii) of this AD that occurs later:

(i) the compliance times presented in Part 1 Table 1 of of Twin Commander Aircraft Corporation Mandatory Service Bulletin No. 214, dated January 26, 2000; Twin Commander Aircraft Corporation Service Publications revision notice to Service Bulletin No. 214, Revision 1, Release Date: April 19, 2000; and Twin Commander Aircraft Corporation Service Publications revision notice to Service Bulletin No. 214, Revision 2, Release Date: May 21, 2001; or

(ii) the Table A compliance times presented on page 1 of the service information and replicated below:

Current airframe hours time-in-service (TIS)	Initial compliance time
(A) 0000 through 1,700	Upon accumulating 2,700 hours TIS or within the next 36 months after the effective date of this AD, whichever occurs first.
(B) 1,701 through 2,500	Upon accumulating 3,400 hours TIS or within the next 36 months after the effective date of this AD, whichever occurs first.
(C) 2,501 through 3,000	Upon accumulating 3,800 hours TIS or within the next 36 months after the effective date of this AD, whichever occurs first.
(D) 3,001 through 5,000	Upon accumulating 5,500 hours TIS or within the next 30 months after the effective date of this AD, whichever occurs first.
(E) 5,001 through 6,000	Upon accumulating 6,400 hours TIS or within the next 24 months after the effective date of this AD, whichever occurs first.
(F) 6,001 through 7,500	Upon accumulating 7,800 hours TIS or within the next 18 months after the effective date of this AD, whichever occurs first.
(G) Over 7,500	Within the next 12 months after the effective date of this AD.

(2) *Part 2 Recurring Inspections:* Repetitively inspect as referenced in Part 2 Recurring Inspections on page 62 of Twin Commander Aircraft Corporation Mandatory Service Bulletin No. 214, dated January 26, 2000; Twin Commander Aircraft Corporation Service Publications revision notice to Service Bulletin No. 214, Revision 1, Release Date: April 19, 2000; and Twin Commander Aircraft Corporation Service Publications revision notice to Service Bulletin No. 214, Revision 2, Release Date: May 21, 2001.

(3) *Mandatory Replacements and Modifications:* If any damage is found during any inspection required by paragraphs (d), (d)(1), and (d)(2) of this AD, prior to further flight, replace or modify the part as specified in the following:

(i) Twin Commander Aircraft Corporation Mandatory Service Bulletin No. 214, dated January 26, 2000;

(ii) Twin Commander Aircraft Corporation Service Publications revision notice to Service Bulletin No. 214, Revision 1, Release Date: April 19, 2000; and

(iii) Twin Commander Aircraft Corporation Service Publications revision notice to Service Bulletin No. 214, Revision 2, Release Date: May 21, 2001.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Seattle Aircraft Certification Office (ACO), approves your alternative. Send your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance following paragraph (e) of this AD. You should include in the request an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Della Swartz, Aerospace Engineer, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW, Renton, Washington 98055–4065; telephone: (425) 687–4246; facsimile: (425) 687–4248.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can perform the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may get the service information referenced in this AD from the Twin Commander Aircraft Corporation, 19010 59th Drive N.E., Arlington, Washington 98223–7832; telephone: (360) 435–9797; facsimile: (360) 435–1112. You may view these documents at

FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on November 22, 2002.

Dorenda D. Baker,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–30496 Filed 12–2–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–AGL–18]

Proposed Modification of Class D Airspace; Terre Haute, IN; Proposed Establishment of Class E Airspace; Terre Haute, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to modify Class D airspace at Terre Haute, IN, and Establish Class E airspace at Terre Haute, IN. A proposal has been made to reduce the operating hours of the Terre Haute Air Traffic Control Tower (HUF ATCT). The effective hours of the Class D airspace for Terre Haute must coincide with the HUF ATCT's hours of operation. Class E airspace extending upward from the surface is also required to protect aircraft executing Instrument Approach Procedures when the HUF ATCT is closed. This action would modify the effective time of the existing area of Class D airspace, and establish a radius of Class E airspace for Terre Haute International-Hulman Field Airport.

DATES: Comments must be received on or before December 29, 2002.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Regional Counsel, AGL–7, Rules Docket No. 02–AGL–18, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–420, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this document must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 02–AGL–18.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this document may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class D airspace and establish Class E airspace at Terre Haute, IN, by modifying the effective time of the existing Class D airspace and establishing Class E airspace for the Terre Haute International-Hulman Field Airport. Controlled airspace extending upward from the surface of the earth is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class D airspace designations are published in paragraph 5000, and Class E airspace areas extending upward from the surface of the earth are published in paragraph 6005, of FAA Order 7400.9K dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 74.00.9k, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

* * * * *

Paragraph 5000 Class D Airspace

* * * * *

AGL IN D Terre Haute, IN [Revised]

Terre Haute International-Hulman-Field Airport, IN
(Lat. 39°27′05″N., long. 87°18′27″W.)
Terre Haute, Sky King Airport, IN
(Lat. 39°32′52″N., long. 87°22′38″W.)

That airspace extending upward from the surface to and including 3,100 feet MSL within a 5.7-mile radius of the Terre Haute International-Hulman Field Airport, excluding that airspace within a 1-mile radius of Sky King Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from the surface of the earth.

* * * * *

AGL in E2 Terre Haute, IN

Terre Haute International-Hulman Field Airport, IN
(Lat. 39°27′05″N., long. 87°18′27″W.)
Terre Haute, Sky King Airport, IN
(Lat. 39°32′52″N., long. 87°22′38″W.)

Within a 5.7-mile radius of the Terre Haute International-Hulman Field Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Director.

* * * * *

Issued in Des Plaines, Illinois on October 16, 2002.

Nancy B. Shelton,

Manager, Air Traffic Division.

[FR Doc. 02–30610 Filed 12–2–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. FAA–2002–13464; Notice No. 02–17]

RIN 2120–AC84

Improved Seats in Air Carrier Transport Category Airplanes; Extension of Comment Period

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (SNPRM); extension of comment period.

SUMMARY: This action extends the comment period for an SNPRM the FAA issued on September 26, 2002. In that document, the FAA proposed to require that all passenger and flight attendant seats in transport category airplanes used in passenger-carrying operations meet improved crashworthiness standards. This extension is a result of requests from the Aerospace Industries Association (AIA), The Boeing Company (Boeing), and the General Aviation Manufacturers Association (GAMA).

DATES: Send your comments on or before March 3, 2003.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2002–13464 at the beginning of your comments, and you should send two copies of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also send comments through the Internet to *http://dms.dot.gov.* You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Hal Jensen, Aircraft Certification Service, Aircraft Engineering Division, AIR–120, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone: (202) 267–8807, facsimile (202) 267–5340, or E-mail: *hal.jensen@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments about the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel about this proposed rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the web address in the **ADDRESSES** section.

Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this proposal because of the comments we receive.

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

Background

On September 26, 2002, the FAA issued Notice No. 02–17, Improved Seats in Air Carrier Transport Category Airplanes (67 FR 62294, October 4, 2002). Comments to that document were to be received on or before December 3, 2002.

On October 29, 2002, Boeing asked the FAA to extend the comment period on Notice No. 02–17 an additional 4 months. In its petition, Boeing indicates that additional time is necessary to collect and confirm economic data. Boeing adds the SNPRM is significantly different from the FAA's original proposal. On November 5, 2002, AIA asked for a 4–6 month extension of the comment period for the same reasons identified by Boeing. Further, on November 6, 2002, GAMA asked for a 90-day extension. GAMA states the proposal is complex and an extension is

necessary to allow interested parties time to develop meaningful and substantive comments.

While the FAA agrees with the petitioners' requests for an extension of the comment period on Notice No. 02–17, the FAA believes that a 4–6 month extension would be excessive. The FAA believes an added 90 days would be adequate for these petitioners to collect economic data necessary to provide meaningful comment to Notice No. 02–17. This will also allow commenters who may have anticipated an extension in the comment period to send their comments by a date certain. Absent unusual circumstances, the FAA does not anticipate any further extension of the comment period for this rulemaking.

Extension of Comment Period

In accordance with § 11.47(c) of Title 14, Code of Federal Regulations, the FAA has reviewed the petitions made by AIA, Boeing, and GAMA for extension of the comment period to Notice No. 02–17. The FAA finds that extension of the comment period is consistent with the public interest, and that good cause exists for taking this action. These petitioners have a substantive interest in the proposed rule and good cause for the extension.

Accordingly, the comment period to Notice No. 02–17 is extended until March 3, 2003.

Issued in Washington, DC, on November 27, 2002.

John J. Hickey,

Director, Aircraft Certification Service.

[FR Doc. 02–30695 Filed 11–29–02; 12:22 pm]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–46920; File No. S7–48–02]

RIN 3235–AI68

Broker-Dealer Exemption from Sending Certain Financial Information to Customers

AGENCY: Securities and Exchange Commission (''Commission'')

ACTION: Proposed rule.

SUMMARY: We are proposing for comment amendments to a rule under the Securities Exchange Act of 1934 that would provide a conditional exemption from the rule's requirement that a broker-dealer that carries customer accounts send its full balance sheet and certain other financial information to each of its customers twice a year. Under the proposed amendments, the broker-dealer could send its customers only certain information regarding its net capital, as long as it also provided customers with a toll-free number to call for a free copy of its full balance sheet and made its full balance sheet available to customers over the Internet. The proposed amendments are intended to reduce the cost of doing business for a broker-dealer while providing customers of the broker-dealer with free and easy access to the information they need to evaluate the financial soundness of the broker-dealer.

DATES: You should send us your comments so that they arrive at the Commission by January 2, 2003.

ADDRESSES: To help us process and review your comments more efficiently, comments should be sent by one method only. Please send three copies of your comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Alternatively, you may submit your comments electronically to the following electronic-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. S7–48–02; please include this file number in the subject line if you use electronic mail. We will make all comment letters available for public inspection and copying in our public reference room at the above address. We will post electronically submitted comment letters on the Commission's Internet Web site (*http://www.sec.gov*).[1]

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli, Associate Director, at (202) 942–0132; Thomas K. McGowan, Assistant Director, at (202) 942–4886; or Rose Russo Wells, Attorney, at (202) 942–0143; Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–1001.

SUPPLEMENTARY INFORMATION:

I. Background

A broker-dealer that carries customer accounts must generally send its full balance sheet to each of its customers twice a year (once audited and once unaudited) under Section 17(e)(1)(B) of the Securities Exchange Act of 1934 and Exchange Act Rule 17a–5(c).[2] The full balance sheet includes footnote disclosures required by generally accepted accounting principles (''GAAP'') and a footnote disclosing the amount of net capital the broker-dealer held as of the balance sheet date and the minimum amount of net capital we required the broker-dealer to hold as of that date.[3] According to the Commission's Office of Economic Analysis, there are currently 412 broker-dealers subject to the rule that carry a total of approximately 103 million public customer accounts.[4]

When we adopted Rule 17a–5(c) on June 30, 1972,[5] our goal was for broker-dealers to ''directly'' send a customer essential information so that a customer could ''judge whether his broker or dealer is financially sound.'')[6] We adopted the Rule in response to the failures of many broker-dealers holding customer funds and securities in the period between 1968 and 1971. When first adopted, Rule 17a–5(c) required a broker-dealer to send its balance sheet

[1] We do not edit personal identifying information, such as names or electronic-mail addresses, from electronic submissions. You should submit only information that you wish to make publicly available.

[2] Section 240.17a–5(c).

[3] Exchange Act Rule 15c3–1 defines net capital and sets minimum net capital requirements for a broker-dealer. Rule 15c3–1 is designed to ensure that each broker-dealer maintains sufficient liquid assets (those assets that can be readily converted into cash) in excess of liabilities to promptly satisfy the firm's liabilities, including those to customers. A broker-dealer that fails to meet the minimum net capital requirements must cease conducting a securities business.

[4] These estimates are based on reports broker-dealers are required to file with the Commission on Form X–17a–5, ''Financial and Operational Combined Uniform Single Report'' (commonly referred to as FOCUS Reports).

[5] We adopted Rule 17a–5(c) pursuant to Exchange Act Sections 17(a), 10(b), 15(c)(1), (2) and (3), and 23(a). In 1975, Congress passed the Securities Acts Amendments, Pub. L. No. 94–29, 89 Stat. 97, which gave the Commission explicit authority, pursuant to Exchange Act Section 17(e), over the accounting practices of broker-dealers. Section 17(e) provides:

(1)(A) Every registered broker or dealer shall annually file with the Commission a balance sheet and income statement certified by a registered public accounting firm, prepared on a calendar or fiscal year basis, and such other financial statements (which shall, as the Commission specifies, be certified) and information concerning its financial condition as the Commission, by rule may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(B) Every registered broker and dealer shall annually send to its customers its certified balance sheet and such other financial statements and information concerning its financial condition as the Commission, by rule, may prescribe pursuant to subsection (a) of this section.

(C) The Commission, by rule or order, may conditionally or unconditionally exempt any registered broker or dealer, or class of such brokers or dealers, from any provision of this paragraph if the Commission determines that such exemption is consistent with the public interest and the protection of investors.

(2) The Commission, by rule, as it deems necessary or appropriate in the public interest or for the protection of investors, may prescribe the form and content of financial statements filed pursuant to this title and the accounting principles and accounting standards used in their preparation.

[6] Exchange Act Release No. 9658 (June 30, 1972).

to its customers five times a year. We later reduced this to two times a year.[7]

The staff of the Commission's Division of Market Regulation (''Division'') has taken steps to reduce the cost to broker-dealers of complying with Rule 17a–5(c). In a letter of February 26, 2001, the Division provided no-action relief to allow a broker-dealer to send its balance sheet with its quarterly mailing of customer account statements, provided that the broker-dealer also sent certain updated net capital information.[8] Further, the Commission has provided that, with the consent of the customer, a broker-dealer may send its balance sheet electronically.[9]

In July 1998, the Securities Industry Association (''SIA'') [10] requested additional relief on behalf of broker-dealers due to the cost of sending a full balance sheet to each customer and the availability of the Internet as an alternative method of delivery.[11] Full balance sheets for large broker-dealers may be six or more pages long, primarily due to the footnote disclosures required by GAAP.

In response to the request for relief, we issued a conditional exemptive order establishing a pilot program that permitted a broker-dealer that elected to take advantage of the relief to send only its net capital footnote to its customers when it otherwise would have had to send its full balance sheet.[12] One condition of the order was that a customer of the broker-dealer wishing to obtain a copy of the firm's full balance sheet was able to do so, at no cost to the customer, by calling a toll-free number to promptly obtain a paper copy or, with the customer's consent, an electronic copy or by accessing the broker-dealer's Internet website. The relief was designed to reduce the cost to broker-dealers of complying with Rule 17a–5(c) while making it as easy as possible for customers to get the information they need to evaluate the financial soundness of a broker-dealer that may be holding their cash and securities. Participation in the pilot program was voluntary, and broker-dealers that participated in the pilot program were the firms that were likely to benefit most from taking advantage of the exemption. No broker-dealer dropped out of the pilot program. On December 20, 2001, the Commission issued an order extending the pilot program for one year, until December 31, 2002.[13] Today, the Commission issued an order extending the pilot program for six months, until June 30, 2003 (Exchange Act Release No. 46921), during which time the Commission, after receiving and considering comments on these proposed rule amendments, may adopt amendments to Rule 17a–5(c).

During the pilot program, we required a broker-dealer taking advantage of the relief to submit to us a report on the number of times its balance sheet was viewed on its website and the number of requests it received for copies via its toll-free number, and, during the December 31, 2001 to December 31, 2002 extension of the pilot program, written customer complaints it received regarding the exemption. As of July 1, 2002, 29 firms, which hold a total of about 40 million customer accounts, had elected to take advantage of the relief. The reports filed since the program was established on December 10, 1999, through July 1, 2002, show that 1,384 customers have called the toll-free numbers to request copies of the balance sheets and that there were 139,888 total viewings of the balance sheets on the websites of the firms participating in the pilot program. This indicates that customers are using the mechanisms provided by the pilot program to access broker-dealers' financial information. In addition, the reports show that the firms taking advantage of the exemption received no customer complaints regarding the exemption.

II. Description of the Proposed Amendments

We now propose to amend Rule 17a–5(c) to codify the relief we granted in the pilot program. The proposed amendments closely track the text of the orders establishing and extending the pilot program with two substantive exceptions.[14] First, as discussed below, the proposed amendments contain a modification from the pilot program regarding when a firm could take advantage of the relief if it had a net capital deficiency or other disqualifying factor. We also propose to eliminate the requirement contained in the pilot that broker-dealers taking advantage of the relief submit reports to us concerning the number of requests for copies of their balance sheets via their toll-free numbers, the number of viewings of their balance sheets on their websites, and the number of complaints they have received regarding the exemption. The reason for requesting this information in the pilot was to permit the Commission to be able to evaluate how the relief was working, so that the Commission could decide whether to propose permanent relief. At this time, we no longer believe such a reporting requirement would be necessary in the proposed rule amendments. We seek comment on whether the proposed rule amendments should contain a reporting requirement.

The pilot program prevented a broker-dealer from taking advantage of the relief in the event of a net capital deficiency or other disqualifying factor. The proposed amendments would extend the circumstances in which the relief would not be available. The amendments would not allow a broker-dealer to take advantage of the relief if, during the year prior to the date of the broker-dealer's balance sheet, the broker-dealer was required to provide notice to the Commission of the occurrence of any disqualifying event specified in the rule.[15] Disqualifying events would include net capital deficiencies, net capital early warning deficiencies, books and records failures, and internal control or financial disclosure inadequacies and are set out in Exchange Act Rule 17a–11 (b)(1), (c)(2), (c)(3), (d), and (e). In such a situation, a broker-dealer would be required to send all mandated financial information directly to each customer because customers would be more likely to want to review the broker-dealer's balance sheet under the circumstances. In the pilot program, the relief was available to a broker-dealer that had a capital deficiency within the past year that was not corrected within 24 hours as long as the deficiency was corrected by the next date that financial disclosures were required. We changed this provision in the proposed amendments because even if the deficiency was promptly cured, the deficiency might indicate that the broker-dealer's overall financial condition has changed significantly. In those circumstances, we believe that customers should receive the full balance sheet for at least one year after the deficiency is cured. We request comment on whether customers should receive the full balance sheet for a time

[7] Exchange Act Release No. 11187 (Jan. 17, 1975).

[8] Letter of February 26, 2001 from Michael Macchiaroli, Associate Director, to Cheryl M. Kallem, Chairperson, Securities Industry Association (2001 SEC No-Act. LEXIS 523).

[9] Exchange Act Release No. 37182 (May 15, 1996).

[10] The 600 member firms of the SIA include investment banks, broker-dealers, and mutual fund companies.

[11] Letter of July 17, 1998 from Mark Holloway, Chairman, SIA Capital Committee to Michael A. Macchiaroli, Associate Director.

[12] Exchange Act Release No. 42222 (Dec. 10, 1999).

[13] Exchange Act Release No. 45179 (Dec. 20, 2001), 66 FR 67341 (Dec. 28, 2001).

[14] In addition to the two changes discussed here, we have made minor technical corrections and clarifications to the conditions previously set out in the pilot program.

[15] *See* proposed paragraph (c)(5)(vi) of Rule 17a–5.

period that is more than one year or less than one year after the deficiency is cured. In addition, as specified in the proposed amendments, we have extended the disqualifying events to include a failure by the broker-dealer to make and keep current certain of its books and records. We request comment on whether the disqualifying events specified in the proposed amendments, certain of the ''Notification Provisions for Brokers and Dealers'' enumerated in paragraphs (b)(1), (c)(1), (c)(2), (c)(3), (d), and (e) of Rule 17a–11, are appropriate. In particular, are there other circumstances in which it would not be appropriate for us to permit a broker-dealer to take advantage of the relief, should any of the specified circumstances not be included in the rule amendments, or should the disqualifying events in the proposed rule amendments be revised? For example, should the levels of net capital that constitute disqualifying events for purposes of the proposed amendments be different from those requiring notification under Rule 17a–11?

The proposed amendments reflect our view that it is not necessary for a broker-dealer to send a full balance sheet two times a year to keep a customer informed of the financial condition of the broker-dealer if the customer receives the broker-dealer's net capital information twice a year and if the full balance sheet is available through a call to a toll-free number or is posted on the website of the broker-dealer. Under the proposed amendments, a broker-dealer that elects to take advantage of the relief provided to broker-dealers through the proposed amendments would continue to send to its customers or have readily available for its customers the financial information about the broker-dealer that is necessary in order for the customer to assess the broker-dealer's financial condition. In turn, we anticipate that if we were to adopt the proposed amendments, the cost to broker-dealers of complying with Rule 17a–5(c) would be substantially reduced. As a result, and as described below, we believe that the conditional exemption, as proposed today, would be consistent with the public interest and the protection of investors.

The amendments would require a broker-dealer taking advantage of the relief to continue to send specified financial information to each customer twice a year. This financial information would consist of the amount of the broker-dealer's net capital as of the date of the balance sheet the broker-dealer would have sent absent the exemption, the amount of the broker-dealer's required net capital as of that date, and information on how to obtain the full balance sheet of the broker-dealer via a toll-free number or on the broker-dealer's website. Sending this financial information twice a year would remind customers that the full balance sheet of the broker-dealer is available to them at no cost and would highlight and keep them informed of the firm's net capital position. We request comment on whether a broker-dealer taking advantage of the relief should send either more or less information to its customers and whether it should send the information more or less often than two times a year.

The amendments would require that the financial information be ''given prominence in the materials delivered to customers. . . .'' [16] We request comment on whether the rule should include additional requirements. For example, should the rule mandate that the financial information be on a separate page, to help make customers aware that the financial information is included in the materials sent to them by their broker-dealer taking advantage of the exemption? Further, should the broker-dealer be required to use other methods to inform its customers how to obtain its full balance sheet?

We believe that customers must have the opportunity to evaluate for themselves whether the broker-dealer is sufficiently financially sound to be entrusted to hold their securities and cash. The net capital requirements are designed to ensure that brokers and dealers have sufficient liquid assets (those assets that can be readily converted into cash) in excess of liabilities to promptly satisfy the firm's liabilities, including those to customers. Information about a broker-dealer's net capital is therefore useful in gauging the financial soundness of the broker-dealer. The amendments would require that a broker-dealer send customers its net capital information directly and give customers directions on how to obtain the full balance sheet of the broker-dealer.

Under the amendments, the full balance sheet of a broker-dealer taking advantage of the exemption would be available to a customer at no cost—by calling a toll-free number to obtain a copy and by accessing it on the firm's website. We request comment on whether there should be other ways in which customers could obtain the broker-dealer's full balance sheet.

The proposed amendments are intended to make it easy and convenient for a customer to obtain the firm's balance sheet. When posting its balance sheet to its website, the broker-dealer would be required to place a prominent link directly to the balance sheet on any web page that a customer would typically use to enter the website. The links would have to be placed on the broker-dealer's home page and on each page at which a customer can enter or log on to the broker-dealer's website. We request comment on how the full balance sheet and hyperlinks to the full balance sheet of a broker-dealer taking advantage of the relief should be placed on its website.

Rule 17a–5(c) requires a broker-dealer that carries customer accounts to annually send each customer certain financial information, including an audited balance sheet, within 105 days of the date of the balance sheet and to semiannually send each customer certain financial information, including an unaudited balance sheet dated six months after the date of the audited balance sheet, within 65 days of the date of the unaudited balance sheet. The Commission's staff has provided no-action relief to allow a broker-dealer to send the balance sheets after the 105 and 65-day time limits, provided that the broker-dealer sent the balance sheets with its next mailing of quarterly customer account statements [17] and provided that the broker-dealer also sent certain net capital information as of a fiscal month end that is within 75 days of the date that statements are sent to customers.[18]

We request comment on whether the time-frames for the sending of broker-dealer financial information to customers required by Rule 17a–5(c) and the no-action relief are appropriate. Should the 105 days for the sending of audited balance sheets be shortened, for example, to somewhere between 105 and 75 days? Should the 65 days for the sending of unaudited balance sheets be shortened, for example, to somewhere between 65 and 45 days? We also request comment on whether these shortened time frames should apply if the firm has experienced the occurrence of financial or operational difficulties, such as a disqualifying event under paragraph (c)(5)(vi) of the proposed amendments. Further, should we codify the time frames in the no-action letter by which the broker-dealer must send

[16] *See* proposed paragraph (c)(5)(ii) to Rule 17a–5.

[17] A broker-dealer that carries customer accounts must send account statements to customers at least quarterly under New York Stock Exchange Rule 409 and Section 45 of Article III of the NASD Rules of Fair Practice.

[18] Letter of February 26, 2001 from Michael Macchiaroli, Associate Director, to Cheryl M. Kallem, Chairperson, Securities Industry Association (2001 SEC No-Act. LEXIS 523).

its balance sheets to each customer into Rule 17a–5(c)? Should such a rule provide a time period that is shorter than the time period permitted in the no-action letter? Should such a rule require that the updated net capital information that a broker-dealer sends with its mailing of quarterly customer account statements under the no-action relief be as of a fiscal month end that is within a time period that is shorter or longer than 75 days?

Under amendments as currently proposed, a broker-dealer taking advantage of the exemption would be required, within 105 days of the date of the audited balance sheet, to send its financial disclosure statement to each customer (as described in paragraphs (5)(i)–(ii) of the proposed amendments), to place its audited balance sheet on its website, and to make its audited balance sheet available to customers who call its toll-free number to request it. The corresponding time frame is 65 days for the unaudited balance sheet. Should we codify the no-action relief to allow a broker-dealer taking advantage of the exemption to send its financial disclosure statement with its next mailing of quarterly customer account statements after the expiration of the prescribed time limits?

We request comment on whether some or all of these time frames for broker-dealers taking advantage of the proposed exemption are appropriate. For example, should a broker-dealer taking advantage of the exemption be required to place its balance sheets on its website sooner than it is required to send the financial disclosure statement to customers? Should the time period for posting the balance sheet on the website be somewhere between 60 and 105 days of the date of the audited balance sheet? Should the time period be somewhere between 45 and 60 days of the date of the unaudited balance sheet? We request comment on whether the time-frames for the sending the financial disclosure statement to each customer under the proposed exemption are appropriate. Should the 105 days for the sending of the financial disclosure statement relating to the audited balance sheet be shortened, for example, to somewhere between 105 and 75 days? Should the 65 days for the sending of the financial disclosure statement related to the unaudited balance sheet be shortened, for example, to somewhere between 65 and 45 days? We also request comment on whether these shortened time frames should apply if the firm has experienced the occurrence of financial or operational difficulties, such as a disqualifying event under paragraph (c)(5)(vi) of the proposed amendments.

We encourage any interested person to submit comments on the proposed amendments from the point of view of broker-dealers, their customers, and investors and other users of information about the financial condition of broker-dealers. Comments are of greatest assistance to us if accompanied by supporting data and analysis of the issues addressed in those comments.

III. Paperwork Reduction Act

The proposed amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[19] We are submitting the proposed amendments to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[20] 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. The title for the collection of information affected by the proposed amendments is ''Rule 17a–5(c)'' (OMB Control No. 3235–0199).

If adopted, the proposed amendments would allow a broker-dealer that elects to take advantage of the exemption, instead of sending its full balance sheet, to send a financial disclosure statement, consisting of its net capital information and information on how to obtain its full balance sheet, to its customers twice a year, as long as the broker-dealer also posts its balance sheet on its website and promptly sends its balance sheet to its customers who request it via a toll-free number. We estimate that the proposed amendments would reduce the existing paperwork burden on broker-dealers taking advantage of the exemption.

The current PRA burden for Rule 17a–5(c) is 542,222 hours and $19.52 million. The hour burden is based on an estimated average of 10 seconds to send each balance sheet times 97.6 million public customer accounts times two balance sheets per year (195,200,000 responses * 10 seconds /60 seconds/60 minutes = 542,222 hours per year). The cost burden is based on an estimated average of 10 cents per response for postage and printing costs (195,200,000 responses * $.10 = $19.52 million).

Since the time of the last calculation of the PRA burden, the number of public customer accounts has increased to 103 million. Further, industry sources represented that it now costs approximately 11 cents to mail a full balance sheet to a customer, primarily due to the additional postage required to mail the approximately six pages of footnotes required by GAAP, and that few customers agreed to accept the balance sheets electronically. We are now using that estimate of 11 cents instead of the 10 cents per balance sheet we had used previously. We request comment on the accuracy of that estimate.

Since the inception of the pilot program on December 10, 1999, to July 1, 2002, 29 broker-dealers, carrying a total of approximately 40 million customer accounts, have taken advantage of the relief. If the Commission adopts the proposed amendments, some additional firms may take advantage of the exemption. Because these firms have not yet taken advantage of the relief and because they may be smaller firms than some of the firms that have already taken advantage of the relief, these firms may realize fewer benefits from the exemption than those firms already taking advantage of the exemption.

Broker-dealers currently taking advantage of the exemption send the financial disclosure statement, instead of their full balance sheet, twice a year. Some broker-dealers print the financial disclosure statement, which is typically about one paragraph in length, on a separate page, and some broker-dealers print it on the account statement.

We estimate that the 29 broker-dealers currently taking advantage of the exemption would spend 222,000 hours per year sending the financial disclosure statements to their customers. This estimate is based on an estimated average of 10 seconds to send each statement times 40 million customers times 2 financial disclosure statements per year. We have estimated in previous Paperwork Reduction Act filings that it requires 10 seconds to send a full balance sheet to a customer. Sending the financial disclosure statement instead of the full balance sheet may require less time. We request comment on the accuracy of the estimate of the amount of time required to send each financial disclosure statement.

We estimate that broker-dealers taking advantage of the exemption would save up to 11 cents each on postage and printing to send the financial disclosure statement instead of the full balance sheet to their customers. We estimate that the 29 firms currently taking advantage of the exemption have reduced their postage and printing costs by up to $8.8 million per year (40 million accounts * 2 mailings * up to 11 cents). If adopted, the proposed amendments would allow these firms to

[19] 44 U.S.C. Section 3501 *et seq.*

[20] 44 U.S.C. Section 3507(d) and 5 CFR § 1320.11.

continue to realize these savings. We request comment on the accuracy of this estimate.

Broker-dealers that take advantage of the exemption must send balance sheets to customers who request them via a toll-free number. Based on requests received by broker-dealers participating in the pilot program, we estimate that the firms that take advantage of the exemption would send approximately 550 balance sheets per year to customers who request them via the firms' toll-free numbers (1384 requests from December 31, 1999 to July 1, 2002/30 months * 12 months = 554).[21] We request comment on how much time would be required to send each balance sheet to a customer. Even if it takes 10 minutes to send each balance sheet, the total annual burden would be small (10 minutes * 550 balance sheets/ 60 =92 hours). In addition, we estimate that it would cost approximately 74 cents in postage to mail the balance sheet (two 37-cent stamps to mail six pages) for a total of $407 and that there may be small printing costs, which we are not able to quantify. We request comment on these estimates. We believe that the firms that would take advantage of the exemption already maintain a toll-free number for their customers and already have an Internet website. We request comment on those assumptions.

We therefore estimate the total burden for broker-dealers who take advantage of the exemption to be 222,000 hours and less than $10,000.

We estimate the burden for broker-dealers who do not take advantage of the exemption (383 broker-dealers carrying approximately 63 million customer accounts) to be about 350,000 hours per year and $13.9 million per year. The hour burden was calculated by multiplying the estimated number of balance sheets to be sent annually (63 million customers times two balance sheets sent per year) by the estimated average amount of time required to send each balance sheet (10 seconds). The cost burden was calculated by multiplying the number of balance sheets sent per year (126 million) by estimated postage and printing costs for each balance sheet (11 cents). We request comment on the accuracy of these estimates.

If the amendments are adopted, therefore, we estimate that the total annual hour burden for Rule 17a–5(c) would be approximately 572,000 hours (350,000 hours for firms not taking advantage of the exemption and 222,000 hours for firms taking advantage of the exemption), and the total annual cost burden would be approximately $13.9 million. The hour burden would increase by 29,778 hours from our previous estimate (572,000 hours—542,222 hours). All of this increase is due to an increase in the total number of public customer accounts since the time of the last submission. The estimated cost burden is $2.38 million higher due to an increase in the number of public customer accounts and an increase in estimated average postage and printing costs and is $8 million lower due to the proposed amendments. The cost burden is therefore lower by $5.62 million ($8 million − $2.38 million=$5.62 million).

We request comment on the proposed collection of information in order to: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) evaluate the accuracy of our estimates of the burden of the proposed collection of information; (c) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; (d) evaluate whether there are ways to minimize the burden of the collection of information on those who respond, including through the use of automated collection techniques or other forms of information technology; and (e) evaluate whether the proposed amendments would have any effects on any other collection of information not previously identified in this section.

Persons who desire to submit comments on the collection of information requirements should direct their comments to the OMB, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Affairs, Washington, DC 20503, and send a copy of the comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, with reference to File No. 270–199. Requests for materials submitted to the OMB by us with regard to this collection of information should be in writing, refer to File No. 270–199, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 450 Fifth Street, NW, Washington DC 20549. Because the OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication, your comments are best assured of having their full effect if the OMB receives them within 30 days of publication.

IV. Costs and Benefits of the Proposed Amendments

The proposed amendments are intended to reduce the cost of doing business to a broker-dealer while providing customers of the broker-dealer with free and easy access to the information they need to evaluate the financial soundness of the broker-dealer. No costs to customers are expected. The proposed amendments provide regulatory relief for those broker-dealers that take advantage of the exemption. The broker-dealers who take advantage of the exemption do so because they believe that the benefits of doing so outweigh the costs.

There are currently 412 broker-dealers that carry customer accounts. These firms carry a total of approximately 103 million accounts. Since the inception of the pilot program on December 10, 1999, to July 1, 2002, 29 broker-dealers, carrying a total of approximately 40 million customer accounts, have taken advantage of the relief. If the Commission adopts the proposed amendments, some additional firms may take advantage of the exemption. Because these firms have not yet taken advantage of the relief and because they may be smaller firms than some of the firms that have already taken advantage of the relief, these firms may realize fewer benefits from the exemption than those firms already taking advantage of the exemption.

The proposed amendments reflect our view that subject to certain conditions it is not necessary for a broker-dealer to send its balance sheet two times a year to customers to keep them informed of the financial condition of the broker-dealer if customers receive the broker-dealer's net capital information twice a year and if the full balance sheet is available on the Web site of the broker-dealer or by a call to a toll-free number. In fact, customers with Internet access would be able to obtain the full balance sheet of their broker-dealer within minutes at any time. Customers without Internet access could call at any time to be promptly sent a free copy of the full balance sheet.

We expect that the proposed amendments will provide benefits to broker-dealers and to investors. We expect that broker-dealers taking advantage of the exemption would reduce their cost of compliance with Rule 17a–5(c). As discussed above, we estimate that the 29 firms currently taking advantage of the exemption have reduced their postage and printing costs by up to $8.8 million per year. If

[21] Customers, when requesting that the full balance sheet be sent to them, have not requested that the balance sheet be sent electronically.

adopted, the proposed amendments would allow these firms to continue to realize these savings. Larger broker-dealers are likely to realize greater benefits than smaller firms as larger firms carry more customer accounts. As election of the exemption is voluntary, we would expect a broker-dealer to elect the exemption only if the firm would be able to conduct business at a lower cost than under current Commission rules. The proposed amendments could reduce overall costs to broker-dealers. In general, to the extent that costs to broker-dealers are reduced, such cost reductions may ultimately be passed on to consumers.

We estimate that the proposed amendments will result in certain costs to broker-dealers. Firms taking advantage of the exemption must have and maintain a toll-free telephone line and must have and maintain Web sites containing their balance sheets. We expect, however, that firms taking advantage of the exemption will already have a toll-free number for their customers and will already have a Web site, as these tend to be the larger firms. Firms taking advantage of the exemption must also send their full balance sheet to customers who request it via the toll-free telephone number. However, as election of the relief is voluntary, any new associated costs only reduce the net benefit of the election and do not impose a new burden.

Commenters are requested to provide their views and data relating to any costs and benefits associated with these proposals to aid us in our evaluation of the costs and benefits that may result from the amendments to Rule 17a–5(c) proposed in this release.

V. Regulatory Flexibility Act Certification

Section 3(a) of the Regulatory Flexibility Act [22] requires the Commission to undertake an initial regulatory flexibility analysis of the proposed rules on small entities unless the Commission certifies that the rule change, if adopted, would not have a significant economic impact on a substantial number of small entities.[23]

The Commission hereby certifies, pursuant to 5 U.S.C. Section 605(b), that the proposed amendments to Rule 17a–5(c) contained in this release, if adopted, would not have a significant economic impact on a substantial number of small entities. These provisions would apply only to broker-dealers that carry customer funds, securities, or property. According to the Commission's Office of Economic Analysis, as of October 2001, there were approximately 412 such firms and, of these firms, approximately 14 were small businesses.[24] Further, election of the relief provided by the proposed rule amendments is voluntary. The proposed amendments, therefore, should not have a significant impact on a substantial number of small entities.

We encourage written comments regarding this certification. We solicit comment as to whether the proposed amendments could have an effect that we have not considered. We request that commenters describe the nature of any impact on small entities and provide empirical data to support the extent of the impact.

VI. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''),[25] a rule is ''major'' if it has resulted, or is likely to result, in:

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment, or innovation.

We request comment on the potential impact of the proposed amendments on the economy on an annual basis. We request that commenters provide empirical data and other factual support for their views.

VII. Burden on Competition, and Promotion of Efficiency, Competition, and Capital Formation

Section 3(f) of the Exchange Act [26] requires us, when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation. Section 23(a)(2) of the Exchange Act [27] requires us to consider the anticompetitive effects of any rules that we adopt under the Exchange Act. Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The Commission preliminarily believes the proposed amendments should improve efficiency, competition, and capital formation by decreasing the costs of doing business for a broker-dealer that carries customer accounts and elects to take advantage of the relief. Additional firms taking advantage of the relief, however, may be smaller firms that may realize fewer benefits from taking advantage of the exemption than larger firms currently taking advantage of the relief. In addition, the proposed amendments should have no anticompetitive effects not necessary or appropriate in furtherance of the purposes of the Act because any broker-dealer should be able to use the exemption, because the complexity and length of financial statements generally varies proportionately with the volume and complexity of the broker-dealer's business, and because the number of financial statements that a broker-dealer must send to its customers is proportional to the number of customers of the broker-dealer.

We solicit comments on these matters with respect to the proposed rule amendments. Would the amendments have an adverse effect on competition that is neither necessary nor appropriate in furtherance of the purposes of the Exchange Act? Would the proposed amendments, if adopted, promote efficiency, competition, and capital formation? Commenters are requested to provide empirical data and other factual support for their views, if possible.

VIII. Statutory Basis

The amendments contained in this release are being proposed under the Exchange Act, particularly Section 17 and Section 23(a).

[22] 5 U.S.C. Section 603(a).

[23] 5 U.S.C. Section 605(b).

[24] Pursuant to 17 CFR 240.0–10, ''the term *small business* or *small organization* shall: [. . .] (c) [w]hen used with reference to a broker or dealer, mean a broker or dealer that: (1) [h]ad total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to § 240.17–5(d) or, if not required to file such statements, a broker or dealer that had total capital (net worth plus subordinated liabilities) of less than $500,000 on the last business day of the preceding fiscal year (or in the time that it has been in business, if shorter); and (2) [i]s not affiliated with any person (other than a natural person) that is not a small business or small organization as defined in this section . . .'' (17 CFR 240.0–10(c)). Further, pursuant to § 240.0–10(i), ''[f]or purposes of paragraph (c) of this section, a broker or dealer is affiliated with another person if [. . .] [s]uch broker or dealer introduces transactions in securities, other than registered investment company securities or interests or participations in insurance company separate accounts, to such other person or introduces accounts of customers or other brokers or dealers, other than accounts that hold only registered investment company securities or interests or participations in insurance company separate accounts, to such other person that carries such accounts on a fully disclosed basis.'' (17 CFR 240.0–10(i)).

[25] Pub. L. No. 104–121, Title II, 110 Stat. 857 (1996).

[26] 15 U.S.C. 78c(f).

[27] 15 U.S.C. 78w(a)(2).

List of Subjects in 17 CFR Part 240

Brokers, Customers, Dealers, Reporting and recordkeeping.

Text of Proposed Rule

For the reasons set out in the preamble, the Commission proposes to amend Title 17, Chapter II of the Code of Federal Regulation as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. Section 240.17a–5 is amended by:

a. Revising the phrase ''except if the activities'' to read ''except as provided in paragraph (c)(5) of this section or if the activities'' in the introduction text of paragraph (c); and

b. Adding paragraph (c)(5).

The addition reads as follows:

§ 240.17a–5 Reports to be made by certain brokers and dealers.

* * * * *

(c) * * *

(5) *Exemption from sending certain financial information to customers.* A broker or dealer is not required to send to its customers the statements prescribed by paragraphs (c)(2) and (c)(3) of this section if the following conditions are met:

(i) The broker or dealer semi-annually sends its customers, at the times it otherwise is required to send its customers the statements prescribed by paragraphs (c)(2) and (c)(3) of this section, a financial disclosure statement that includes:

(A) The amount of the broker's or dealer's net capital and its required net capital in accordance with § 240.15c3–1, as of the date of the statements prescribed by paragraphs (c)(2) and (c)(3) of this section;

(B) To the extent required under paragraph (c)(2)(ii) of this section, a description of the effect on the broker's or dealer's net capital and required net capital of the consolidation of the assets and liabilities of subsidiaries or affiliates consolidated pursuant to Appendix C of § 240.15c3–1; and

(C) Any statements otherwise required by paragraph (c)(2)(iii) and (iv) of this section.

(ii) The financial disclosure statement is given prominence in the materials delivered to customers of the broker or dealer and includes an appropriate caption stating that customers may obtain the statements prescribed by paragraphs (c)(2) and (c)(3) of this section, at no cost, by:

(A) Accessing the broker's or dealer's Web site at the specified Internet Uniform Resource Locator (URL); or

(B) Calling the broker's or dealer's specified toll-free telephone number.

(iii) The broker or dealer publishes the statements in accordance with paragraphs (c)(2) and (c)(3) of this section on its Web site, accessible by hyperlinks, in either textual or button format, which are separate, prominent links, are clearly visible, and are placed in each of the following locations:

(A) On the broker's or dealer's Web site home page; and

(B) On each page at which a customer can enter or log on to the broker's or dealer's Web site; and

(C) If the Web sites for two or more brokers or dealers can be accessed from the same home page, on the home page of the Web site of each broker or dealer.

(iv) The broker or dealer maintains a toll-free telephone number that customers can call to request a copy of the statements prescribed by paragraphs (c)(2) and (c)(3) of this section.

(v) If a customer requests a copy of the statements prescribed by paragraphs (c)(2) and (c)(3) of this section, the broker or dealer sends it promptly at no cost to the customer.

(vi) During the year prior to the date as of which the statements prescribed by paragraphs (c)(2) and (c)(3) of this section were prepared, the broker or dealer was not required to provide notice to the Commission of the occurrence of any circumstance enumerated in paragraph (b)(1), (c)(1), (c)(2), (c)(3), (d), or (e) of § 240.17a–11.

* * * * *

Dated: November 26, 2002.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30664 Filed 12–2–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC–25835; File No. S7–47–02]

RIN 3235–AI57

Certain Research and Development Companies

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is publishing for comment a new rule under the Investment Company Act of 1940 that would provide a nonexclusive safe harbor from the definition of investment company for certain bona fide research and development companies. The rule is intended to allow research and development companies greater flexibility to raise and invest capital pending its use in research, development and other operations and would also clarify the extent to which a company relying on the rule may make investments in other research and development companies pursuant to collaborative research and development arrangements.

DATES: Comments must be received on or before January 15, 2003.

ADDRESSES: To help us process and review your comments more efficiently, comments should be sent by one method only.

Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Comments also may be submitted electronically at the following E-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. S7–47–02; this file number should be included on the subject line if E-mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549. Electronically submitted comment letters also will be posted on the Commission's Internet Web site (*http://www.sec.gov*).[1]

FOR FURTHER INFORMATION CONTACT: Karen L. Goldstein, Senior Counsel, Janet M. Grossnickle, Branch Chief, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564, Office of Investment Company Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0506.

SUPPLEMENTARY INFORMATION: The Commission is requesting public comment on proposed rule 3a–8 [17 CFR 270.3a–8] under the Investment Company Act of 1940 [15 U.S.C. 80a] (the ''Act'').

I. Introduction and Summary

The Commission is proposing for comment new rule 3a–8 under the Act

[1] We do not edit personal identifying information, such as names or electronic mail addresses, from electronic submissions. You should submit only information that you wish to make available publicly.

as a nonexclusive safe harbor from investment company status for certain bona fide research and development companies (''R&D companies''). The Commission previously proposed rule 3a–8 in 1993 (''1993 Proposal'').[2] The 1993 Proposal was intended to codify the terms of a Commission order under section 3(b)(2) of the Act issued to ICOS Corporation, a biotechnology company (''ICOS order'').[3] In the ICOS order, the Commission addressed how the status of a company engaged largely in research and development activities should be determined under the Act. The Commission recently received a petition for rulemaking from the Biotechnology Industry Organization (''BIO'') asking the Commission to update and clarify Commission interpretations relating to the status of biotechnology companies under the Act.[4]

R&D companies often raise large amounts of capital, invest the proceeds and use the principal and return on these investments to fund research and development activities during their lengthy product development phase. An R&D company also may purchase a non-controlling equity stake in another R&D company as part of a strategic alliance with the other company to conduct research and develop products jointly. Either or both of these activities may cause an R&D company to fall within the definition of investment company and to fail to qualify for an exclusion from the definition when using the Commission's traditional analysis to determine a company's primary business for purposes of the Act.

The Act defines an ''investment company'' rather broadly. Among other definitions, the Act provides that any company that owns or proposes to acquire certain types of securities having a value exceeding 40 percent of the value of the company's total assets on an unconsolidated basis (exclusive of U.S. government securities and cash items) is an investment company. The Act also provides certain exclusions from the definition of investment company for a company that is primarily engaged in a non-investment business. When the Commission determines whether a company is primarily engaged in a non-investment business, we principally look at the composition of the company's assets and the sources of its income. We also consider the company's historical development, its public representations, and the activities of its officers and directors.[5]

In the ICOS order, the Commission recognized that the traditional analysis emphasizing the composition of a company's assets and income might not appropriately reflect an R&D company's non-investment business activities. Accordingly, we modified the traditional analysis of a company's primary business to better fit the business realities of R&D companies.

According to BIO, the analysis set forth in the ICOS order no longer provides some biotechnology companies sufficient flexibility or clarity to raise capital or enter into strategic alliances.[6] The Commission believes that it may be appropriate for biotechnology and other R&D companies to have greater flexibility to raise capital and make strategic investments in other R&D companies. Therefore, we are proposing new rule 3a–8 to update and codify the analysis set forth in the ICOS order with respect to R&D companies. We believe that it is in the public interest to ensure that bona fide R&D companies do not inadvertently fall within the definition of investment company and are not unnecessarily hindered in their operations by the Act.[7] We are equally concerned, however, that companies that are primarily engaged in the investment business not escape regulation under the Act and thereby deny their investors the protections afforded by the Act.

In order to accomplish these goals, the proposed rule generally would determine the primary business activity of a company based on how the company uses its assets and income. A company would be eligible to rely on the rule's nonexclusive safe harbor if it: (a) Has research and development expenses that are a substantial percentage of its total expenses for its last four fiscal quarters combined and that equal at least half of its investment revenues for that period; (b) has investment-related expenses that do not exceed five percent of its total expenses for its last four fiscal quarters combined; (c) makes its investments to conserve capital and liquidity until it uses the funds in its primary business subject to certain exceptions; and (d) is primarily engaged, directly or through a company or companies that it controls primarily, in a noninvestment business, as evidenced by the activities of its officers, directors and employees, its public representations of policies, and its historical development.

II. Background

A. The Definition of Investment Company

Section 3 of the Act determines when an issuer is an investment company subject to regulation under the Act. General provisions for determining investment company status are set forth in sub-sections 3(a) and 3(b).

Section 3(a) has two definitions of investment company that may be relevant to R&D companies.[8] Section 3(a)(1)(A) defines an investment company as any issuer that is, holds itself out as, or proposes to be engaged primarily in the business of investing, reinvesting, or trading in securities.[9] Section 3(a)(1)(C) defines as an investment company any issuer that is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities and owns or proposes to acquire investment securities having a value exceeding 40 percent of the value of its total assets on an unconsolidated basis (exclusive of U.S. government securities and cash items).[10] Section 3(a)(2)

[2] *See* Certain Research and Development Companies, Investment Company Act Release No. 19566 (July 9, 1993) [58 FR 38095 (July 15, 1993)] (the ''1993 Proposal''). The Commission withdrew rule 3a–8 from the Unified Agenda on April 1, 1996, because the Commission did not expect to consider the item within the next 12 months. Regulatory Flexibility Agenda, Investment Company Act Release No. 21795 (Mar. 4, 1996) [61 FR 24066 (May 13, 1996)].

[3] ICOS Corp., Investment Company Act Release Nos. 19274 (Feb. 18, 1993) [58 FR 1426 (Feb. 25, 1993)] (notice) and 19334 [53 S.E.C. Docket 2965] (Mar. 23, 1993) [58 FR 15392 (Mar. 22, 1993)] (order) (the ''ICOS Order'').

[4] Petition for Investment Company Act of 1940 Rulemaking, submitted by Matthew A. Chambers and John C. Nagel, Wilmer, Cutler & Pickering, on behalf of the Biotechnology Industry Organization, File No. 4–457 (May 23, 2002) (''BIO Petition'') (available at *http://www.sec.gov/rules/petitions/petn4–457.htm*). BIO represents more than 950 biotechnology companies in the United States and 33 other countries. Its members are involved in the research and development of health care, agricultural, industrial, and environmental biotechnology products.

[5] *See infra* note 14.

[6] *Id.* at 1, 7.

[7] R&D companies increasingly are recognized as making an important contribution in many areas. For example, the U.S. Senate recently passed a resolution designating a ''National Biotechnology Week'' in recognition of the importance of biotechnology to the U.S. economy and to an improved quality of life overall. *See* Senate Resolution 243 Designating The Week Of April 21 Through April 28, 2002, as ''National Biotechnology Week,'' 107th Cong., 2d Session, April 16, 2002. The resolution noted that the biotechnology industry is instrumental in the research and development of antibiotics and other drugs to treat and cure diseases and conditions such as cancer, diabetes, epilepsy, multiple sclerosis and Acquired Immune Deficiency Syndrome. It also develops products to improve agriculture, industrial processes, the environment, and national security. *Id.*

[8] Section 3(a)(1)(B) of the Act [15 U.S.C. 80a–3(a)(1)(B)] defines an investment company to include companies that issue face-amount certificates of the installment type and is not relevant for purposes of this release.

[9] 15 U.S.C. 80a–3(a)(1)(A).

[10] 15 U.S.C. 80a–3(a)(1)(C).

defines ''investment securities'' to include all securities except Government securities, securities issued by employees' securities companies, and securities issued by majority-owned subsidiaries of the owner which are not investment companies.[11]

An issuer that meets the definition of investment company in section 3(a)(1)(C) of the Act nevertheless may be deemed not to be an investment company under two provisions in section 3(b). Section 3(b)(1) provides that an issuer is not an investment company if it is primarily engaged, directly or through wholly-owned subsidiaries, in a business other than that of investing, reinvesting, owning, holding or trading in securities.[12] Section 3(b)(2) provides that an issuer is not an investment company if the Commission by order finds and declares it to be primarily engaged (directly, through majority-owned subsidiaries or controlled companies[13] conducting similar types of businesses) in a business other than that of investing, reinvesting, owning, holding or trading in securities.[14]

To receive an order from the Commission under section 3(b)(2), an issuer initially must establish that it is engaged in some non-investment business. If an identifiable non-investment business exists, the inquiry then shifts to whether that business is ''primary.'' In Tonopah Mining Co.,[15] the Commission stated that its determination of an issuer's primary business under section 3(b)(2) would be based on five principal factors: (a) the issuer's historical development; (b) its public representations of policy; (c) the activities of its officers and directors; (d) the nature of its present assets; and (e) the sources of its present income (the ''Tonopah factors,'' also referred to as the ''Tonopah test''). The two most important factors are the composition of the issuer's assets and the sources of its income.[16] The Tonopah factors also have been applied to determine whether an issuer satisfies the primary business standard under section 3(b)(1).[17] Rule 3a-1 under the Act, adopted in 1981, codified a series of Commission orders issued under section 3(b)(2).[18]

B. Certain R&D Companies

The Tonopah test, while well suited for most issuers, may not appropriately identify the primary business of certain R&D companies. For example, ''in the biotechnology industry, there is typically a significant time lag between research and development investments, and revenues produced by those investments.''[19] Accordingly, biotechnology companies must obtain financing many years[20] before they offer their products for sale and invest the proceeds in liquid instruments[21] so the funds are readily accessible for research and development activities.[22] Some R&D companies also enter into strategic alliances with other R&D companies to conduct research and develop products jointly.[23] These alliances may involve a strategic investment whereby one R&D company purchases a non-controlling equity stake in another R&D company.[24]

Many of the instruments in which R&D companies invest their capital and most investments made as part of a strategic alliance are investment securities counted toward the 40 percent threshold in section 3(a)(1)(C). Moreover, research and development expenses,[25] including those associated with the development of ''intellectual capital,'' are not recognized as assets on balance sheets prepared in accordance

[11] 15 U.S.C. 80a–3(a)(2). ''Government security'' is defined in section 2(a)(16) of the Act [15 U.S.C. 80a–2(a)(16)] and generally includes any security issued or guaranteed as to the principal or interest by the United States. ''Employees'' securities company'' is defined in section 2(a)(13) of the Act [15 U.S.C. 80a–2(a)(13)] generally to mean an investment company owned by employees of a company. ''Majority-owned subsidiary'' of an issuer is defined in section 2(a)(24) of the Act [15 U.S.C. 80a–2(a)(24)] to mean a company 50 percent or more of the outstanding securities of which are owned by the issuer or by a majority-owned subsidiary of the issuer.

[12] 15 U.S.C. 80a–3(b)(1).

[13] Section 2(a)(9) of the Act [15 U.S.C. 80a–2(a)(9)] defines ''control'' as the power to exercise a controlling influence over the management or policies of a company. This section creates a rebuttable presumption that owners of 25 percent or more of a company's voting securities control the company, and that owners of less than 25 percent do not. Unless otherwise stated, ''control,'' when used in this release, refers to the section 2(a)(9) definition.

[14] 15 U.S.C. 80a–3(b)(2). Section 3(b)(2) allows issuers that are investment companies as defined by section 3(a)(1)(C) to apply to the Commission for an order. An exclusion pursuant to section 3(b)(1), on the other hand, is ''automatic'' in that it is determined by the issuer itself. A determination under either section 3(b)(2) or section 3(b)(1) that an issuer is engaged primarily in a noninvestment business also means that it is not an investment company under section 3(a)(1)(A). *See* M.A. Hanna Co., 10 S.E.C. 581 (1941).

[15] Tonopah Mining Co., 26 S.E.C. 426 (1947)(''Tonopah Order'').

[16] *Id.* at 427, 430–431.

[17] *See* Moses v. Black, Fed. Sec. L. Rep. (CCH) P 97,866 (S.D.N.Y. 1981).

[18] 17 CFR 270.3a–1. The rule provides that a company that meets the definition of investment company in section 3(a)(1)(C) will not be deemed to be an investment company if it meets certain requirements. The rule essentially requires that the issuer derive no more than 45 percent of the value of its total assets, and no more than 45 percent of its net income for the last four fiscal quarters, from securities other than Government securities, securities issued by employees securities companies, securities issued by the issuer's majority-owned subsidiaries that are not investment companies, and securities issued by companies that are controlled primarily by the issuer through which the issuer engages in a non-investment business.

[19] BIO Petition, *supra* note 3, at I.B. BIO states that it takes approximately 10 to 14 years and costs approximately $300 million to $500 million to develop a new drug and obtain approval from the Food and Drug Administration (''FDA'') to market it. See also Ernst & Young, *Convergence: The Biotechnology Industry Report, Millenium Edition* (''Ernst & Young Report 2000'') at 6 (estimating that the average research and development cost of bringing a new drug to market is $400 million); Cynthia Robbins-Roth, *Magic Bullets: The Breakthroughs, the Business and the People of Biotechnology,* Forbes, May 31, 1999 at 42 (stating that new pharmaceutical products generally take more than 10 years from conception to approval by the FDA).

[20] Several cycles of equity offerings and depletions of the resulting investment pools can occur before an R&D company achieves profitable operations, if ever. *See* Financing the Biotech Industry: Can the Risks Be Reduced?, 4 B.U. J. SCI. & TECH. L. 1 (1998) (''Financing the Biotech Industry'') (noting that Chiron Corporation, a biotechnology company, ''came to market approximately six times * * * to get where it is today.''). *See also* Ernst & Young Report 2000, *supra* note 20 (indicating that at the end of 1999, 36 percent of public biotechnology companies had less than one year's worth of cash on hand).

[21] Biotechnology companies, for example, are traditionally financially conservative because they need to preserve cash for high research and development expenses. *See Biotech Firms Growing Up Fast,* Standard & Poors, April 10, 2002.

[22] On an industry-wide basis, research and development accounts for approximately 45 percent of all expenses incurred by U.S. biotechnology companies. *See* Ernst & Young, *Focus on Fundamentals, The Biotechnology Report* (Executive Summary) (Oct. 2001) (''Ernst & Young Report 2001'').

[23] In the biotechnology area, a very high risk business with few profitable companies, strategic alliances allow firms to share the risk and reduce fund-raising pressures. *See* Financing the Biotech Industry, *supra* note 20. Additionally, strategic alliances with pharmaceutical companies facilitate biotechnology companies' ability to raise additional funds in the market by providing confirmation of the company's prospects and tending to put a valuation on its products and technology. *See* Ernst & Young Report 2000, *supra* note 19, at 48.

[24] In addition to equity interests, strategic partnerships can also take the form of licensing agreements and other contractual partnerships. *See* Hagedoorn, John, ''*Inter-firm R&D Partnership—An Overview of Major Trends and Patterns Since 1960,*'' Strategic Research Partnerships: Proceedings from an NSF Workshop, August, 2001 (''Inter-Firm R&D Partnership'').

[25] Statement of Financial Accounting Standards No. 2 defines ''research'' as planned search or critical investigation aimed at discovery of new knowledge with hope that such knowledge will be useful in developing a new product or service or a new process or technique or in bringing about a significant improvement to an existing product or process. ''Development'' is the translation of research findings or other knowledge into a plan or design for a new product or process or for a significant improvement to an existing product or process whether intended for sale or use. *See* Accounting for Research and Development Costs, Statement of Financial Accounting Standards No. 2 (Fin. Accounting Standards Bd. 1974) at P 8 (''SFAS No. 2''). Research and development expenses generally include costs incurred for materials, equipment, facilities, personnel, intangibles, and indirect costs that are clearly related to research and development activities. *Id.* at 11.

with Generally Accepted Accounting Principles (''GAAP'').[26] R&D companies therefore may have few assets other than investment securities. As a result, a bona fide R&D company may fall within section 3(a)(1)(C)'s definition of investment company and fail to meet the traditional assets and income factors for determining a company's primary non-investment business. Becoming subject to regulation under the Act, however, typically is incompatible with how operating companies, including R&D companies, conduct their business.[27]

C. The ICOS Order

In the ICOS order, the Commission set forth an alternative test for determining the primary business of an R&D company under sections 3(b)(1) and 3(b)(2) of the Act. The ICOS order stated that, ''Given the unique nature of [R&D] companies, the Commission believes that it is appropriate to expand the traditional Tonopah analysis. If a company demonstrates that it is engaged actively in bona fide research and development activities, the Commission would consider the use, rather than simply the composition, of the company's assets and income.'' [28] Under the ICOS order, this consideration focuses on three factors: (1) Whether the company uses its securities and cash to finance its research and development activities; (2) whether the company has substantial research and development expenses and insignificant investment-related expenses; and (3) whether the company invests in securities in a manner that is consistent with the preservation of its assets until needed to finance operations. If a company satisfies these factors, the remaining factors of the traditional primary business test—the company's historical development, its public representations of policy, and the activities of its officers and directors—then should be examined to determine whether the company is engaged primarily in a noninvestment business.[29] Several months after issuing the ICOS order, the Commission proposed rule 3a–8 to codify the analysis that it set forth in the ICOS order. The rule was withdrawn from the Commission's rulemaking agenda in 1996.[30]

D. The BIO Petition

The BIO Petition requests that the Commission adopt a rule to address what BIO perceives as weaknesses in the tests used to determine its members' status under the Act. BIO asserts that with respect to the biotechnology industry today, the ICOS test is arbitrary and unduly limiting. The BIO Petition states that competition for skilled personnel and technology has increased the need for strategic collaborations and, without greater certainty about their investment company status, biotechnology companies forego these investments, or invest liquid assets solely in government securities, rather than those that may provide a higher return. BIO also argues that the increased duration of the drug development cycle, the nature of the capital markets, and biotechnology companies' ability to receive financing early in the product development cycle may cause companies to forego funding opportunities that may result in its income exceeding research and development expenses during some periods. To address these issues, the BIO Petition requests that the Commission adopt a rule that modifies the ICOS analysis to permit biotechnology companies to own more strategic investments and capital preservation investments (the ''BIO Proposal'').

III. Discussion

Today we are proposing rule 3a–8 to update and codify the primary business test for R&D companies set forth in the ICOS order. The proposed rule would serve as a nonexclusive safe harbor from the definition of investment company in sections 3(a)(1)(A) and 3(a)(1)(C) of the Act. The analysis set forth in the proposed rule generally focuses on an R&D company's use of its capital and other indicia of the company's primary engagement in a non-investment business. Rule 3a–8, as proposed, differs from the BIO Proposal in certain respects, which are noted below. We generally request comment on these differences.

A. Use of Capital

As the Commission has recognized, an R&D company would not be expected to maintain perpetually a portfolio of investment securities, and the amounts earned on the company's investments should bear some reasonable relationship to its actual research and development costs.[31] A bona fide R&D company also would be expected to invest its capital in a manner designed to preserve it, rather than in a manner designed to produce speculative profits.[32] Finally, we recognize that there are circumstances where an R&D company may want to make a strategic investment to gain access to another company's intellectual property or for other reasons related to the company's non-investment business.[33] These strategic investments, however, should not be for speculative purposes and should not comprise an overly large portion of the company's assets (because, as non-controlling minority equity investments, they are not investments in companies through which the R&D company conducts its non-investment business).[34]

[26] *See id.* at 12. Under GAAP, costs of self-developed intangible assets generally, and research and development expenses for ''intellectual assets,'' in particular, are charged to expense when incurred.

[27] Section 18 of the Act [15 U.S.C. 80a–18], for example, places limits on a registered investment company's capital structure, and would significantly reduce the ability of an R&D company to raise capital. Section 18's restrictions on the issuance of warrants, options, and other rights also would limit the company's ability to attract scientific talent.

[28] The ICOS Order, *supra* note 3, at section II. ICOS, a development stage biopharmaceutical company, had no drug products approved for commercial use and, as a result, no revenues from product sales. It had, however, raised $90 million in public and private stock offerings that it had invested in short-term U.S. government and commercial debt securities pending the use of the proceeds in its research and development programs and for capital expenditures. As a result, most of ICOS' revenues were derived from securities. On the other hand, a substantial percentage of ICOS' total expenses were for research and development, its research and development expenses exceeded its investment revenues, and its investment-related expenses were insignificant. ICOS' historical development, its public representations of policy, and the activities of its officers and directors also all indicated that it was not engaged primarily in the investment company business. ICOS thus applied for an order under section 3(b)(2) declaring it to be engaged primarily in a business other than investing, reinvesting, or trading in securities. In the ICOS order, the Commission stated that, ''The Commission believes that ICOS may rely on the automatic exclusion provided by section 3(b)(1) * * * The Commission, however, believes an order is appropriate here to modify the analysis for determining the primary business of bona fide [R&D] companies.'' *Id.*

[29] *Id.* at sections II.A—II.C.

[30] *See supra* note 2. It appears that the Commission's analysis set forth in the ICOS Order provided R&D companies and their counsel with sufficient guidance for determining their status under the Act.

[31] *See* the ICOS Order, *supra* note 3, at section II.A and the 1993 Proposal, *supra* note 2, at section II.A.1.

[32] *See* the ICOS Order, *supra* note 3, at section II.C and the 1993 Proposal, *supra* note 2, at section II.A.4.

[33] *See* the 1993 Proposal, *supra* note 2, at section II.A.4. *See also* Inter-Firm R&D Partnership, *supra* note 24. Strategic alliances enable R&D companies to cross-fertilize technological disciplines, achieve technology synergies and complements as well as R&D economies of scale and scope, share R&D costs, utilize a partner's R&D expertise, and jointly cope with R&D uncertainty. *Id.*

[34] Both the framers of the Act and the Commission in administering the Act have viewed non-controlling minority equity interests as a type of investment security, which, if it comprises a significant portion of a company's assets, suggests that the company may in fact be an investment company. *See* sections 3(a)(1)(C) and 3(b)(2) of the Act; the Tonopah Order, *supra* note 14. The Act was an outgrowth of a Commission study of the investment company industry conducted between

We view these factors as important to the distinction that must be drawn between bona fide R&D companies that should not be subject to the Act and investment companies that should be. The provisions of proposed rule 3a–8 described below are designed to limit the rule's safe harbor to bona fide R&D companies.

1. Substantial Research and Development Expenses

Paragraph (a)(1) of proposed rule 3a–8 would require that research and development expenses [35] for an R&D company's last four fiscal quarters combined be a substantial percentage of its total expenses for that period. The proposed rule leaves the determination of ''substantial'' undefined in order to allow R&D companies to take into account fluctuations in the composition of their expenses over time. If an R&D company's research and development expenses are the majority of its expenses but for nonrecurring items or unusual fluctuations in recurring items, the research and development expenses certainly would be ''substantial'' for purposes of this provision. We request comment whether the rule should provide a more objective standard and if so, what that standard should be.

2. Revenues from Investments Compared to Research and

Development Expenses

Paragraph (a)(2) of proposed rule 3a–8 would require that the R&D company's revenues from investments in securities not exceed twice the amount of its research and development expenses.[36] As defined in paragraph (b)(6), ''investments in securities'' would include all securities owned by the R&D company other than securities issued by majority-owned subsidiaries and companies controlled by the R&D company that conduct similar types of businesses, through which the R&D company is engaged primarily in a business other than that of investing, reinvesting, owning, holding, or trading in securities.[37] Investment revenues, for purposes of the proposed rule, would include all investment returns, including amounts earned from dividends, interest on securities, and profits on securities (net of losses).

The requirement set forth in paragraph (a)(2) is designed to allow an R&D company to raise a significant amount of capital during favorable market conditions while precluding a situation in which the company's primary focus is its revenues from investments rather than its research and development activities. We note that the proposed rule would permit R&D companies to raise and hold more capital than the ICOS order currently permits. Under the ICOS order, an R&D company was expected to spend more on research and development than its gross investment income. R&D companies are spending an increasing amount on research and development. For example, between 1997 and 2000, total funds for industrial research and development in the U.S. increased over 26 percent.[38] Given these increased capital requirements and the lengthy product development phases faced by R&D companies, additional flexibility to raise and invest capital pending use in research and development would appear appropriate so long as the other requirements of the rule are met.

In the 1993 Proposal, the Commission noted that, if an R&D company did not deplete its invested funds over time to fund its research and development, a question would arise as to whether it was maintaining the value of its reserves for use in its operations or was running a perpetual investment program.[39]

- We request comment on whether the rule as proposed today sufficiently protects against that possibility.
- We also request comment on whether the rule should address an R&D company's other operational expenses as well.
- Would a requirement that an R&D company spend more on research and development and other operational expenses than its gross investment income be more appropriate?
- The Commission also requests comment on whether the rule should define ''investment revenues,'' and, if so, how that term should be defined.
- We also request comment on whether the proposed test unduly limits the ability of R&D companies to raise capital during favorable market conditions. If so, what would be an appropriate alternative test for determining whether a company's investment program is consistent with a primary engagement in research and development and related non-investment business activities?
- We also request comment on whether the holding of investments by an R&D company should be subject to custody, bonding or other requirements, similar to those contained in the Act, relating to the safekeeping of liquid securities.[40]

3. Insignificant Investment-Related Expenses

Paragraph (a)(3) of proposed rule 3a–8 would require that an R&D company devote no more than five percent of its total expenses for its last four fiscal quarters combined to investment advisory and management activities, investment research and selection, and supervisory and custodial fees.[41] Under paragraph (a)(4), as discussed more fully below, most of an R&D company's investments would be made to conserve capital and liquidity pending use of the funds in its operations. Consequently, its excess funds generally would be invested in instruments presenting limited investment risk. Accordingly,

1938 and 1940 pursuant to a Congressional mandate in the Public Utility Holding Company Act of 1935 [15 U.S.C. 79z–4]. When determining which companies to include in the study, the Commission distinguished between ''investment companies'' and ''holding companies'' on the basis of whether the company held a controlling interest in other companies, or instead smaller blocks of securities. SEC, REPORT ON THE STUDY OF INVESTMENT TRUSTS AND INVESTMENT COMPANIES (1939–1942).

[35] Research and development expenses are defined in paragraph (b)(5) by reference to SFAS No. 2, as currently in effect or as it may be subsequently revised.

[36] The Commission recognizes that bona fide R&D companies at times experience fluctuations in their research and development expenses and investment revenues. Consequently, the requirements in paragraphs (a)(1) and (a)(2) are calculated using the last four fiscal quarters combined.

[37] The BIO Proposal contains a similar requirement—that a company's investment income (excluding any income from strategic investments) be less than or equal to twice the amount the company spends on research and development. As proposed, paragraph (a)(2) would not exclude income from strategic investments. We request comment on our proposed approach. We ask commenters to discuss the types of income an R&D company receives from strategic investments and whether such income would be more properly viewed as indicative of research and development operations, rather than as investment income.

[38] *See* National Science Foundation, *Research and Development in Industry: 2000* (Early Release Tables), Table E–1 at *http://www.nsf.gov/sbe/srs/srs02403/tables/e1.xls* (last visited Nov. 26, 2002). Since 1993, research and development expenses for biotechnology companies alone more than doubled, *See Report on the State of the Industry,* presentation by Carl B. Feldbaum, President of the Biotechnology Industry Organization to Covance Senior Management, Washington, D.C. (April 29, 2002)(''Feldbaum Speech'') available at *http://www.bio.org/news/speeches/20020429.asp* (last visited Nov. 26, 2002). From 1999 to 2000 alone, these expenses rose from $10.7 billion to $13.8 billion, a 29.2 percent increase. *See* Ernst & Young Report 2001, *supra* note 22.

[39] *See* 1993 Proposal, *supra* note at section II.A.1.

[40] Under the Act, securities and similar investments of a registered investment company must be placed in the custody of a bank, a member of a national securities exchange, or the company itself in accordance with Commission rules. 15 U.S.C. 80a–17(f); *see also* 17 CFR 270.17f–1 and 2. As authorized by the Act, the Commission requires registered management investment companies to provide and maintain a fidelity bond against larceny and embezzlement that covers officers and employees of the company who have access to its securities or funds. 15 U.S.C. 80a–17(g); *see also* 17 CFR 270.17g–1.

[41] *See* 17 CFR 210.6–07.2(a) (Regulation S–X).

investment advisory, management, research, and similar expenses should be limited. In contrast, a high level of spending on these types of expenses may indicate that the company is more focused on its investment activities then its research and development activities, and should therefore be regulated as an investment company. We request comment on whether a different limitation on investment-related expenses would be more appropriate.

4. Investments to Conserve Capital and Liquidity

Paragraph (a)(4) of proposed rule 3a–8 would require that an R&D company's investments in securities be capital preservation investments, subject to two exceptions for ''other investments.'' The exceptions are designed to clarify the extent to which an R&D company may make investments that are not consistent with the preservation of capital and still remain within the safe harbor provided by the rule.

a. Definition of Capital Preservation Investments. ''Capital preservation investments'' are defined in paragraph (b)(3) as investments made to conserve an R&D company's capital and liquidity until the funds are used in its primary business or businesses. In general, capital preservation investments are liquid so that they can be readily sold to support the issuer's research and development activities as necessary and present limited credit risk. This requirement is intended to ensure that the investments are being used to support the company's research and development activities, rather than in a speculative manner that would be more characteristic of an investment company.

- We request comment on whether this definition provides sufficient guidance and, if more guidance would be appropriate, the types of issues any such guidance should address.
- We also request comment on whether the rule should require the board of directors of the company to adopt investment guidelines designed to assure that the company's funds are invested consistent with the goals of capital preservation and liquidity.[42]

Finally, the proposed rule, like the ICOS order, does not impose a limit on capital preservation investments relative to the company's total assets because R&D companies tend to have few tangible assets and large amounts of capital are needed to conduct research and development activities. We request comment on this approach.

b. Other Investments. In the 1993 Proposal, the Commission proposed a requirement that an R&D company's investment portfolio, viewed overall, present limited investment risk.[43] The Commission also stated that it would not view the acquisition of a limited amount of equity securities of a noncontrolled company, pursuant to a collaborative arrangement or ''strategic business relationship,'' as necessarily placing the issuer outside of this requirement, depending upon the facts and circumstances of that investment.[44] In recent years, companies are increasingly collaborating with other companies to conduct joint research and development.[45] Further, these collaborative arrangements appear to enhance research and development efforts.[46]

We believe that R&D companies should have some flexibility to obtain equity stakes that advance their strategic and business goals. The countervailing concern, however, remains that such investments, while being ''strategic,'' are nonetheless non-controlling minority equity interests which, if they constitute a significant portion of a company's assets, may indicate that the company's primary business is that of an investment company.[47] We also note that it is unclear why some collaborative research and development arrangements include the purchase of a non-controlling equity interest, while others do not.[48] We request comment on the specific reasons for including non-controlling interests in securities as part of collaborative research and development arrangements.[49]

Paragraph (a)(4) of proposed rule 3a–8 is designed to balance these considerations by drawing a distinction between investments made pursuant to a collaborative research and development arrangement and other investments that are not made to preserve capital and liquidity. Paragraph (a)(4)(i) would permit an R&D company to acquire investments that are not capital preservation investments (''other investments,'' defined in paragraph (b)(7) of the proposed rule), provided that immediately after the acquisition no more than 10 percent of its total assets consist of other investments. Alternatively, paragraph (a)(4)(ii) would permit a larger 20 percent ''basket'' of investments that are not capital preservation investments so long as at least 75 percent of those investments were made pursuant to collaborative research and development arrangements. These alternatives are designed both to ensure that an R&D company's investment portfolio, viewed overall, presents limited investment risk and to reflect the increased use of collaborative relationships to conduct research and development since the ICOS order was issued.

- We request comment on whether the proposed limits on other

[42] *See* the ICOS order, *supra* note 3, at section II.C.; *see also* BIO Petition, *supra* note 4, at 9.

[43] *See* the 1993 Proposal, *supra* note 2, at section II.A.2.

[44] *Id.*

[45] *See* Inter-Firm R&D Partnership *supra* note 24. The trend among biotechnology companies over the last 9 years, for example, has been a substantial increase in the number of strategic partnerships, including a six-fold increase between biotechnology and pharmaceutical companies, and a twelve-fold increase in partnerships between biotechnology companies. *See* Feldbaum Speech, *supra* note 38. Although the most common alliance remains between biotechnology and pharmaceutical companies, partnering between biotechnology companies is growing as smaller companies with narrow areas of expertise require other biotechnology companies to generate product candidates. *Id.*

[46] *See* Audretsch, David B., *Strategic Research Linkages and Small Firms, Strategic Research Partnerships: Proceedings from an NSF Workshop* (Aug. 2001) (noting that it has been argued that linkages and partnerships among R&D companies has ''contributed to a superior innovative performance''). *See also* Ernst and Young Report 2000, *supra* note 19, at 48 (noting that pharmaceutical companies rely on biotechnology companies to drive product development and to access cost-cutting technologies, which may increase the speed and efficiency of the drug discovery process).

[47] *See* the 1993 Proposal, *supra* note 2, at II.A.4.

[48] Although joint ventures and other equity partnerships previously dominated the alliances among R&D companies, recently R&D companies seem increasingly to prefer contractual partnerships. *See* Inter-Firm R&D Partnerships, *supra* note 24. *See also* Windhover's Pharmaceutical Strategic Alliances, Volume XIII (September 2002) (indicating that 98 of more than 650 strategic alliances signed between July 2001 and June 2002 included equity investments) (available at *http://www.windhover.net/pubs/psa/psa.asp*) (last visited Nov. 26, 2002).

[49] According to one commentator, the investing company may be motivated to make an investment more for strategic reasons than for the financial rewards. Mark A. Medearis & Michael W. Hall, *Minority Equity Investments In Connection With Strategic Alliances,* 1323 PLI/Corp 117, 119 (July-August 2002). These strategic reasons may include investment: (a) to obtain influence or control over the investee and its business plans; (b) to serve as a prelude to an ultimate acquisition of the investee by the investing company; (c) to provide a mechanism through which the investing company may provide development funding without incurring an expense for accounting purposes; and (d) to serve as a ''goodwill'' gesture to the investee. *Id.* According to a recent article, however, technology corporations that invested in other technology companies for strategic reasons in the late 1990's are now selling those interests as their value has declined. Ann Grimes, *Tech Companies Itch to Shed VC Portfolios in Tough Times,* Wall Street Journal, September 26, 2002. It is not clear that any of these motives are directly connected to the long, expensive research and development cycles experienced by R&D companies. We believe that understanding the reasons for structuring a strategic alliance to include an investment in a non-controlling interest in securities is important because, absent such an investment, a strategic alliance would not raise any issues under the Act.

investments set forth in paragraph (a)(4) are too restrictive or whether they may be too broad.

• We also request comment on whether other investments that were made pursuant to collaborative research and development arrangements should continue to be considered with respect the 75 percent calculation, if the collaborations are no longer ongoing.[50]

Under the proposed approach, the limits on other investments would be calculated only at the time other investments are acquired. If an R&D company's other investments increase in value due to market fluctuations, it would not be required to sell any other investments it already owns, but it would not be able to continue to acquire other investments.

• Is this approach appropriate?

• Should the rule provide a limit, applicable at any time, on the percentage of an R&D company's assets, valued in accordance with section 2(a)(41) of the Act, that may consist of other investments?

• Should the rule provide a period of time after a collaborative research and development arrangement ends during which securities obtained pursuant to it must be sold?

We also encourage commenters to suggest alternative tests. We note that the BIO Proposal would not impose any asset-based limit on investments that meet its definition of strategic investments.[51] The BIO Proposal would impose a cost-based limit on strategic investments, requiring that the cost of all strategic investments at any time be less than the total amount of the company's research and development expenses during the most recent four fiscal quarters.[52]

• We request comment on the approach advocated by BIO.

• We also request that commenters who propose tests alternative to that which we are proposing today address how their proposed test(s) would ensure that companies that should be regulated under the Act are not afforded the benefit of the rule's safe harbor.

c. CollaborativeResearch and Development Arrangements. ''Collaborative research and development arrangement'' is defined in paragraph (b)(4) as a business relationship which (i) is designed to achieve narrowly focused goals that are directly related to, and an integral part of, the issuer's research and development activities; (ii) calls for the issuer to conduct joint research and development activities with one or more other parties, and (iii) is not entered into for the purpose of avoiding regulation under the Act. Together, paragraphs (a)(4) and (b)(4) recognize that certain investments, while not interests in controlled companies through which the issuer engages in a non-investment business, nonetheless may be sufficiently related to an R&D company's primary business that their holding should be permitted by the rule's safe harbor.

• We request comment on the scope of the definition of collaborative research and development arrangement.[53]

• Does the proposed definition appropriately distinguish a ''strategic'' investment of an R&D company from one that primarily has an investment purpose?

• Should other relationships, such as a licensor-licensee relationship with respect to a patent or other intellectual property rights, be included in the definition?[54]

• Should activities other than research and development activities, such as manufacturing and joint marketing activities, be included?[55] In this regard, we ask commenters to address whether R&D companies face any unique challenges that are not faced by other operating companies seeking to produce and market their products.

We note that paragraph (b)(1) of the proposed rule provides that assets are to be valued for purposes of the rule in accordance with section 2(a)(41) of the Act.[56] Section 2(a)(41)(B) provides, in relevant part, that for purposes of section 3 of the Act the term ''value'' means, (i) with respect to securities for which market quotations are readily available, the market value of those securities; and (ii) with respect to other securities and assets, fair value as determined in good faith by the board of directors. We request comment on whether some other basis (for example, cost) would be more appropriate for investments made pursuant to collaborative research arrangements, and if so, why.

B. Conducting Business Through Primarily Controlled Companies

The rule's safe harbor would be available to any R&D company that conducts business directly, through majority-owned subsidiaries, ''or through one or more companies which it controls primarily.'' Paragraph (b)(5) of the rule provides that ''controlled primarily'' means that the issuer has control over the company within the meaning of section 2(a)(9) of the Act and that the degree of the issuer's control is greater than that of any other person. The ''controlled primarily'' standard, also found in rule 3a–1 under the Act, is designed to distinguish securities representing interests in operating companies through which an issuer engages in a non-investment business from mere investments in securities.[57] The Commission traditionally has viewed the fact that an issuer's degree of control over a company is greater than that of any other person as strong evidence that the issuer is engaged in a business through the other company.[58]

[50] Under the BIO Proposal, an investment would not qualify as strategic if the subject of the collaborative activity or contractual right is not ongoing (*i.e.*, once the collaboration or contractual right terminates, the investment would no longer be treated as a strategic investment.) *See* BIO Petition, *supra* note 4, at 8.

[51] *See id.* The BIO Proposal would allow a company to hold strategic investments, provided they are owned to achieve goals that are directly related to its research and development activities. *Id.*

[52] *Id.* Unlike the proposed rule, the approach suggested in the BIO Proposal would not limit an R&D company's ability to continue to acquire other investments when non-controlling strategic investments, valued in accordance with section 2(a)(41) of the Act, are a large portion of the company's assets.

[53] The BIO Proposal similarly would require that strategic investments be owned to achieve narrowly focused goals that are directly related to, and an integral part of, the issuer's research and development activities. *Id.*

[54] Under the BIO Proposal, an investment will qualify as ''strategic'' if, among other things, the investing company made the investment in connection with a strategic agreement with another company under which (1) the parties collaboratively will conduct research, development, manufacturing, or commercialization activities, *or* (2) the investing company provides or receives a license of, or similar contractual right to use (or an option to provide or receive a license of, or similar contractual right to use) patents, know-how, or other proprietary intellectual property to use in research, development, manufacturing, or commercialization activities. *Id.*

[55] The BIO Proposal also would permit an investment to qualify as strategic when the parties collaboratively conduct manufacturing or commercialization activities.

[56] 15 U.S.C. 80a–2(a)(41)(B).

[57] Rule 3a–1(a)(4) [17 CFR 270.3a–1(a)(4)]. *See, e.g.*, Standard Shares, Inc., Investment Company Act Release Nos. 10200 (Apr. 11, 1978) (notice) and 10234 (May 9, 1978) (order).

[58] *See* Health Communications Services Inc. (pub. avail. Apr. 26, 1985). To demonstrate control over a company for purposes of section 2(a)(9) under the Act, an issuer must show not only the ability to exercise control, but also that it is exercising it. *See id.* (ownership of more than 25 percent of the outstanding stock of affiliates, if ''outstanding stock'' is comprised of voting securities, constituted control over those entities for purposes of the rebuttable presumption established by section 2(a)(9) of the Act). *See also* In the Matter of ENERSIS S.A., Investment Company Act Release Nos. 20925 (Feb. 27, 1995) (notice) and 20965 (Mar. 24, 1995) (order); In the Matter of CITIC Pacific Limited, Investment Company Act Release Nos. 21282 (Aug. 15, 1995) (notice) and 21345 (Sept. 12, 1995) (order); In the Matter of Safeguard Scientifics,

Continued

We request comment on extending the rule's safe harbor to R&D companies that conduct their business in this manner.

C. Holding Out as Primarily Engaged in a Non-investment Business

Paragraph (a)(5) of the proposed rule would require that an R&D company not hold itself out as being engaged in the business of investing, reinvesting, or trading in securities. This requirement would ensure that any issuer that holds itself out as being an investment company could not rely on the rule. Paragraph (a)(5) further requires that the company not be a special situation investment company.[59]

D. Other Tonopah Factors

Paragraph (a)(6) of the proposed rule codifies the requirement in the ICOS order that the activities of an R&D company's officers, directors and employees,[60] its public representations of policies, and its historical development demonstrate that it is primarily engaged in a business or businesses other than investing, reinvesting, owning, holding, or trading in securities. Paragraph (a)(6) also requires that the board of directors of a company seeking to rely on the safe harbor adopt an appropriate resolution evidencing that the company is primarily engaged in a non-investment business.[61] We request comment on these provisions.

E. Consolidation With Financial Statements of Wholly-Owned Subsidiaries

Paragraph (b)(2) provides that, for purposes of the proposed rule, an R&D company's assets, expenses and revenues should be determined on an unconsolidated basis, except that the company shall consolidate its financial statements with the financial statements of any wholly-owned subsidiaries. This approach is consistent with rule 3a–1 under the Act.[62] We note that, under GAAP, the assets, income and expenses of majority-owned subsidiaries of an issuer also are consolidated with the issuer's statement of operations.[63] We request comment on whether it would be more appropriate for the proposed rule to require or permit consolidation of an R&D company's financial statements with those of its majority-owned subsidiaries.

An R&D company's investments in companies it controls primarily (but which are not majority-owned subsidiaries) may be accounted for using the equity method.[64] Statements of operations prepared on the basis of the equity method of accounting reflect, in a single amount, the parent's share of the controlled company's net income, but not the parent's share of its investment revenues, investment-related expenses, or research and development expenses. We request comment on whether an R&D company should be allowed or required to combine its pro rata share of the relevant expenses and revenues of any companies it controls primarily with its own when determining whether it meets the requirements of paragraphs (a)(1) through (a)(3) of the proposed rule.[65]

IV. General Request for Comment

The Commission requests comment on the rule proposed in this release, suggestions for other additions to the rule, and comment on other matters that might have an effect on the proposal contained in this release.

V. Cost-Benefit Analysis

The Commission is proposing a rule that would serve as a nonexclusive safe harbor from investment company status for certain R&D companies. The rule is designed primarily to benefit R&D companies that currently are relying on the ICOS Order. The rule primarily would address two aspects of the analysis in the ICOS Order. First, it would allow R&D companies greater flexibility to raise and invest capital pending its use in research, development and other operations by modifying the requirement that an R&D company generally spend more on research and development that it earns on its investments. Second, the proposed rule would clarify the extent to which an R&D company may make investments in other R&D companies pursuant to collaborative research and development arrangements.

The proposed rule generally would determine the primary business activity of a company based on how the company uses its assets and income. A company would be eligible to rely on the rule's nonexclusive safe harbor if it: (a) Has research and development expenses that are a substantial percentage of its total expenses for its last four fiscal quarters combined and that equal at least half of its investment revenues for that period; (b) has investment-related expenses that do not exceed five percent of its total expenses for its last four fiscal quarters combined; (c) makes its investments to conserve capital and liquidity until it uses the funds in its primary business subject to certain exceptions; and (d) is primarily engaged, directly or through a company or companies that it controls, in a noninvestment business, as evidenced by the activities of its officers, directors and employees, its public representations of policies, and its historical development.

As the proposed rule is exemptive, rather than prescriptive, R&D companies are not required to rely on it. Therefore, we assume that R&D companies will only rely on the provisions of the proposed rule if the anticipated benefits from such actions would exceed the anticipated costs.

A. Benefits

Proposed rule 3a–8 is intended to benefit R&D companies by reducing costs on an ongoing basis. When an R&D company's status under the Act is uncertain, it may experience higher costs when issuing securities or when borrowing. The proposed rule is

Inc., Investment Company Act Release Nos. 24317 (Feb. 25, 2000) (notice) and 24345 (Mar. 22, 2000) (order).

[59] For a discussion of a special situation investment company, *see e.g.*, Certain Prima Facie Investment Companies, Investment Company Act Release No. 10937 at nn. 19–20 & accompanying text (Nov. 13, 1979).

[60] In the Tonopah Order, and subsequent Commission orders under section 3(b)(2) of the Act, the Commission considered the activities of a company's employees in determining a company's primary business. *See* Tonopah Order, *supra* note 14. *See also, e.g.*, Yahoo! Inc., Investment Company Act Release Nos. 24459 (May 18, 2000) (notice) and 24494 (June 13, 2000) (order); Airtouch Communications, Inc., Investment Company Act Release Nos. 24271 (Jan. 28, 2000) (notice) and 24294 (Feb. 23, 2000) (order); Internet Capital Group, Inc. Investment Company Act Release Nos. 23923 (July 28, 1999) (notice) and 23961 (Aug. 23, 1999) (order); and Extended Stay America, Inc., Investment Company Act Release Nos. 23167 (Apr. 30, 1998) (notice) and 23210 (May 27, 1998) (order).

[61] This requirement is modeled on the requirement in rule 3a–2 under the Act that provides a temporary exemption from the Act for transient investment companies. 17 CFR 270.3a–2.

[62] *See* rule 3a–1(c). Under section 3(a)(1)(C) of the Act, an issuer's status is determined by the composition of its assets on an unconsolidated basis.

[63] The consolidated statement reflects all income and expenses of these subsidiaries, whether the issuer/parent owns all or just a majority of the outstanding common stock of the subsidiary. The net income attributable to minority ownership of the subsidiaries is also deducted in arriving at consolidated net income on the consolidated income statement. 1993 Proposal, *supra* note , at n.31.

[64] *See* The Equity Method of Accounting, Accounting Principles Board Opinion No. 18 (American Institute of Certified Public Accountants 1971) (''APB No. 18''). APB No. 18 generally prescribes the equity method of accounting by investors for investments in investees when the investor owns more than 20 percent, but not more than 50 percent, of the investee's voting interests.

[65] This method of accounting, generally referred to as the pro rata consolidation method, currently is applied in certain industries in lieu of the equity method. *See* Simplification of Registration and Reporting Requirements for Foreign Companies; Safe Harbors for Public Announcements of Unregistered Offerings and Broker-Dealer Research Reports, Securities and Exchange Commission Release No. 34–33139 (Nov. 3, 1993) [58 FR 60307 (Nov. 3, 1993)].

designed to assist R&D companies in determining their status under the Act by clarifying the applicable test. Clarification of the test should both reduce the costs that an R&D company may need to incur to determine its status under the Act and reduce any uncertainty in such determination, which may reduce costs when issuing securities or borrowing.

In addition, the rule is designed to afford R&D companies greater flexibility to both raise and invest capital. R&D companies may be forgoing opportunities to access the markets or reducing the amounts raised when accessing the markets because of limits contained in the current test. The current limits also may discourage investment in higher yielding capital preservation instruments. The rule should allow R&D companies to raise larger amounts of capital in a more cost-effective manner and to formulate more efficient asset allocations than would be permitted under the existing tests. Thus, the rule is expected to reduce any costs that may be associated with a lack of flexibility (1) to access fully the markets when conditions are favorable, and (2) to make capital preservation investments.

B. Costs

In addition to the benefits of the rule, the Commission is sensitive to the costs that may be associated with it. The proposed rule would require a company's board of directors to adopt and record a resolution that the company is primarily engaged in a non-investment business. The Commission believes the cost of this requirement, which generally would need to be fulfilled once, to be minimal relative to its benefits. We estimate that to comply with this requirement, an R&D company would need to have its in-house counsel spend 45 minutes preparing the resolution, and its board of directors spend 15 minutes adopting the resolution. Based on our estimate that 500 companies would rely on the rule, one hour per company at a blended hourly rate results in a total cost of $103,750.[66] The Commission requests comment on whether its estimates of the number of companies that may rely on the rule, the amount of time needed to adopt the required resolution and the costs of such time are appropriate. The Commission requests comment on the potential costs and benefits identified in the proposal and any other costs or benefits that may result from the proposal.

VI. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, a rule is ''major'' if it results or is likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers or individual industries; or significant adverse effects on competition, investment, or innovation. The Commission requests comment on the potential impact of the proposed rule on the U.S. economy on an annual basis. Commenters are requested to provide empirical data to support their views.

VII. Consideration of Promotion of Efficiency, Competition, and Capital Formation

Section 2(c) of the Act provides that whenever the Commission is engaged in rulemaking under the Act and is required to consider or determine whether an action is consistent with the public interest, the Commission also must consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. The Commission has considered rule 3a–8 in light of these standards and believes that, by clarifying the status of certain R&D companies under the Act, and allowing R&D companies greater flexibility to raise and invest capital, the rule is consistent with the public interest and will positively affect capital formation. The Commission also believes that the proposed rule will promote efficiency and competition, and that the rule would not be unduly burdensome to those companies wishing to rely on it.

The Commission requests comment on whether the proposed rule, if adopted, would promote efficiency, competition, and capital formation. Will the proposed rule materially affect both the number of R&D companies and their ability to raise capital for their business? Comments will be considered by the Commission in satisfying its responsibilities under section 2(c) of the Act. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

VIII. Paperwork Reduction Act

R&D companies wishing to rely on the safe harbor provided by proposed rule 3a–8 must fulfill certain conditions set forth in the rule. One such condition requires that the board of directors of the company adopt an appropriate resolution evidencing that the company is primarily engaged in a business other than that of investing, reinvesting, owning, holding, or trading in securities. The proposed rule would require that the resolution be recorded contemporaneously in the company's minute books or comparable documents. This requirement constitutes a ''collection of information'' within the meaning of the Paperwork Reduction Act of 1995 [44 U.S.C. 3501, *et seq.*], because adopting the resolution is necessary to meet the conditions of the rule. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information without display of a valid Office of Management and Budget (''OMB'') control number. Accordingly, the Commission has submitted the proposed rule to the OMB for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for the collection of information is ''Rule 3a–8 under the Investment Company Act.''

The Commission has estimated the paperwork burden under the proposed rule. The total aggregate estimated annual reporting burden associated with the rule's requirements is 500 hours. The required board resolution would need to be adopted and recorded only once (unless relevant circumstances change). Thus, the Commission believes that the annual collection of information requirement will not be a significant burden.

The Commission estimates that of the 500 R&D companies that may take advantage of the proposed rule, the reporting burden imposed by rule 3a–8 is one hour per company, for a total aggregate reporting burden of 500 hours.

Persons wishing to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Room 3208, Washington, DC 20503, and also should send a copy to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609 with reference to File No. S7–47–02. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, so a comment to OMB

[66] The Commission's estimate concerning the weighted average hourly wage rate is based on salary information for the securities industry compiled by the Securities Industry Association. *See* Securities Industry Association, Report on Management & Professional Earnings in the Securities Industry—2001. The weighted average hourly wage rate of $207.50 includes overhead costs and assumes that 75 percent of the time will be by in-house counsel at a rate of $110 per hour and 25 percent by the board of directors at a rate of $500 per hour.

is best assured of having its full effect if OMB receives the comment within 30 days after publication of this release. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–47–02, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 450 Fifth Street, NW., Washington, DC 20549.

IX. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis (''IRFA'') in accordance with 5 U.S.C. 603 regarding proposed rule 3a–8 under the Act. The IRFA explains that the proposed rule would provide a safe harbor to allow R&D companies more investment flexibility and the ability to hold and invest more capital without becoming subject to the Act. The IRFA also explains that in order to be eligible for the nonexclusive safe harbor the proposal would create, an R&D company must have research and development expenses that are a substantial percentage of its total expenses, have relatively small investment-related expenses, make its investments to conserve capital and liquidity until it uses the funds in its primary business, subject to certain exceptions, and be primarily engaged, directly or through a company or companies that it controls primarily, in a noninvestment business.

The IRFA states that proposed rule 3a–8 is designed to clarify, and provide greater certainty concerning, the status of an R&D company under the Act. Rule 3a–8 would have no reporting requirements, but the board of directors of a company seeking to rely on the rule would need to adopt a board resolution and record that resolution contemporaneously in its minute books or comparable documents. The IRFA states that the only significant alternative to the proposed rule would be for an R&D company to engage in its own analysis and application of existing statutory provisions, Commission orders and interpretations to determine the R&D company's status under the Act. The Commission therefore concluded that the proposal, although it could affect small entities, would be less burdensome than this alternative and, thus, would minimize any impact upon, or cost to, small businesses. Any company with net assets of $50 million would be a small entity for purposes of the proposed rule. The IRFA also states that the Commission believes that there are no duplicative, overlapping, or conflicting Federal rules with the proposed rule.

The Commission encourages comment with respect to any aspect of the IRFA. The Commission specifically requests comment on the number of small entities that would be affected by the proposed rule, and the likely impact of the proposal on small entities. Commenters are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. These comments will be considered in connection with the adoption of the rule, and will be placed in the same public file as comments on the proposed rule itself. A copy of the IRFA may be obtained by contacting Karen L. Goldstein, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0506.

X. Statutory Authority

We are proposing rule 3a–8 pursuant to our authority set forth in sections 6(c) and 38(a) of the Investment Company Act of 1940 [15 U.S.C. 80a–6(c) and 80a–37(a)].

List of Subjects in 17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule Amendments

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulation is proposed to be amended as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37, 80a–39, unless otherwise noted;

* * * * *

2. Section 270.3a–8 is added to read as follows:

§ 270.3a–8 Certain research and development companies.

(a) Notwithstanding sections 3(a)(1)(A) and 3(a)(1)(C) of the Act (15 U.S.C. 80a–3(a)(1)(A) and 80a–3(a)(1)(C)), an issuer will be deemed not to be an investment company if:

(1) Its research and development expenses, for the last four fiscal quarters combined, are a substantial percentage of its total expenses for the same period;

(2) Its revenues from investments in securities, for the last four fiscal quarters combined, do not exceed twice the amount of its research and development expenses for the same period;

(3) Its expenses for investment advisory and management activities, investment research and custody, for the last four fiscal quarters combined, do not exceed five percent of its total expenses for the same period;

(4) Its investments in securities are capital preservation investments, except that the issuer may acquire other investments, provided that immediately after such acquisition:

(i) No more than 10 percent of its total assets consist of other investments; or

(ii) No more than 20 percent of its total assets consist of other investments and at least 75 percent of such other investments were made pursuant to collaborative research and development arrangements;

(5) It does not hold itself out as being engaged in the business of investing, reinvesting or trading in securities, and it is not a special situation investment company; and

(6) It is primarily engaged, directly, through majority-owned subsidiaries, or through one or more companies which it controls primarily, in a business or businesses other than that of investing, reinvesting, owning, holding, or trading in securities, as evidenced by:

(i) The activities of its officers, directors and employees;

(ii) Its public representations of policies;

(iii) Its historical development; and

(iv) An appropriate resolution of its board of directors, or by an appropriate action of the person or persons performing similar functions for any issuer not having a board of directors, which resolution or action has been recorded contemporaneously in its minute books or comparable documents.

(b) For purposes of this section:

(1) All assets shall be valued in accordance with section 2(a)(41)(A) of the Act (15 U.S.C. 80a–2(a)(41)(A));

(2) The percentages described in this section are determined on an unconsolidated basis, except that the issuer shall consolidate its financial statements with the financial statements of any wholly-owned subsidiaries;

(3) *Capital preservation investments* means investments that are made to conserve capital and liquidity until the funds are used in the issuer's primary business or businesses;

(4) *Collaborative research and development arrangement* means a business relationship which:

(i) Is designed to achieve narrowly focused goals that are directly related to, and an integral part of, the issuer's research and development activities;

(ii) Calls for the issuer to conduct joint research and development activities with one or more other parties;

and (iii)Is not entered into for the purpose of avoiding regulation under the Act;

(5) *Controlled primarily* means the issuer has control over the company within the meaning of section 2(a)(9) of the Act (15 U.S.C. 80a–2(a)(9)) and the degree of the issuer's control is greater than that of any other person;

(6) *Investments in securities* means all securities other than securities issued by majority-owned subsidiaries and companies controlled primarily by the issuer that conduct similar types of businesses, through which the issuer is engaged primarily in a business other than that of investing, reinvesting, owning, holding, or trading in securities;

(7) *Other investments* means investments in securities that are not capital preservation investments; and

(8) *Research and development expenses* means research and development expenses as defined in the Statement of Financial Accounting Standards No. 2, as currently in effect or as it may be subsequently revised.

By the Commission.

Dated: November 26, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30663 Filed 12–2–02; 8:45 am]

BILLING CODE 8010–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 02–2721, MB Docket No. 02–335, RM–10545]

Radio Broadcasting Services; Coopersville, Hart & Pentwater, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Waters Broadcasting Corporation and Synergy Media, Inc. requesting the substitution of Channel 287B for Channel 287C2 at Hart, Michigan, and reallotment of Channel 287B from Hart, Michigan, to Coopersville, Michigan, and modification of the license for Station WCXT to specify operation on Channel 287B at Coopersville. The coordinates for Channel 287B at Coopersville are 43–20–36 and 85–52–16. To accommodate the proposal for Coopersville, we shall also propose the reallotment of Channel 231C3 from Pentwater to Hart, Michigan, and modification of the license for Station WWKR accordingly. The coordinates for Channel 231C3 at Hart are 43–51–33 and 86–18–27. In accordance with Section 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest in the use of Channel 287B at Coopersville or Channel 231C3 at Hart. Canadian concurrence will be requested for both allotments.

DATES: Comments must be filed on or before December 30, 2002, and reply comments on or before January 15, 2003.

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's counsel, as follows: Matthew H. McCormick, Reddy, Begley & McCormick, LLP, 2175 K Street, NW., Suite 350, Washington, DC 20037–1845 and Robert L. Olender, Koerner & Olender, P.C., 5809 Nicholson Lane, Suite 124, North Bethesda, Maryland 20852–5706.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–335, adopted October 23, 2002, and released November 8, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 Twelfth Street, SW, 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 Michigan, is amended by removing Channel 287C2 at Hart, by adding Coopersville, Channel 287B, and by removing Channel 231C3 at Pentwater and adding Channel 231C3 at Hart.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–30508 Filed 12–2–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–2927; MB Docket No. 02–314 RM–10594]

Radio Broadcasting Services; Encino, Texas

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document seeks comment on a petition for rulemaking filed by Charles Crawford proposing the allotment of Channel 283A at Encino, Texas, as the community's first local transmission service. Channel 283A can be allotted at Encino, Texas, with a site restriction of 6.4 kilometers (4.0 miles) west of the community. Coordinates for Channel 283A at Encino, Texas are 26–55–42 NL and 98–11–56 WL . Since this proposal is within 320 kilometers (199 miles) of the U.S.-Mexico border, concurrence of the Mexican government to the proposed allotment has been requested.

DATES: Comments must be filed on or before December 30, 2002, and reply comments must be filed on or before January 14, 2003.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report

and Order, MB Docket No. 02–314, adopted October 23, 2002, and released November 8, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. This document 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.

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.

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Encino, Channel 283A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–30506 Filed 12–2–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–3064, MB Docket No. 02–351, RM–10601]

Radio Broadcasting Services; Blanket, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Robert Fabian proposing the allotment of Channel 284A at Blanket, Texas, as that community's first local FM service. The coordinates for Channel 284A at Blanket are 31–49–24 and 98–47–12.

DATES: Comments must be filed on or before December 30, 2002, and reply comments on or before January 14, 2003.

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, as follows: Robert Fabian, 4 Hickory Crossing Lane, Argyle, Texas 76226.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–351, adopted October 30, 2002, and released November 8, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Reference Center (Room CY–A257), 445 Twelfth Street, SW., 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 Texas, is amended by adding Blanket, Channel 284A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–30509 Filed 12–2–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–3066; MB Docket No. 02–352, RM–10602]

Radio Broadcasting Services; Glenville, NC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Glenville Radio Broadcasters proposing the allotment of Channel 289A at Glenville, North Carolina, as the community's first local aural transmission service. Channel 289A can be allotted to Glenville in compliance with the Commission's minimum distance separation requirements with a site restriction of 1.5 kilometers (.93 miles) west to avoid a short-spacing to the licensed site of Station WZNY(FM), Channel 289C, Augusta, Georgia. The coordinates for Channel 289A are 35–09–38 North Latitude and 83–07–28 West Longitude.

DATES: Comments must be filed on or before December 30, 2002, and reply comments on or before January 14, 2002.

ADDRESSES: Federal Communications Commission, Washington, DC 20054.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 02–352, adopted October 30, 2002, and released November 8, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

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.

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 North Carolina, is amended by adding Glenville, Channel 289A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–30510 Filed 12–2–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–3069; MB Docket No. 02–208; RM–10515]

Radio Broadcasting Services; Buttonwillow, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: This document dismisses the Petition for Rule Making filed by Dangerous Broadcasting, L.P., II, requesting the allotment of Channel 265A to Buttonwillow, California. On October 29, 2002, Dangerous Broadcasting, L.P., II filed a Motion to Withdraw its Petition for Rule Making in this proceeding. This document grants the Motion to Withdraw the Petition for Rule Making filed by Dangerous Broadcasting, L.P., II.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket Nos. 02–208, adopted November 6, 2002, and released November 8, 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.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–30513 Filed 12–2–02; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 67, No. 232

Tuesday, December 3, 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. 02–006–2]

Monsanto Co.; Extension of Determination of Nonregulated Status for Canola Genetically Engineered for Glyphosate Herbicide Tolerance

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our decision to extend to one additional canola event our determination that a canola line developed by Monsanto Company, which has been genetically engineered for tolerance to the herbicide glyphosate, is no longer considered a regulated article under our regulations governing the introduction of certain genetically engineered organisms. Our decision is based on our evaluation of data submitted by Monsanto Company in its request for an extension of a determination of nonregulated status, an analysis of other scientific data, and a comment received from the public in response to a previous notice. This notice also announces the availability of our finding of no significant impact.

EFFECTIVE DATE: January 2, 2003.

ADDRESSES: You may read copies of the extension request, the environmental assessment and finding of no significant impact, and the comment received on an earlier notice of the availability of the environmental assessment 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: Dr. James White, Biotechnology Regulatory Services, APHIS, Suite 5B05, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–5940. To obtain a copy of the extension request or the environmental assessment and finding of no significant impact, contact Ms. Kay Peterson at (301) 734–4885; e-mail: *Kay.Peterson@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered ''regulated articles.''

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Further, the regulations in § 340.6(e)(2) provide that a person may request that APHIS extend a determination of nonregulated status to other organisms. Such a request must include information to establish the similarity of the antecedent organism and the regulated article in question.

Background

On November 20, 2001, APHIS received a request for an extension of a determination of nonregulated status (APHIS No. 01–324–01p) from Monsanto Company (Monsanto) of St. Louis, MO, for a canola (*Brassica napus* L.) transformation event designated as glyphosate-tolerant canola event GT200 (GT200), which has been genetically engineered for tolerance to the herbicide glyphosate. Monsanto requested an extension of a determination of nonregulated status that was issued for Roundup Ready® canola line RT73, the antecedent organism, in response to APHIS petition number 98–216–01p (see 64 FR 5628–5629, Docket No. 98–089–2, published February 4, 1999). Based on the similarity of GT200 to the antecedent organism RT73, Monsanto requested a determination that glyphosate-tolerant canola event GT200 does not present a plant pest risk and, therefore, is not a regulated article under APHIS' regulations in 7 CFR part 340.

On February 28, 2002, APHIS published a notice in the **Federal Register** (67 FR 0247–0248, Docket No. 02–006–1) announcing that an environmental assessment (EA) for the Monsanto extension request had been prepared and was available for public comment. APHIS received one comment on the subject EA during the 30-day comment period, which ended April 1, 2002. The comment, which was from a consumer organization, urged denial of the subject extension request based on alleged deficiencies in the environmental assessments prepared for the antecedent organism and event GT200 canola. We have provided a response to this comment in an addendum to the finding of no significant impact (FONSI). The EA and FONSI are available from the person listed under **FOR FURTHER INFORMATION CONTACT**.

Analysis

Like the antecedent organism, canola event GT200 has been genetically engineered to express an enzyme, 5-enolpyruvylshikimate-3-phosphate synthase (EPSPS), from *Agrobacterium* sp. strain CP4, and the glyphosate oxidoreductase (GOX) gene/protein from *Ochrobactrum anthropi* strain LBAA, both of which impart tolerance to the herbicide glyphosate. The subject canola and the antecedent organism were produced through use of the *Agrobacterium tumefaciens* method to transform the parental canola variety Westar. Expression of the added genes in GT200 and the antecedent organism is controlled in part by gene sequences derived from the plant pathogen figwort mosaic virus.

Canola event GT200 and the antecedent organism were genetically engineered using the same

transformation method and contain the same enzymes that make the plants tolerant to the herbicide glyphosate. Accordingly, we have determined that canola event GT200 is similar to the antecedent organism in APHIS petition number 98–216–01p, and that canola event GT200 should no longer be regulated under the regulations in 7 CFR part 340.

The subject canola has been considered a regulated article under APHIS regulations in 7 CFR part 340 because it contains gene sequences derived from plant pathogens. However, GT200 has been approved for unconfined environmental release and food and feed use in Canada since 1997, with no subsequent reports of deleterious effects on plants, nontarget organisms, or the environment.

Determination

Based on an analysis of the data submitted by Monsanto and a review of other scientific data, APHIS has determined that canola event GT200: (1) Exhibits no plant pest characteristics; (2) is no more likely to become a weed than non-transformed traditional varieties; (3) is unlikely to increase the weediness potential for any other cultivated or wild species with which it can interbreed; (4) will not cause damage to raw or processed agricultural commodities; and (5) will not harm threatened or endangered species or other organisms, such as bees, that are beneficial to agriculture. Therefore, APHIS has concluded that canola event GT200 and any progeny derived from crosses with other canola varieties will be as safe to grow as canola that is not subject to regulation under 7 CFR part 340.

Because APHIS has determined that the subject canola event does not present a plant pest risk based on its similarity to the antecedent organism, Monsanto's canola event GT200 will no longer be considered a regulated article under APHIS' regulations in 7 CFR part 340. Therefore, the requirements pertaining to regulated articles under those regulations no longer apply to the field testing, importation, or interstate movement of the subject canola event or its progeny. However, importation of canola event GT200 and seeds capable of propagation is still subject to the restrictions found in APHIS' foreign quarantine notices in 7 CFR part 319.

National Environmental Policy Act

An EA was prepared to examine any potential environmental impacts associated with the proposed extension of a determination of nonregulated status. The EA was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372). Based on that EA, APHIS has reached a FONSI with regard to the determination that Monsanto's canola event GT200 and events developed from it are no longer regulated articles under its regulations in 7 CFR part 340. Copies of Monsanto's extension request and the EA and FONSI are available upon request from the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Done in Washington, DC, this 26th day of November 2002.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–30514 Filed 12–2–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 01–060–2]

Vector Tobacco; Availability of Determination of Nonregulated Status for Tobacco Genetically Engineered for Reduced Nicotine

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our determination that the Vector Tobacco (USA) Ltd. tobacco designated as Vector 21–41, which has been genetically engineered for reduced nicotine, is no longer considered a regulated article under our regulations governing the introduction of certain genetically engineered organisms and products. Our determination is based on our evaluation of data submitted by Vector Tobacco (USA) Ltd. in its petition for a determination of nonregulated status, our analysis of other scientific data, and comments received from the public in response to a previous notice. This notice also announces the availability of our written determination document and our finding of no significant impact.

EFFECTIVE DATE: September 16, 2002.

ADDRESSES: You may read a copy of the determination, an environmental assessment and finding of no significant impact, the petition for a determination of nonregulated status submitted by Vector Tobacco (USA) Ltd., and all comments received on the petition and the environmental assessment 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: Dr. Susan Koehler, Biotechnology Regulatory Services, Suite 5B05, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–4886. To obtain a copy of the determination or the environmental assessment and finding of no significant impact, contact Ms. Kay Peterson at (301) 734–4885; e-mail: *Kay.Peterson@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

On May 1, 2001, the Animal and Plant Health Inspection (APHIS) received a petition (APHIS Petition No. 01–121–01p) from Vector Tobacco (USA) Ltd. (Vector) of Durham, NC, requesting a determination of nonregulated status under 7 CFR part 340 for tobacco (*Nicotiana tabacum* L.) designated as Vector 21–41, which has been genetically engineered to produce a very low level of nicotine. The Vector petition states that the subject tobacco should not be regulated by APHIS because it does not present a plant pest risk.

On February 12, 2002, APHIS published a notice in the **Federal Register** (67 FR 6480–6481, Docket No. 01–060–1) announcing that the Vector petition was available for public review. In the notice, APHIS solicited comments from the public on whether this tobacco presents a plant pest risk. APHIS also made available for public comment an environmental assessment for the proposed determination of nonregulated status. APHIS received 45 comments on the petition and the environmental assessment during the 60-day comment period which ended April 15, 2002. The comments were received from tobacco farmers, tobacco companies, State

farmers' organizations, State department of agriculture officials, private individuals, tobacco growers' cooperatives, tobacco marketing organizations, university cooperative extension centers, members of the U.S. Congress, a foundation seed producer, an agronomic consultant, a county chamber of commerce, and a consumer organization. Twenty-three of the comments were in favor of a determination of nonregulated status for Vector 21–41 tobacco, and 22 comments either opposed deregulation or recommended no action on the petition until certain concerns are addressed about the effects of Vector 21–41 deregulation on traditional tobacco growers and markets. A majority of commenters in favor of deregulation stressed that Vector 21–41 did not present a plant pest risk, displayed disease and insect susceptibilities and agronomic characteristics similar to conventionally bred tobacco, and noted the benefits to local economies from growing Vector 21–41. Those commenters not expressing support for deregulation of the subject tobacco at this time generally expressed the following concerns about Vector 21–41: Blue mold and insect susceptibilities, the limited number of years of field testing, the potential for gene transfer to conventional tobacco, and the potential for commingling with conventional tobacco in the absence of growing and processing guidelines. One commenter found the environmental assessment inadequate, alleging that it failed to address the impacts of Vector 21–41 on organic farmers and certain human health effects, including the impacts of an antibiotic resistance gene. We have provided a response to the comments as an attachment to our finding of no significant impact, which is available from the person listed under **FOR FURTHER INFORMATION CONTACT**.

Analysis

Vector 21–41 tobacco has been genetically engineered to express a quinolinic acid phosphoribosyltransferase (QPTase) in the reverse, or antisense position, which disrupts the normal expression of QPTase, a key enzyme in the biosynthetic pathway leading to the production of nicotine and related alkaloids. The effect of this genetic change is to reduce the nicotine levels of nicotine, nor-nicotine, and total alkaloids in the leaves of Vector 21–41 tobacco. The subject tobacco also contains the *nptII* marker gene derived from the bacterium *Escherichia coli.* The *nptII* gene encodes the enzyme neomycin phosphotransferase type II (NPTII) and is used as a selectable marker in the initial laboratory stages of plant cell selection. Expression of the added genes is controlled in part by gene sequences from the plant pathogen *Agrobacterium tumefaciens.* The *A. tumefaciens* method was used to transfer the added genes into the parental recipient Burley 21–LA tobacco variety.

The subject tobacco has been considered a regulated article under the regulations in 7 CFR part 340 because it contains gene sequences from a plant pathogen. Vector 21–41 tobacco has been field tested since 1999 in the United States under APHIS notifications. In the process of reviewing the notifications for field trials of this tobacco, APHIS determined that the vectors and other elements were disarmed and that the trials, which were conducted under conditions of reproductive and physical containment or isolation, would not present a risk of plant pest introduction or dissemination.

Determination

Based on its analysis of the data submitted by Vector, a review of other scientific data, field tests of the subject tobacco, and comments submitted by the public, APHIS has determined that Vector 21–41 tobacco: (1) Exhibits no plant pathogenic properties; (2) is no more likely to become a weed than tobacco developed by traditional breeding techniques; (3) is unlikely to increase the weediness potential for any other cultivated or wild species with which it can interbreed; (4) will not cause damage to raw or processed agricultural commodities; and (5) will not harm threatened or endangered species or organisms, such as bees, that are beneficial to agriculture. Therefore, APHIS has concluded that the subject tobacco and any progeny derived from hybrid crosses with other nontransformed tobacco varieties will be as safe to grow as tobacco in traditional breeding programs that is not subject to regulation under 7 CFR part 340.

The effect of this determination is that Vector's 21–41 tobacco is no longer considered a regulated article under APHIS'' regulations in 7 CFR part 340. Therefore, the requirements pertaining to regulated articles under those regulations no longer apply to the subject tobacco or its progeny. However, importation of Vector 21–41 tobacco or seeds capable of propagation are still subject to the restrictions found in APHIS'' foreign quarantine notices in 7 CFR part 319.

National Environmental Policy Act

An environmental assessment has been prepared to examine the potential environmental impacts associated with this determination. The environmental assessment was prepared in accordance with (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372). Based on that environmental assessment, APHIS has reached a finding of no significant impact with regard to its determination that Vector 21–41 tobacco and lines developed from it are no longer regulated articles under its regulations in 7 CFR part 340. Copies of the petition and the environmental assessment and finding of no significant impact are available upon request from the individual listed under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Done in Washington, DC, this 26th day of November 2002 .

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–30518 Filed 12–2–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Change to the Natural Resources Conservation Service's National Handbook of Conservation Practices

AGENCY: Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture, New York State Office.

ACTION: Notice of availability of proposed changes in the NRCS National Handbook of Conservation Practices, section IV of the New York State Field Office Technical Guide (FOTG) for review and comment.

SUMMARY: It is the intention of NRCS to issue an interim conservation practice standard in its National Handbook of Conservation Practices. This standard is: Transition to Organic Production (NY000).

DATES: Comments will be received for a 30-day period commencing with the date of this publication.

FOR FURTHER INFORMATION CONTACT: Inquire in writing to Joseph R. DelVecchio, State Conservationist, Natural Resources Conservation Service (NRCS), 441 S. Salina Street, Fifth Floor, Suite 354, Syracuse, New York 13202–2450.

A copy of this standard is available from the above individual.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agricultural Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS State Technical Guides used to carry out highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days the NRCS will receive comments relative to the proposed changes. Following that period, a determination will be made to the NRCS regarding disposition of those comments and final determination of change will be made.

Dated: November 19, 2002.

Tyrone M. Goddard,

State Soil Scientist, Natural Resources Conservation Service, Syracuse, NY.

[FR Doc. 02–30582 Filed 12–2–02; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Housing Service, USDA.

ACTION: Proposed collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's (RHS) intention to request an extension for a currently approved information collection in support of Housing Application Packaging Grants.

DATES: Comments on this notice must be received by February 3, 2003 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Gloria L. Denson, Loan Specialist, Single Family Housing Direct Loan Division, RHS, U.S. Department of Agriculture, STOP 0783, South Building, Washington, DC 20250, Telephone 202–720–1474. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION:

Title: Housing Application Packaging Grants.

OMB Number: 0575–0157.

Expiration Date of Approval: September 30, 2003.

Type of Request: Extension of a currently approved information collection.

Abstract: The Rural Housing Service (RHS) under section 509 of the Housing Act of 1949, 42 U.S.C. 1479, provides grants to public and private nonprofit organizations and state and local governments to package housing applications for loans under sections 502, 504, 514, 515, and 524 grants under section 533 of the Housing Act of 1949 in colonias and designated undeserved counties. RHS reimburses eligible organizations for part or all of the costs of conducting, administering and coordinating an effective housing application packaging program in colonias and designated underserved counties. Eligible organizations assist very low and low-income families that are without adequate housing to buy, build, or repair housing for their own use. Also, the organizations package applications for loans to buy, build or repair rental units for lower income families.

RHS will be collecting information from grantees to assure the organizations participating in this program are eligible entities and have participated in RHS training in application packaging. The respondents are nonprofit organizations, States, State agencies, and units of general local government. The information required for approval of housing application packaging grants is used by RHS personnel to verify program eligibility requirements. The information is collected at the RHS field office responsible for the processing of the application being submitted. The information is also used to ensure the program is administered in a manner consistent with legislative and administrative requirements. If not collected, RHS would be unable to determine if a grantee would qualify for grant assistance.

The grantees facilitate the application process by helping applicants submit complete applications to RHS. This saves RHS time by prescreening applicants, making preliminary determinations of eligibility, ensuring that the application is complete, and helping the applicant understand the program.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.12 hours per response.

Respondents: Private and public nonprofit organizations and State and local governments.

Estimate Number of Respondents: 300.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 900 hours.

Copies of this information collection can be obtained from Brigitte Sumter, Regulations and Paperwork Management Branch, at (202) 692–0040.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of RHS, including whether the information will have practical utility; (b) the accuracy of RHS's estimates of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Brigitte Sumter, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, Stop 0742, Washington, DC 20250. 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.

Dated: November 18, 2002.

Arthur A. Garcia,

Administrator, Rural Housing Service.

[FR Doc. 02–30519 Filed 12–2–02; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 021121280–2280–01]

Annual Surveys in the Manufacturing Area

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of determination.

SUMMARY: The Bureau of the Census (Census Bureau) is conducting the 2002 Annual Surveys in the Manufacturing Area. The 2002 Annual Surveys consist of the Current Industrial Reports surveys, the Survey of Industrial Research and Development, and the Survey of Plant Capacity Utilization. We have determined that annual data collected from these surveys are needed to aid the efficient performance of

essential governmental functions and have significant application to the needs of the public and industry. The data derived from these surveys, most of which have been conducted for many years, are not publicly available from nongovernmental or other governmental sources.

FOR FURTHER INFORMATION CONTACT: William G. Bostic, Jr., Chief, Manufacturing and Construction Division, on (301) 763–4593.

SUPPLEMENTARY INFORMATION: The Census Bureau is authorized to conduct mandatory surveys necessary to furnish current data on the subjects covered by the major censuses authorized by Title 13, United States Code (U.S.C.), sections 61, 81, 131, 182, 193, 224, and 225. For 2002, the economic census year, the surveys will, as they have in the past, operate as separate collections of national statistical data on manufacturing. The data collected in these surveys will be similar to that collected in the past and within the general scope and nature of those inquiries covered in the economic census. In this, the economic census year, all the data collected in these surveys are mandatory under Title 13, U.S.C. In the interim years, most of these surveys are conducted under a mandatory basis as well.

Current Industrial Reports

Most of the following commodity or product surveys provide data on shipments or production, stocks, unfilled orders, orders booked, consumption, and so forth. Reports will be required of all or a sample of establishments engaged in the production of the items covered by the following list of surveys.

Survey	Title
MA311D	Confectionery
MA313F	Yarn Production
MA313K	Knit Fabric Production
MA314Q	Carpets and Rugs
MA315D	Gloves and Mittens
MA316A	Footwear Production
MA321T	Lumber Production and Mill Stocks
MA325F	Paint and Allied Products
MA325G	Pharmaceutical Preparations, except Biologicals
MA327C	Refractories
MA327E	Consumer, Scientific, Technical, and Industrial Glassware
MA331A	Iron and Steel Castings
MA331B	Steel Mill Products
MA331E	Nonferrous Castings
MA332Q	Antifriction Bearings
MA333A	Farm Machinery and Lawn and Garden Equipment
MA333D	Construction Machinery
MA333F	Mining Machinery and Mineral Processing Equipment
MA333L	Internal Combustion Engines
MA333M	Refrigeration, Air-conditioning, and Warm Air Equipment
MA333N	Fluid Power Products
MA333P	Pumps and Compressors
MA334B	Selected Instruments and Related Products
MA334M	Consumer Electronics
MA334P	Communication Equipment
MA334Q	Semiconductors, Printed Circuit Boards, and Electronic Components
MA334R	Computers and Office and Accounting Machines
MA334S	Electromedical and Irradiation Equipment
MA335A	Switchgear, Switchboard Apparatus, Relays, and Industrial Controls
MA335E	Electric Housewares and Fans
MA335F	Major Household Appliances
MA335H	Motors and Generators
MA335J	Insulated Wire and Cable
MA335K	Wiring Devices and Supplies

The following list of surveys represent annual counterparts of monthly and quarterly surveys and will cover only those establishments that are not canvassed, or do not report, in the more frequent surveys. Accordingly, there will be no duplication in reporting. The content of these annual reports will be identical with that of the monthly and quarterly reports.

Survey	Title
M311H	Animal and Vegetable Fats and Oils (Stocks)
M311J	Oilseeds, Beans, and Nuts (Primary Producers)
M311L	Fats and Oils (Renderers)
M311M	Animal and Vegetables Fats and Oils (Consumption and Stocks)
M311N	Animal and Vegetables Fats and Oils (Production, Consumption, and Stock)
M313P	Consumption on the Cotton System
M313N	Cotton and Raw Linters in Public Storage
M327G	Glass Containers
M331J	Inventories of Steel Producing Mills
M336G	Civil Aircraft and Aircraft Engines
MQ311A	Flour Milling Products
MQ313D	Consumption on the Woolen System and Worsted Combing
MQ313T	Broadwoven Fabrics (Gray)
MQ314X	Bed and Bath Furnishings
MQ315A	Apparel
MQ325A	Inorganic Chemicals
MQ325B	Fertilizer Materials
MQ325C	Industrial Gases
MQ327D	Clay Construction Products
MQ333W	Metalworking Machinery
MQ335C	Fluorescent Lamp Ballasts

Survey of Industrial Research and Development

The Survey of Industrial Research and Development measures spending on research and development activities in private U.S. businesses. The Census Bureau collects and compiles this information with funding from the National Science Foundation (NSF). The NSF publishes the results in its publication series.

Survey of Plant Capacity Utilization

The Survey of Plant Capacity Utilization is designed to measure the use of industrial capacity. The survey collects information on actual output and estimates of potential output in terms of value of production. These data are the basis for calculating rates of utilization of full production capability and use of production capability under national emergency conditions.

Based upon the foregoing, the Census Bureau will be conducting the Annual Surveys in the Manufacturing Area for the purpose of collecting these data.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a current valid Office of Management and Budget (OMB) control number. In accordance with the PRA, 44 U.S.C. chapter 45, the OMB approved the 2002 Annual Surveys under the following OMB Control Numbers: Current Industrial Reports—0607–0206, 0607–0392, 0607–0393, 0607–0395, and 0607–0476; Survey of Industrial Research and Development—3145–0027; and Survey of Plant Capacity Utilization—0607–0175. We will provide copies of each form upon written request to the Director, U.S. Census Bureau, Washington, DC 20233–0001.

Dated: November 26, 2002.

Charles Louis Kincannon,

Director, Bureau of the Census.

[FR Doc. 02–30573 Filed 12–2–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 021121281–2281–01]

Service Annual Survey

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of determination.

SUMMARY: In accordance with Title 13, United States Code (U.S.C.), sections 182, 224, and 225, the Bureau of the Census (Census Bureau) has determined that limited financial data (revenue, expenses, and the like) for selected service industries are needed to provide a sound statistical basis for the formation of policy by various governmental agencies and that these data also apply to a variety of public and business needs.

FOR FURTHER INFORMATION CONTACT: Ruth A. Bramblett, Chief, Current Services Branch, Service Sector Statistics Division, on (301) 763–7089.

SUPPLEMENTARY INFORMATION: The Census Bureau conducts surveys necessary to furnish current data on subjects covered by the major censuses authorized by Title 13, U.S.C. The Service Annual Survey provides continuing and timely national statistical data each year. Data collected in this survey are within the general scope, type, and character of those inquiries covered in the economic census.

The Census Bureau needs reports only from a limited sample of service sector firms in the United States. Selected service industries include professional, scientific, and technical services; administrative and support services; healthcare and social assistance; telecommunications, publishing, broadcasting and other information service industries; trucking, courier and messenger, and warehousing; financial services; arts, entertainment and recreation; and so forth. The probability of a firm's selection is based on its revenue size (estimated from payroll); that is, firms with a larger payroll will have a greater probability of being selected than those with smaller ones. We are mailing report forms to the firms covered by this survey and require their submission within thirty days after receipt. These data are not publicly available from nongovernment or other government sources.

Based upon the foregoing, the Census Bureau will be conducting the annual survey for the purpose of collecting these data.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a current valid Office of Management and Budget (OMB) control number. In accordance with the PRA, 44 U.S.C. chapter 35, the OMB approved the Service Annual Survey under OMB Control Number 0607–0422. Copies of the proposed forms are available upon written request to the Director, U.S. Census Bureau, Washington, DC 20233.

Dated: November 26, 2002.

Charles Louis Kincannon,

Director, Bureau of the Census.

[FR Doc. 02–30574 Filed 12–2–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1260]

Expansion of Foreign-Trade Zone 181; Akron/Canton, OH Area

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 Northeast Ohio Trade & Economic Consortium, grantee of Foreign-Trade Zone No. 181, submitted an application to the Board for authority to expand FTZ 181 in the Akron/Canton, Ohio area, within and adjacent to the Cleveland Customs port of entry (FTZ Docket 8–2002, filed 1/30/2002; amended 9/18/02 to withdraw the proposed Lorain site);

Whereas, notice inviting public comment was given in the **Federal Register** (67 FR 6679, 2/13/2002) 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 the 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 181 is approved, subject to the Act and the Board's regulations, including Section 400.28, and further subject to the Board's standard 2,000-acre activation limit for the overall zone project, and to a sunset provision that would terminate authority for each of the sites on December 31, 2007, except for those sites that are activated pursuant to 19 CFR part 146 of the U.S. Customs regulations at any time prior to the termination date.

Signed at Washington, DC, this 21st day of November 2002.

Faryar Shirzad,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 02–30626 Filed 12–2–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1259]

Approval for Subzone Expansion, (Watches and Accessories), Foreign-Trade Subzone 39E, Fossil Partners, L. P.; Richardson and Dallas, TX

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 Dallas/Fort Worth International Airport Board, grantee of Foreign-Trade Zone 39, has requested authority, on behalf of Fossil Partners, L.P. (Fossil), which operates Subzone 39E at its watch and accessories warehousing/distribution facility located in the Dallas, Texas, area, to expand the subzone to include a site in Dallas, Texas, and to reinstate FTZ status at the original site in Richardson, Texas (FTZ Doc. 22–2002, filed 5/1/02);

Whereas, notice inviting public comment was given in the **Federal Register** (67 FR 31768, 5/10/02);

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 approves the request, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 21st day of November 2002.

Faryar Shirzad,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 02–30625 Filed 12–2–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1262]

Grant of Authority for Subzone Status, Canon Virginia, Inc. Manufacturing Plant (Computer Printers and Related Products); Newport News, VA

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 Foreign-Trade Zones Act provides for '' * * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved; and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Virginia Port Authority, grantee of Foreign-Trade Zone 20, has made application to the Board for authority to establish special-purpose subzone status at the computer printer and related products manufacturing plant of Canon Virginia, Inc., located in Newport News, Virginia (FTZ Docket 29–2002, filed July 2, 2002);

Whereas, notice inviting public comment has been given in the **Federal Register** (67 FR 46632, 7/16/02); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants authority for subzone status at the computer printer and related products manufacturing plant of Canon Virginia, Inc., located in Newport News, Virginia, (Subzone 20D), at the locations described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 21st day of November 2002.

Faryar Shirzad,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 02–30627 Filed 12–2–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–846]

Brake Rotors from the People's Republic of China: Initiation of New Shipper Antidumping Duty Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce has received requests to conduct a new shipper review of the antidumping duty order on brake rotors from the People's Republic of China. In accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended (''the Act''), and 19 C.F.R. 351.214(d), we are initiating a review for Xiangfen Hengtai Brake System Co., Ltd. and Xianghe Xumingyuan Auto Parts Co., Ltd.

EFFECTIVE DATE: December 3, 2002.

FOR FURTHER INFORMATION CONTACT: Terre Keaton or Davina Hashmi, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–1280 or 482–0984, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce (''the Department'') regulations are to 19 C.F.R. Part 351 (April 2002).

Background

The Department has received timely requests from Xiangfen Hengtai Brake System Co., Ltd. (''Hengtai'') and Xianghe Xumingyuan Auto Parts Co., Ltd. (''Xumingyuan''), in accordance with 19 C.F.R. 351.214(c), for a new shipper review of the antidumping duty order on brake rotors from the People's Republic of China (''PRC''), which has an April anniversary date.

As required by 19 C.F.R. 351.214(b)(2)(i) and (iii)(A), each of the exporters identified above, which are also producers, has certified that it did not export brake rotors to the United States during the period of investigation (''POI''), and that it has never been affiliated with any exporter or producer which did export brake rotors during the POI. Each company has further certified that its export activities are not controlled by the central government of the PRC, satisfying the requirements of 19 C.F.R. 351.214(b)(2)(iii)(B). Pursuant to the Department's regulations at 19 C.F.R. 351.214(b)(2)(iv), Hengtai and Xumingyuan each submitted documentation establishing the date on which it first shipped the subject merchandise to the United States, the date of entry of that first shipment, the volume of that shipment and the date of the first sale to an unaffiliated customer in the United States.

In accordance with section 751(a)(2)(B) of the Act and 19 C.F.R. 351.214(b), and based on information on the record, we are initiating a new shipper review for Hengtai and Xumingyuan.

It is the Department's usual practice in cases involving non-market economies to require that a company seeking to establish eligibility for an antidumping duty rate separate from the country-wide rate provide *de jure* and *de facto* evidence of an absence of government control over the company's export activities. Accordingly, we will issue a questionnaire to Hengtai and Xumingyuan (including a complete separate rates section), allowing approximately 37 days for response. If the response from each respondent provides sufficient indication that it is not subject to either *de jure* or *de facto* government control with respect to its exports of brake rotors, the review will proceed. If, on the other hand, a respondent does not demonstrate its eligibility for a separate rate, then it will be deemed to be affiliated with other companies that exported during the POI and that it did not establish entitlement to a separate rate, and the review of that respondent will be rescinded.

Initiation of Review

In accordance with section 751(a)(2)(B)(ii) of the Act and 19 C.F.R. 351.214(d)(1), we are initiating a new shipper review of the antidumping duty order on brake rotors from the PRC. We intend to issue the preliminary results of this new shipper review not later than 180 days after initiation of this review.

Antidumping Duty Proceeding	Period to be Reviewed
PRC: Brake Rotors, A-570–846.	
Hengtai Brake System Co., Ltd.	04/01/02 - 09/30/02
Xianghe Xumingyuan Auto Parts Co., Ltd.	04/01/02 - 09/30/02

We will instruct the Customs Service to allow, at the option of the importer,

the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the subject merchandise from the above-listed companies in accordance with 19 C.F.R. 351.214(e). Because Hengtai and Xumingyuan certified that they both produce and export the subject merchandise, the sale of which was the basis for this new shipper review request, we will apply the bonding privilege only to subject merchandise for which they are both the producer and exporter.

Interested parties that need access to proprietary information in this new shipper review should submit applications for disclosure under administrative protective order in accordance with 19 C.F.R. 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 C.F.R. 351.214(d).

Dated: November 25, 2002.

Susan Kuhbach,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 02–30622 Filed 12–2–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-549–807]

Certain Carbon Steel Butt-Weld Pipe Fittings from Thailand: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limit for Final Results of Antidumping Duty Administrative Review.

EFFECTIVE DATE: December 3, 2002.

FOR FURTHER INFORMATION CONTACT: Zev Primor at (202) 482–4114 or Tom Futtner at (202) 482–3814, Office of AD/CVD Enforcement 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

TIME LIMITS:

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department of Commerce (the Department) to make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days and for the final determination to 180 days (or 300 days if the Department does not extend the time limit for the preliminary determination) from the date of publication of the preliminary determination.

Background

On October 1, 2001, the Department published a notice of initiation of administrative review of the antidumping duty order on certain carbon steel butt-weld pipe fittings from Thailand, covering the period July 1, 2000 through June 30, 2001 (66 FR 49924). On August 7, 2002 (67 FR 51178), we published the preliminary results of review. In our notice of preliminary results, we stated our intention to issue the final results of this review no later than 120 days after the date of publication of the preliminary results, December 5, 2002.

Extension of Time Limit for Final Results of Review

Due to the complexity of the issues raised in this segment of the review, we determine that it is not practicable to complete the final results of this review within the original time limit. Therefore, the Department is extending the time limit for completion of the final results until no later than February 3, 2003. For details, *see* Decision Memorandum from Holly Kuga to Bernard Carreau, dated concurrently with this notice, which is on file in the Central Records Unit, Room B-099 of the main Commerce building.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: November 26, 2002.

Gary Taverman,

Acting Deputy Assistant Secretary for Import Administration, Group II.

[FR Doc. 02–30623 Filed 12–2–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–337–803]

Fresh Atlantic Salmon From Chile: Notice of Extension of Time Limit for Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 3, 2002.

FOR FURTHER INFORMATION CONTACT: Constance Handley or Salim Bhabhrawala, Office 5, Group II, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0631 and (202) 482–1784, respectively.

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days and for the final determination to 180 days from the date of publication of the preliminary determination (or 300 days if the Department does not extend the time limit for the preliminary determination).

Background

On August 20, 2001, we published in the **Federal Register** the notice of initiation of the third administrative review of the antidumping duty order on fresh Atlantic salmon from Chile, covering the period July 1, 2000, through June 30, 2001. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 66 FR 43570 (August 20, 2001). On January 22, 2002, the Department published in the **Federal Register** the notice of an extension of the preliminary results of the third administrative review. *See Fresh Atlantic Salmon From Chile: Extension of Preliminary Results of Antidumping Duty Administrative Review,* 67 FR 2856 (January 22, 2002). On August 7, 2002, the Department

published the preliminary results of the third administrative review. *See Notice of Preliminary Results of Antidumping Duty Administrative Review, Preliminary Determination to Revoke the Order in Part, and Partial Rescission of Antidumping Duty Administrative Review: Fresh Atlantic Salmon From Chile,* 67 FR 51182 (August 7, 2002) (*Preliminary Results*). In our notice of preliminary results, we stated our intention to issue the final results of this review no later than December 5, 2002.

Extension of Time Limit for Final Results of Review

We determine that it is not practicable to complete the final results of this review within the original time limit. Therefore, the Department is extending the time limit for completion of the final results until no later than February 3, 2003. *See* Decision Memorandum from Constance Handley to Gary Taverman, dated concurrently with this notice, which is on file in the Central Records Unit, Room B–099 of the main Commerce building.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: November 27, 2002.

Gary Taverman,

Acting Deputy Assistant Secretary, Group II, Import Administration.

[FR Doc. 02–30628 Filed 12–2–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–815]

Pure and Alloy Magnesium from Canada: Correction of Notice of Initiation and Partial Rescission of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Correction of Notice of Initiation and Partial Rescission of Countervailing Duty Administrative Review.

EFFECTIVE DATE: December 3, 2002.

FOR FURTHER INFORMATION CONTACT: Melanie Brown, AD/CVD Enforcement, Group I, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4987.

Correction of Notice of Initiation

On September 25, 2000, the Department of Commerce published in the **Federal Register** (67 FR 60210) the notice of initiation of the countervailing duty administrative review of pure and alloy magnesium from Canada. The notice of initiation incorrectly stated the period of review (" POR") as January 1, 2001 to December 31, 2002. The correct POR is January 1, 2001 to December 31, 2001.

Partial Rescission of Review

This initiation was based on a request made on August 28, 2002, by the petitioner, U.S. Magnesium, LLC., with respect to the imports of pure and alloy magnesium produced by Norsk Hydro Canada Inc. and Magnola Metallurgy ("Magnola"). Magnola is currently a party in a new shipper review ("NSR") covering the same POR and the same subject merchandise. (*See Pure and Alloy Magnesium from Canada: Notice of Initiation of New Shipper Countervailing Duty Review*, 67 FR 15767, (April 3, 2002)). Therefore, in accordance with 19 CFR 351.213(d) we are rescinding this administrative review with respect to Magnola.

This notice is published in accordance with section 751 of the Act and 19 CFR 351.213(d)(4).

Dated: November 24, 2002.

Susan Kuhbach,

Acting Deputy Assistant, Secretary for Import Administration, Group 1.

[FR Doc. 02–30624 Filed 12–2–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Overseas Trade Missions

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce invites U.S. companies to participate in the below listed overseas trade missions. For a more complete description, obtain a copy of the mission statement from the Project Officer indicated below.

Aerospace Executive Service at the Australian International Airshow

Avalon Airport, Melbourne, Australia.

February 12–14, 2003.

Recruitment closes on January 3, 2003.

For further information contact: Ms. Diane Mooney, U.S. Department of Commerce, telephone 206–553–7261, or e-mail to *dmooney@mail.doc.gov.*

Environmental Technologies Trade Mission

Milan, Italy.

March 5–8, 2003.

Recruitment closes on January 10, 2003.

For further information contact: Ms. Yvonne Jackson, U.S. Department of Commerce, telephone 202–482–2675, or e-mail to *Yvonne.Jackson@mail.doc.gov.*

U.S. Microelectronics Trade Mission to Shanghai, China

March 10–14, 2003.

Recruitment closes on January 31, 2003.

For further information contact: Ms. Marlene Ruffin, U.S. Department of Commerce, telephone 202–482–0570, or e-mail to *Marlene_Ruffin@ita.doc.gov.*

ACE/Infrastructure Trade Mission to China

Beijing, Shanghai and Hong Kong (SAR).

April 7–15, 2003.

Recruitment closes on January 31, 2003.

For further information contact: Mr. Sam Dhir, U.S. Department of Commerce, telephone 202–482–4756, or e-mail to *Sam.Dhir@mail.doc.gov.*

Recuitment and selection of private sector participants for these trade missions will be conducted according to the Statement of Policy Governing Department of Commerce Overseas Trade Missions dated March 3, 1997. For further information contact Mr. Thomas Nisbet, U.S. Department of Commerce, telephone 202–482–5657, or e-mail *Tom_Nisbet@ita.doc.gov.*

Dated: November 26, 2002.

Thomas H. Nisbet,

Director, Export Promotion Coordination, Office of Planning, Coordination and Management.

[FR Doc. 02–30629 Filed 12–2–02; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588–846]

Notice of Determination Under Section 129 of the Uruguay Round Agreements Act: Antidumping Measures on Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: Consistent with section 129 of the Uruguay Round Agreements Act (URAA), which governs the

Department's actions following WTO reports, the Department has calculated new rates with respect to the antidumping duty investigation on hot-rolled flat-rolled carbon-quality steel products (hot-rolled steel) from Japan, in order to implement findings of the World Trade Organization (WTO) Appellate Body. These new rates will apply to unliquidated entries of the subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after November 22, 2002.

EFFECTIVE DATE: November 22, 2002.

FOR FURTHER INFORMATION CONTACT: Mark Hoadley, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3148.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the Tariff Act of 1930, as amended (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR Part 351 (2001). Finally, citation to ''section 129'' refers to section 129 of the URAA, codified at 19 U.S.C. § 3538.

Background

On April 28, 1999, the Department of Commerce issued a final determination of sales at less than fair value in the antidumping investigation on hot-rolled steel from Japan. *Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Japan*, 64 FR 24329 (May 6, 1999) (*Final Determination*). Following an affirmative injury determination issued by the United States International Trade Commission, the Department issued an antidumping duty order on this product on June 23, 1999. *Antidumping Duty Order; Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Japan*, 64 FR 34778 (June 29, 1999).

Subsequently, the Government of Japan requested the establishment of a WTO dispute resolution panel (the Panel) to consider, among other issues, various aspects of the Department's final determination in this case. The Panel circulated its report on February 28, 2001. *United States Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan*, WT/DS184/R (February 28, 2001).

The United States and Japan appealed certain findings and conclusions in the Panel report. The WTO Appellate Body (the Appellate Body) issued its report on July 24, 2001. *United States Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan*, WT/DS184/AB/R (July 24, 2001). The Appellate Body report and the Panel report, as modified by the Appellate Body report, were adopted by the WTO Dispute Settlement Body (DSB) on August 23, 2001. *United States - Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan*, WT/DS184/8 (August 23, 2001).

On September 10, 2001, the United States informed the DSB that it would implement the recommendations and rulings of the DSB in a manner consistent with its WTO obligations. On November 5, 2002, pursuant to section 129(b)(2) of the URAA, the United States Trade Representative requested that the Department issue a determination that would render the Department's actions in the investigation not inconsistent with the findings of the DSB.

Section 129 of the URAA is the applicable provision governing the nature and effect of determinations issued by the Department to implement findings by WTO panels and the Appellate Body. Specifically, section 129(b)(2) provides that ''{n}otwithstanding any provision of the Tariff Act of 1930 . . .,'' within 180 days of a written request from the U.S. Trade Representative, the Department shall issue a determination that would render its actions not inconsistent with an adverse finding of a WTO panel or the Appellate Body. 19 U.S.C. § 3538(b)(2). The Statement of Administrative Action for the URAA (SAA) variously refers to such a determination by the Department as a ''new,'' ''second,'' and ''different'' determination. SAA at 1025, 1027. This determination is subject to judicial review separate and apart from judicial review of the Department's original determination. 19 U.S.C. § 1516a(a)(2)(B)(vii).

In addition, section 129(c)(1)(B) of the URAA expressly provides that a determination under section 129 applies only with respect to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the date on which the U.S. Trade Representative directs the Department to implement that determination. In other words, as the SAA clearly provides, ''such determinations have prospective effect only.'' SAA at 1026. Thus, ''relief available under subsection 129(c)(1) is distinguishable from relief in an action brought before a court or a NAFTA binational panel, where . . . retroactive relief may be available.'' *Id.*

Accordingly, this new determination, pursuant to section 129 of the URAA (*Section 129 Determination*), does not render moot the federal court appeal currently pending with respect to the antidumping duty order on hot-rolled steel. As detailed below, the *Section 129 Determination* rates will apply only to cash deposits for entries made after the effective date, and subsequent assessments on such entries, should no administrative review be requested under section 351.213 of the Department's regulations.

On November 8, 2002, the Department issued a draft **SECTION 129 DETERMINATION** to the Government of Japan and to the parties to the less than fair value investigation segment of the proceeding, soliciting comments by November 15, 2002 and rebuttal comments by November 19, 2002. On November 15, two petitioning parties provided joint comments on the draft determination. No other affirmative or rebuttal comments were received.

Appellate Body Findings and Conclusions

In its report, the Appellate Body found, *inter alia*, that certain aspects of the Department's final determination in the hot-rolled steel investigation were inconsistent with the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the Antidumping Agreement).

1. The Appellate Body's report, at paragraph 240(a), upholds the finding, in paragraph 8.1(a) of the Panel Report, that the United States acted inconsistently with Article 6.8 and Annex II of the Antidumping Agreement in applying ''facts available'' to Nippon Steel Corporation (Nippon) and NKK Corporation (NKK) with respect to sales affected by their failure to timely provide weight conversion factors. The information, which was needed to allow the Department to compare steel sold on an actual weight basis with steel sold on a theoretical weight basis, was provided by the two companies after the stipulated deadline.

2. The Appellate Body's report, at paragraph 240(b), upholds the finding, in paragraph 8.1(a) of the Panel Report, that the United States acted inconsistently with Article 6.8 and Annex II of the Antidumping Agreement in applying adverse facts available to Kawasaki Steel Corporation (Kawasaki).

3. The Appellate Body's report, at paragraph 240(c), upholds the Panel's findings that the United States' application of section 735(c)(5)(A) of the United States Tariff Act of 1930, as

amended, to determine the ''all others'' rate in this case, was inconsistent with the United States' obligations under Article 9.4 of the Antidumping Agreement.

4. The Appellate Body's report, at paragraph 240(d), upholds the finding, in paragraph 8.1(c) of the Panel Report, that the United States acted inconsistently with Article 2.1 of the Antidumping Agreement by excluding from the calculation of normal value, as outside ''the ordinary course of trade,'' certain home market sales to parties affiliated with an investigated exporter, on the basis of the ''99.5 percent'' or ''arm's length'' test.

Implementation

The Department is implementing the recommendations and rulings of the DSB as follows:

1. All three investigated companies (Kawasaki, NKK, and Nippon) made home market sales through affiliates. In order to determine which of these related party sales may have been made at arm's length and thus may be considered for use in calculating normal value, the Department applied a new arm's length methodology. *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186 (November 15, 2002). Specifically, under the new methodology, for sales by the exporter or producer to an affiliate to be included in the normal value calculation, those sales prices must fall, on average, within a defined range, or band, around sales prices of the same or comparable merchandise sold by that exporter or producer to all unaffiliated customers. The band established for this test provides that the overall ratio calculated for an affiliate be between 98 percent and 102 percent, inclusive, of prices to unaffiliated customers in order for sales to that affiliate to be considered ''in the ordinary course of trade'' and used in the normal value calculation. This new test is consistent with the view, expressed by the Appellate Body at paragraph 148 of its report, that rules aimed at preventing the distortion of normal value through sales between affiliates should reflect, ''even-handedly,'' that ''both high and low-priced sales between affiliates might not be 'in the ordinary course of trade.'''' Additionally, under the new methodology, the Department will compare sales to affiliates with sales to unaffiliated parties of the most similar merchandise, when sales of identical merchandise to unaffiliated parties are unavailable.

In comparing merchandise sold in the United States with merchandise sold in the home market, the Department makes an adjustment, where appropriate, to normal value for differences in physical characteristics. This adjustment normally is based on differences in the variable costs of manufacturing attributable to the physical differences between the products. While product characteristics differ from case to case, the Department generally does not compare a comparison market product to a given product sold in the United States if the difference in variable manufacturing costs of the two products is greater than 20 percent. Under the new arm's length methodology, the Department has applied a comparable adjustment to prices of similar merchandise sold to unaffiliated customers.

As a result of the application of this new methodology, the home market sales used to calculate normal value changed somewhat, in this *Section 129 Determination*, for each of the three companies examined during the investigation.

2. In the *Final Determination*, the Department applied adverse facts available to sales of Nippon and NKK that were affected by the absence of weight conversion factors on the record. Commerce has placed the weight conversion factor data submitted by Nippon and NKK on the record of this *Section 129 Determination*, and has used these factors in calculating the margins for affected sales, rather than using facts available margins for those sales. Refer to the proprietary *Memorandum to the File from Mark Hoadley through Sally Gannon, Analysis of Nippon Steel Corp.*, dated November 12, 2002, and the proprietary *Memorandum to the File from Mark Hoadley through Sally Gannon, Analysis of NKK Corp.*, dated November 12, 2002, for the conversion factors used.

3. In the *Final Determination*, the Department used adverse facts available to determine the margin for U.S. sales made by Kawasaki through its affiliate California Steel Industries (CSI), because Kawasaki did not provide requested information with respect to these sales. The Department stated in the *Final Determination* that, in not providing these data, Kawasaki had failed to cooperate by not acting to the best of its ability to obtain the CSI data, and, thus, that the use of an adverse inference was warranted in selecting facts available for the CSI sales. However, the Appellate Body report stated that the Department's determination that Kawasaki had not cooperated was inconsistent with Article 6.8 and Annex II of the Antidumping Agreement. Therefore, under the circumstances in this case, in selecting the facts available for the missing sales made through CSI, the Department has, in this *Section 129 Determination*, applied neutral facts available to these sales. Specifically, the Department has applied the weighted-average margin calculated for sales to all customers other than CSI.

4. Using the new rates for examined respondents, the Department also recalculated the ''all others'' rate. The Appellate Body's report, at paragraph 129, stated:

[S]ection 735(c)(5)(A) of the United States Tariff Act of 1930, as amended, requires the inclusion of margins established, in part, on the basis of facts available, in the calculation of the 'all others' rate, and to the extent that this results in an 'all others' rate in excess of the maximum allowable rate under Article 9.4, we uphold the Panel's finding that section 735(c)(5)(A) of the United States Tariff Act of 1930, as amended, is inconsistent with Article 9.4 of the *Anti-Dumping Agreement*.

As required by section 735(c)(5) of the Act, the Department has calculated the ''all others'' rate for this *Section 129 Determination* as the amount equal to the weighted average of the estimated margins established for the exporters and producers individually investigated, excluding any zero and de minimis margins, and any margins determined entirely on the basis of the facts available. In this *Section 129 Determination*, none of the exporters and producers individually examined had a rate which was zero, *de minimis*, or determined entirely on the basis of the facts available. Therefore, the ''all others'' rate for this *Section 129 Determination* is the weighted average of the recalculated company-specific rates for Nippon, NKK, and Kawasaki, the three individually examined producers and exporters. This rate is 22.92 percent.

Article 9.4 of the Antidumping Agreement requires that, when the authorities have limited their examination of the known exporters or producers in accordance with Article 6.10, any antidumping duty applied to imports from exporters or producers not included in the examination *shall not exceed* the weighted average margin of dumping established with respect to the selected exporters or producers. Article 9.4 further provides that, for purposes of that calculation, the authorities shall disregard any zero and *de minimis* margins and ''margins established under the circumstances referred to in paragraph 8 of Article 6.''

The ''all others'' rate in this *Section 129 Determination* conforms to the requirements of Article 9.4 because the new ''all others'' rate of 22.92 percent *does not exceed* the rate of 25.95 percent, which is the weighted average of the company-specific rates for NKK and Kawasaki, the rates which are based solely on the data provided by those respondents for the purposes requested. Therefore, this weighted average is made up of margins that are not ''established under the circumstances referred to in paragraph 8 of Article 6.'' The new rate for Nippon, in contrast, is based in part on the application of a facts-available ''plug'' to U.S. sales matched to home market products (''CONNUMs'') for which Nippon failed to report product-specific costs. For those sales, the Department used the highest margin calculated for other sales, and averaged those margins into the overall margin for Nippon, thereby changing that margin. 64 FR 24329, 24348 (May 6, 1999). This methodology was not contested before either the WTO Panel or the Appellate Body. In contrast, Kawasaki's margin was calculated solely on the basis of the information Kawasaki provided with respect to the non-CSI sales, and was not altered by any use of facts available. Thus, Kawasaki's overall margin was not ''established under the circumstances referred to in paragraph 8 of Article 6.''

Comment 1

Two petitioning steel companies stated that the Department's draft *Section 129 Determination* adequately implemented the findings of the Appellate Body, but that it was ambiguous as to the nature and effect of that determination. They urged the Department to make clear that it is a new and different determination, rather than an amendment to the original determination in the investigation, and that it has prospective effect only. They also asked that the Department address the proper assessment rates for entries made prior to the date of implementation of the *Section 129 Determination*.

Department Position

We agree with petitioners' first argument, and have clarified, in this notice, the nature and effect of this *Section 129 Determination*. We do not agree, however, that a section 129 Determination should necessarily include a discussion of the proper assessment rates for entries made prior to the effective date of that determination, *i.e.*, entries to which that determination expressly does not apply. Under U.S. law, such prior entries, if reviewed, are governed by the results of the relevant review. Section 751(a)(1) and (a)(2)(C) of the Act. If such prior entries are not reviewed, they are liquidated as entered. 19 CFR § 351.212(c).

Section 129 Determination Margins

As a result of the changes to the calculations, we determine that the following Section 129 Determination margins exist:

Kawasaki	40.26%
NKK	17.70%
Nippon	18.37%
All Others	22.92%

Continuation of Suspension of Liquidation

In accordance with section 129(c)(1)(B) of the URAA, we will instruct the U.S. Customs Service (Customs) to continue to suspend liquidation of all imports of hot-rolled steel from Japan that are entered, or withdrawn from warehouse, for consumption on or after November 22, 2002, the date on which the Trade Representative directed the Department under subsection (b)(4) of that section to implement this *Section 129 Determination*. Customs shall continue to require a cash deposit equal to the estimated amount by which the normal value exceeds the U.S. price. The suspension of liquidation instructions will remain in effect until further notice.

Because we completed an administrative review of Kawasaki subsequent to the issuance of the order in this proceeding, we will not issue a new cash deposit rate for Kawasaki pursuant to this *Section 129 Determination*. We have not conducted reviews of Nippon and NKK, however. Thus, we will instruct Customs to revise the cash deposit rates for these two firms with respect to subject merchandise entered, or withdrawn from warehouse, for consumption on or after November 22, 2002. The *Section 129 Determination* ''all others'' rate will be the new cash deposit rate for all exporters of subject merchandise other than Nippon, NKK and Kawasaki, with respect to entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after November 22, 2002.

This Section 129 Determination is issued and published in accordance with section 129(c)(2)(A) of the URAA.

Dated: November 22, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–30621 Filed 12–2–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology (NIST)

Proposed Information Collection; Comment Request; Manufacturing Extension Partnership (MEP) Management Information Reporting

ACTION: Notice.

SUMMARY: The Department of Commerce, 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 (2)(A)).

DATES: Written comments must be submitted on or before February 3, 2003.

ADDRESSES: Direct written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Brian Clark, National Institute of Standards and Technology, Manufacturing Extension Partnership, 100 Bureau Drive, Stop 4800, Gaithersburg, MD 20899–4800, 301–975–8841 (phone) and 301–926–3787 (fax).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Manufacturing Extension Partnership (MEP), sponsored by NIST, is a national network of locally-based manufacturing extension centers working with small manufacturers to help improve their productivity, improve profitability and enhance their economic competitiveness.

The collected information will provide the MEP with information regarding the centers' performance in the delivery of technology, and business solutions to US-based manufacturers. The information obtained will assist in

determining the performance of the MEP Centers at both a local and national level, as well as, the impact on the national economy. Responses to the collection of information are mandatory per the regulations governing the operation of the MEP Program (15 CFR 290, 291, 292, and H. R. 1274–Section 2).

II. Method of Collection

Web forms will be the primary method to collect and analyze a wide range of information.

III. Data

OMB Number: 0693–0032.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 60.

Estimated Time Per Response: 68 hours.

Estimated Total Annual Burden Hours: 4,048.00.

Estimated Total Annual Cost to the Public: $202,400.

IV. Requests 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 will also become a matter of public record.

Dated: November 27, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–30606 Filed 12–2–02; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Malcolm Baldrige National Quality Award Board of Overseers

AGENCY: National Institute of Standards and Technology Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that there will be a meeting of the Board of Overseers of the Malcolm Baldrige National Quality Award on December 18, 2002. The Board of Overseers is composed of eleven members prominent in the field of quality management and appointed by the Secretary of Commerce, assembled to advise the Secretary of Commerce on the conduct of the Baldrige Award. The purpose of this meeting is to discuss and review information received from the National Institute of Standards and Technology with the members of the Judges Panel of the Malcolm Baldrige National Quality Award. The agenda will include: Report from the Judges' Panel; Status of Baldrige Program; Internal Supplier Eligibility, Baldrige Not-For-Profit Eligibility Category; CEO Marketing Study; State and Local Programs; 2003 Criteria Update—Ethics and Governance; Topics for Discussion with NIST Director; Recommendations to the NIST Director; and New Business. All visitors to the National Institute of Standards and Technology site will have to pre-register to be admitted. Please submit your name, time of arrival, email address and phone number to Virginia Davis no later than Monday, December 16, 2002, and she will provide you with instructions for admittance. Ms. Davis' email address is *virginia.davis@nist.gov* and her phone number is (301) 975–2361.

DATES: The meeting will convene December 18, 2002 at 8:30 a.m. and adjourn at 3:00 p.m. on December 18, 2002.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Building 222, Red Room, Gaithersburg, Maryland 20899. Please note admittance instructions under SUMMARY paragraph.

FOR FURTHER INFORMATION CONTACT: Dr. Harry Hertz, Director, National Quality Program, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2361.

Dated: November 22, 2002.

Karen H. Brown,

Deputy Director.

[FR Doc. 02–30494 Filed 12–2–02; 8:45 am]

BILLING CODE 3510–13–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Notice of Funding To Support Scholars Under the Civil Society-Nonprofit Scholars Program

AGENCY: Corporation for National and Community Service.

ACTION: Notice of availability of funds.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation'') announces the availability of funding to offer up to three nine-month residency scholars' awards under the Civil Society-Nonprofit Scholars program, a joint venture with the Woodrow Wilson International Center for Scholars in Washington, DC. Applicants are encouraged to submit proposals to conduct applied research in three thematic areas: (1) The relationship between democratic institutions and nonprofit organizations; (2) the role of service and citizenship in modern and civil society; and (3) civic engagement and public policy. This program solicits applications from individuals with experience in government, the corporate world, the professions and academia. Eligibility for academic applicants is limited to candidates with demonstrated scholarly development beyond the doctoral level. Non-academic candidates shall match professional, governmental or corporate levels of experience similar to those established for the Woodrow Wilson Fellows program. Memoir projects will be considered but are discouraged. A full description of the program, eligibility requirements and application material are located at the Corporation's Web site: *http://www.nationalservice.org/scholars.*

DATES: The application deadline is February 3, 2003. Notification of scholarship awards shall take place in mid-April, 2003. Scholars will be in residence at the Corporation's Washington, DC headquarters from September 2003 through May 2004.

ADDRESSES: If you cannot access the Corporation's Web site, you may request a program description and application materials by writing to the following address: The Corporation for National and Community Service, Civil Society-Nonprofit Scholars Program, 1201 New York Avenue, NW., Room 8100–H, Washington, DC 20525.

FOR FURTHER INFORMATION CONTACT: Robin Dean at (202) 606–5000 ext. 436, TTY: (202) 565–2799; Fax: (202) 565–2743; E-mail: *scholars@cns.gov;* World Wide Web: *http://www.nationalservice.org/scholars.*

Dated: November 25, 2002.

David A. Reingold,

Director, Department of Research and Policy Development.

[FR Doc. 02–30585 Filed 12–2–02; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0130]

Federal Acquisition Regulation; Information Collection; Buy American Act—North American Free Trade Agreement-Israeli Trade Act Certificate

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0130).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Buy American Act—North American Free Trade Agreement-Israeli Trade Act Certificate. The clearance currently expires on March 31, 2003.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before February 3, 2003.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Cecelia Davis, Acquisition Policy Division, GSA, (202) 219–0202.

SUPPLEMENTARY INFORMATION:

A. Purpose

Under the North American Free Trade Agreement (NAFTA) Implementation Act, unless specifically exempted by statute or regulation, agencies are required to evaluate offers over a certain dollar limitation to supply an eligible product without regard to the restrictions of the Buy American Act or the Balance of Payments program. Offerors identify excluded end products and NAFTA end products on this certificate.

The contracting officer uses the information to identify the offered items which are domestic and NAFTA country end products so as to give these products a preference during the evaluation of offers. Items having components of unknown origin are considered to have been mined, produced, or manufactured outside the United States.

B. Annual Reporting Burden

Respondents: 1,140;

Responses Per Respondent: 5;

Annual Responses: 5,700;

Hours Per Response: .167;

Total Burden Hours: 952.

Obtaining Copies of Proposals

Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVA), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0130, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate, in all correspondence.

Dated: November 26, 2002.

Jeremy F. Olson,

Acting Director, Acquisition Policy Division.

[FR Doc. 02–30548 Filed 12–2–02; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0026]

Federal Acquisition Regulation; Information Collection; Change Order Accounting

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0026).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning change order accounting. This OMB clearance expires on March 31, 2003.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before February 3, 2003.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Acquisition Policy Division, GSA (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

FAR clause 52.243–6, Change Order Accounting, requires that, whenever the

estimated cost of a change or series of related changes exceed $100,000, the contracting officer may require the contractor to maintain separate accounts for each change or series of related changes. The account shall record all incurred segregable, direct costs (less allocable credits) of work, both changed and unchanged, allocable to the change. These accounts are to be maintained until the parties agree to an equitable adjustment for the changes or until the matter is conclusively disposed of under the disputes clause. This requirement is necessary in order to be able to account properly for costs associated with changes in supply and research and development contracts that are technically complex and incur numerous changes.

B. Annual Reporting Burden

Respondents: 8,750.
Responses Per Respondent: 18.
Annual Responses: 157,500.
Hours Per Response: .084.
Total Burden Hours: 13,230.

C. Annual Recordkeeping Burden

Recordkeepers: 8,750.
Hours Per Recordkeeper: 1.5.
Total Recordkeeping Burden Hours: 13,125.
Total Burden Hours: 26,355.

Obtaining Copies of Proposals

Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVA), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0026, Change Order Accounting, in all correspondence.

Dated: November 26, 2002.

Jeremy F. Olson,

Acting Director, Acquisition Policy Division.

[FR Doc. 02–30549 Filed 12–2–02; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Applications Concerning Automated Inhalation Toxicology Exposure Systems

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 35 U.S.C. 209 and 37 CFR part 404 announcement is made of the availability for licensing of the U.S. Patent Applications concerning ''Automated Inhalation Toxicology Exposure Systems'' list under **SUPPLEMENTARY INFORMATION**. The inventions listed have been assigned to the United States Government as represented by the Secretary of the Army, Washington, DC.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, Attn: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION:

1. U.S. Patent Application No.: 09/919,741. Foreign rights are also available (PCT/US01/27077).

Title: Automated Inhalation Toxicology Exposure System.

Filing Date: July 31, 2001.

Description: A method of exposing an animal to an inhalant; acquiring near real time measurement of at least respiration during said exposing; and calculating a received dose of the inhalant in response to the near real time measurement of the at least respiration during said exposing. The method further includes to automatically controlling an environment of an inhalant chamber; automatically controlling a concentration of an inhalant in the inhalant chamber, and displaying near real time measurement data related to an animal in an inhalant chamber.

2. U.S. Patent Application No.: 10/166,228, which is a continuation-in-part of U.S. Patent Application 09/919,741, above.

Title: Inhalant System.

Filing Date: May 29, 2002.

Description: The present application relates, in general, to multi-animal inhalation exposure systems.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–30568 Filed 12–2–02; 8:45 am]

BILLING CODE 3410–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Provisional Patent Application Concerning Hybrid Inhalation System for Precious Materials

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6 and 404.7, announcement is made of the availability for licensing of U.S. Provisional Patent No. 60/396,698 entitled ''Hybrid Inhalation System for Precious Materials,'' filed July 17, 2002. The United States Government, as represented by the Secretary of the Army, has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, Attn: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: The invention is a method and associated system for generating a cycle of dynamic and static test atmospheres designed to be sued for aerosol characterization or exposing animals to all materials potentially aerosolized but especially limited production materials such as new chemical entities or biologics.

This method will greatly reduce the cost and time required for evaluation of precious materials under testing. The method includes complete computer automated control of aerosol generation, characterization, and exposure duration and can be utilized with a variety of commercially-available aerosol generators, sampling devices, and material types.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–30569 Filed 12–2–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Final Estuary Habitat Restoration Strategy Prepared by the Estuary Habitat Restoration Council

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice.

SUMMARY: The Corps of Engineers on behalf of the interagency Estuary Habitat Restoration Council is publishing the final ''Estuary Habitat Restoration Strategy.'' The comments received on the draft published on May 3, 2002,

were reviewed and changes have been made to clarify the intent of the Council and correct errors.

FOR FURTHER ASSISTANCE CONTACT: Ms. Ellen Cummings, Headquarters, U.S. Army Corps of Engineers, Washington, DC 20314–1000, (202) 761–4558; or Ms. Cynthia Garman-Squier, Office of the Assistant Secretary of the Army (Civil Works), Washington, DC, (703) 695–6791.

SUPPLEMENTARY INFORMATION: The Estuary Restoration Act of 2000, title I of Pub. L. 106–457 has four purposes: (1) Promotion of estuary habitat restoration; (2) Development of a national strategy for creating and maintaining effective estuary habitat restoration partnerships; (3) Provision of Federal assistance for estuary habitat restoration projects; and (4) Development and enhancement of monitoring and research capabilities to ensure that estuary habitat restoration efforts are based on sound scientific understanding and innovative technologies. The Estuary Habitat Restoration Council, consisting of representatives from Department of the Army, National Oceanic and Atmospheric Administration, the Environmental Protection Agency, United States Fish and Wildlife Service, and the Department of Agriculture, was established to oversee implementation of the Act.

The Council is charged with developing an estuary habitat restoration strategy designed to ensure a comprehensive approach to maximize benefits and foster coordination of Federal and non-Federal activities. The goal of the strategy is restoration of 1,000,000 acres of estuary habitat by the year 2010. Elements of the strategy are discussed in section 106(d) of the Act. The intent of this notice is to publish the strategy prepared by the Estuary Habitat Restoration Council in accordance with these requirements.

The Council received comments on the draft strategy published in May from 26 parties including five Federal and six State agencies, 11 non-governmental groups, one corporation, two intergovernmental bodies and one individual. Responses to the questions published with the draft Strategy were thought provoking and varied. There was no strong consensus among the commenters in support of major changes to the draft strategy. However, a new section was added to recognize the importance of innovative technology and the role of the National Estuarine Research Reserve System. Commenters were divided regarding the merits of local vs. national awards and the definition of small vs. large projects. There were several requests for the inclusion of additional examples to those in the draft. In some instances additional examples have been added but the Council did not intend for the strategy to be an inclusive list of all possibly relevant activities or documents. Many commenters suggested clarifying language that has generally been incorporated or resulted in related modifications of the text. A number of commenters took issue with aspects of the strategy, including definitions and requirements such as including the Great Lakes, that are dictated by the Act and therefore cannot be changed. Several commenters desired more information about the process that will be used to implement the program for estuary habitat restoration. The Council still believes that this level of programmatic detail is inappropriate for inclusion in the strategy. This material will be released in the future using various means. Some of the changes by section are highlighted below.

a. Introduction. The term ''unimpaired connection'' in the definition of ''estuary'' has been clarified to indicate that this is in reference to ''natural'' convergence patterns between fresh and salt-water sources. In response to comments from practitioners in the Great Lakes area, the areas to be considered as ''estuary'' under this Act are described as ''riparian and nearshore areas adjacent to the drowned mouths of streams.'' A sentence has been added to clarify that the strategy supports restoration of degraded estuary habitat or creation of estuary habitat, including activities in estuaries and associated ecosystems.

b. Trends of Estuary Habitats. The Council acknowledges that when using trends data it is important to understand the rationale underlying the data presented, as it may not be accurate to make local assumptions based on data acquired for a national study. The discussion of the use of trends data in proposals has been modified to clarify that existing information should be used. While there was support for using a classification system based on Cowardin *et al.*, the Council acknowledges that there may be times when regional clarifying refinements should be recognized.

c. Estuary Management or Habitat Restoration Plans. Language has been added to clarify that the Federal plans listed in the Act are not the only Federal plans that will be considered as meeting the Act's definition of ''estuary habitat restoration plan.'' A reference to protection of estuary habitat was deleted to reduce confusion regarding the scope of activities considered under the Act.

d. Ecosystem Level Approach. In response to comments, a definition for ''self-sustaining'' has been added. The importance of addressing causes of degradation is noted and the potential synergy of locating restoration projects adjacent to protected areas is acknowledged.

e. Partnerships. An acknowledgement of the variety of possible partnership models has been added. In response to comments requesting that lists of funding sources be included in the strategy, a citation has been added for one example of existing lists.

f. Habitat Restoration Program. Most of the changes were designed to improve clarity in the discussion of the project selection criteria included in the Act and the scope of the cost covered in the definition of a ''small'' project. Recognition of the possible synergy of combining estuarine habitat restoration activities with otherwise ''excluded activities'' has been included.

g. Innovative Technology. This section was added to acknowledge the role of the National Estuarine Research Reserve System.

h. Ensuring Success. The need to consult with existing broad-scale monitoring programs when developing a long-term monitoring program to detect large-scale changes has been added.

Estuary Habitat Restoration Strategy

Introduction

This Estuary Habitat Restoration Strategy (Strategy) has been developed in accordance with the requirements of the Estuary Restoration Act of 2000, title I of Pub. L. 106–457 (the Act). The purpose of the Strategy is to ensure a comprehensive approach to maximize benefits derived from estuarine habitat restoration projects, provide incentives for the creation of new partnerships between the public and private sectors, and foster coordination of Federal and non-Federal activities related to restoration of estuarine habitat. The Act also provides Federal assistance, promotes efficient financing of technically sound and cost-effective estuarine habitat restoration projects, and encourages the use of innovative technologies.

Congress enacted the Estuary Restoration Act to establish a collaborative process for addressing the pressures facing our Nation's estuaries. As part of the Act, an inter-agency Estuary Habitat Restoration Council (Council) was established to develop and submit the Strategy to Congress, solicit, review, and evaluate project

proposals, and recommend projects to the Secretary of the Army. Much of the Council's work will involve soliciting and funding on-the-ground habitat restoration projects. The Strategy, however, is broader than site-specific restoration. It encourages coordinating, integrating, and capitalizing upon the broad spectrum of ongoing estuary restoration efforts throughout the country. Its goal is to bring together the collective expertise, technical, and financial resources of the Federal community, the practical experience of tribal, State, local and nongovernmental groups, and the vision of the corporate world to restore the integrity of our Nation's estuarine systems. The Federal investment will be used to leverage the financial and technical contribution of non-Federal partners, providing sound ecological and economic returns.

The Strategy calls for restoration activities that improve degraded estuaries or estuarine habitat, or those that create estuarine habitat, with the goal of attaining a self-sustaining system integrated into the surrounding landscape. Restoration projects must improve or establish function to degraded or destroyed habitats and be located to recapture regional ecological integrity. Successful restoration of estuarine habitat will protect native flora and fauna in estuaries and their watersheds, while providing multiple additional benefits such as improved surface and ground water quality and quantity, nutrient cycling, flood control, outdoor recreation, and other services, valued by local stakeholders and consistent with the establishment and maintenance of healthy ecosystems.

The goal of the Strategy is to restore one million-acres of estuarine habitat by 2010. The Council will organize and support a task force to recommend methods for tracking progress toward the million-acre goal, including defining a baseline timeframe for comparison. The task force will consider regional and local perspectives on quantifying project successes. Subsequently, the Council will produce periodic reports on progress toward meeting the Strategy's million-acre goal, as well as other habitat trends.

The Act defines estuary as ''a part of a river or stream or other body of water that has an unimpaired connection with the open sea and where the sea water is measurably diluted with fresh water from land drainage.'' Estuary also includes the ''* * * near coastal waters and wetlands of the Great Lakes that are similar in form and function to estuaries.'' For the purposes of this Strategy, estuaries are considered to extend from the head of tide to the boundary with the open sea (to downstream terminus features or structures such as barrier islands, reefs, sand bars, mud flats, or headlands in close proximity to the connection with the open sea). In the Great Lakes, riparian and nearshore areas adjacent to the drowned mouth of a stream entering one of the Lakes will be considered estuaries. Additionally, an unimpaired connection refers to ''natural'' convergence patterns between fresh and salt-water sources, disregarding the influence of man-made structures and obstructions. Estuary habitat includes the estuary and its associated ecosystems, such as: salt, brackish, and fresh water coastal marshes, coastal forested wetlands and other coastal wetlands, maritime forests, coastal grasslands, tidal flats, natural shoreline areas, shellfish beds, sea grass meadows, kelp beds, river deltas, and river and stream corridors under tidal influence. The Strategy supports restoration work targeted at improving degraded estuarine habitat or creating estuarine habitat, including activities occurring both within estuaries and in their associated ecosystems.

Some restoration projects can easily measure success in terms of acreage (for example, projects that plant vegetation), but many cannot (for example, projects that alter hydrology). By manipulating a relatively small area, the function of a much larger habitat area can be improved. For the purposes of this Strategy, therefore, the restored area will be defined as that area over which appropriate monitoring can document the establishment or improvement of desirable ecosystem characteristics.

The Estuary Habitat Restoration Council developed this Strategy building on work done by Council member agencies, environmental professionals, and private conservation organizations, including Restore America's Estuaries. In consultation with restoration professionals, scientists, academics, and nonprofit organizations, Restore America's Estuaries has developed A National Strategy to Restore Coastal and Estuarine Habitat. The document provides a framework for restoring function to estuary and coastal habitats, which can aid in focusing restoration efforts to reach this Strategy's million-acre goal.

This Strategy is dynamic. It will evolve over time according to information collected through monitoring and research programs and feedback from restoration practitioners, scientists, and public agencies and private organizations. Reaching the one-million-acre goal will require further close coordination among the Federal partners and tribal, State, local and private partners as habitat priorities, project efficiencies, and funding sources are identified.

Trends of Estuarine Habitats

Section 106(d) of the Estuary Restoration Act of 2000 requires that the National Strategy include guidance on addressing trends of estuarine habitats, including historic losses, estimated current rate of loss, the extent of the threat of future loss or degradation, and a measurement of the rate of change. For purposes of this Strategy, estuarine habitats will include the complex of physical and hydrologic features and living organisms within estuaries and their associated ecosystems, including salt and fresh water coastal marshes, coastal forested wetlands and other coastal wetlands, maritime forests, coastal grasslands, tidal flats, natural shoreline areas, shellfish beds, sea grass meadows, kelp bed, river deltas, and river and stream corridors under tidal influence.

Understanding trends as well as the structure, function and extent of various estuarine habitats is key to an effective and efficient restoration program. Trends data provide a chronological and geographic picture of change in habitat types, thereby helping managers to recognize ecological stability or stress. These help to identify existing or potential habitat threats so that early action can be taken to avoid or rectify them. This information can be used to establish a baseline from which to quantify restoration success. By identifying both healthy and impaired ecosystems, trends information can help managers to target habitat restoration efforts in a cost-effective manner. For these reasons this Strategy encourages the development and use of trends data in designing restoration programs for estuarine habitats. The Strategy recognizes that when using this data, it is important to understand the conventions and mapping standards that underlie data collection so that they can be appropriately applied. For instance, it may not be accurate to make local assumptions based on data that was meant for a national study.

The Council will use a classification system based on Cowardin *et al.* (1979). The Cowardin classification system is the national standard for wetland mapping, monitoring and data reporting as determined by the Federal Geographic Data Committee (*http://www.fgdc.gov/*). Examples of the relevant classes are: Estuarine subtidal, including open water, bay bottoms, and reefs; estuarine intertidal emergents,

such as salt marsh; estuarine intertidal forested/shrub, such as mangroves; estuarine intertidal unconsolidated shore, such as beaches, bars and mudflats; and estuarine aquatic bed, such as submerged or floating estuarine vegetation. Freshwater habitat categories to be included because they are estuarine-associated ecosystems or are found in the Great Lakes include: palustrine forested wetlands, such as forested swamps or riparian zones; palustrine shrub wetlands; and palustrine emergents, including inland marshes and wet meadows. As appropriate and supported by the scientific and resource management communities, the Council will recognize and use regional refinements in classification of habitat types that augment the Cowardin system.

Within two years after publication of this Strategy, the Council will review information available for estuarine habitats concerning historic losses, current rates of loss, the extent of the threat of future loss or degradation, and measures of the rate of change, and identify gaps in trends information that can be addressed by the Council members and/or its partners. Data collected will be used to help identify regional and national restoration priorities.

Organizations and agencies preparing or updating estuary management or restoration plans should incorporate available information on estuary trends in their documents and consider this data when establishing project priorities. In addition, project proposals submitted to the Council for potential funding should address existing information about the trends for estuarine habitat types in the project area and explain how this information was considered when developing the project proposal. Among the sources of information to consult are historic maps and navigation charts, tribal, State and local agencies, available aerial photography and other remote sensing data, Federal agencies such as the members of the Estuary Habitat Restoration Council and the United States Geological Survey, reports on Federal projects in estuaries, and universities conducting research in local estuaries.

It is also important to collect information relating to the causes of change in estuarine habitat types, distribution, quality and quantity. This will help in defining the types of projects that may be needed, setting realistic goals, and influencing the design. For example, if the primary limiting factor is water quality and the source of the problem is upstream, success of any estuary restoration project might be limited until the upstream problem is resolved. The Council will give priority to projects that clearly address historic losses in areas where steps are being taken to address the causes of degradation and where there is a reasonable likelihood of success in the foreseeable future.

Estuary Management or Habitat Restoration Plans

This Strategy will be implemented in a manner consistent with estuary management or habitat restoration plans. An estuary habitat restoration plan is defined in the Act as ''* * * any Federal or State plan for restoration of degraded estuary habitat that was developed with the substantial participation of appropriate public and private stakeholders.'' These plans include (but are not limited to) the estuarine habitat restoration components of comprehensive conservation and management plans approved under section 320 of the Federal Water Pollution Control Act, lakewide management plans or remedial action plans developed under section 118 of the Federal Water Pollution Control Act, management plans approved under the Coastal Zone Management Act of 1972, and the interstate management plan developed pursuant to the Chesapeake Bay program under section 117 of the Federal Water Pollution Control Act.

Effective estuary habitat restoration plans typically contain common elements such as focusing on the watershed as the basic management unit, integrating good science with sound decision-making, and emphasizing collaborative problem solving. Also essential is public and private stakeholder participation. This is crucial to the final success of any plan, because those individuals and private interests affected by measures to maintain and restore the estuary are ultimately responsible for implementing the plan. Providing them the opportunity to design and contribute during early planning stages promotes ''buy-in'' when the time comes to undertake restoration actions and activities.

Another component of successful restoration plans is clearly identifying a central goal or set of goals and describing means for measuring progress toward achieving these goals. Performance measures may be as simple as the number of acres of habitat directly restored. Many federally approved estuary management and restoration plans track major milestones or other implementation activities to ensure progress is occurring, or if it is not, to identify what necessary steps to take to move forward.

Successful plans also include trend assessment, which is critical to watershed characterization, such as loss of historic estuarine habitat, land use, development, recreation, and fisheries pressures. This information is necessary to identify problems facing a given watershed and to select those actions necessary to return it to the desired state. Status and trend information can help to assess the condition of the highest priority resources and can forecast future conditions should current trends continue. It can also highlight data gaps.

Finally, plans should identify management and restoration priorities. Identifying regional or estuary-level restoration priorities will help projects address the most critical habitat needs. The Council will give priority to those projects that have the best potential to restore habitat functions successfully. Improved planning will also allow benefits to be accrued over a larger scale, enhancing the overall effectiveness of restoration efforts.

In accordance with the Act, every project considered for funding under this authority must address restoration needs identified in an estuary habitat restoration plan. Additionally, one of the factors for the Secretary of the Army (Secretary) to consider when selecting a project to fund is whether the project is part of an approved Federal estuary management or habitat restoration plan. This selection criterion will help ensure that the Strategy is implemented in a manner consistent with such plans.

Agency staff supporting the Council participated in and reviewed the results of a recent effort supported by the National Oceanic and Atmospheric Administration and led by Restore America's Estuaries, a nongovernmental organization, to review existing estuary restoration plans. Plans reviewed included those developed for Federal programs, such as the National Estuary Program (Comprehensive Conservation and Management Plans), State Coastal Zone Management Plans, and other Tribal and State plans; and watershed or estuary plans, such as the Puget Sound Water Quality Management Plan and The Nature Conservancy's Ecoregional Plans. Review of these plans revealed that the level and sophistication of planning for estuarine and coastal habitat restoration varies significantly among the regions and watersheds of the United States. In some coastal areas, only broad, coastal management planning has been completed, while in other areas sophisticated planning

efforts with strong community and stakeholder participation have determined specific habitat restoration goals and priorities.

By working with tribal, State and local agencies and nongovernmental organizations, the Council will help to identify gaps in planning, and encourage sharing of information and other collaborative efforts to improve restoration plans. The Council will also seek to promote coordination of planning activities associated with other tribal, State and Federal programs. For example, the Council will encourage regional planning workshops, bringing together resource managers, scientists, and other stakeholders to establish restoration goals and priorities. The Council could also identify and recommend the use of successful planning frameworks such as those developed by the National Estuary Program and other examples.

Ecosystem Level Approach

This Strategy recognizes that successful estuary restoration projects with multiple goals will improve ecosystem function. Restoration projects should be designed using an ecosystem or watershed approach to establish a self-sustaining area that provides the structure and function necessary to support the many interrelated physical, biological, and chemical components of healthy estuarine habitats. The definition of ''self-sustaining'' will vary according to specific site conditions, the landscape context, and project goals, but will generally include those habitats that require little or no high cost maintenance following the period of initial establishment and adaptive management. The prospects for self-sustainability can be enhanced by ensuring that the original causes of habitat degradation have been addressed, both within and surrounding the restoration site.

While protection is not explicitly included within the scope of the Estuary Restoration Act, restoration activities should be planned and performed with awareness of the surrounding land use/land cover. Siting a restoration project close to protected areas can increase the habitat effectiveness of both the restoration area and nearby protected areas, by extending wildlife corridors, decreasing edge effects, and ultimately forming a more intact ecosystem.

An ecosystem or watershed approach will facilitate the development of projects with multiple benefits. Examining how actions fit into the surrounding area and considering economic, recreational, water quality, land use, and other parameters, are necessary to achieve restoration goals. Estuarine habitats are a web of interrelated components, each supporting and depending on the other for healthy function.

Estuary restoration projects that include physical and functional restoration should also include objectives to provide healthy ecosystems to support wildlife, including endangered and threatened species, migratory birds, and resident species of an estuary watershed, as well as fish and shellfish, including commercial and recreational fisheries.

Restoration of healthy ecosystem function can provide improved water quality and flood control benefits. For example, healthy and intact tidal wetlands filter water flowing from rivers and tributaries to the ocean, remove pollutants from runoff and trap and assimilate nutrients. Estuarine wetlands also have the capacity to store floodwater and can provide a critical physical buffer between land and water, protecting communities from flooding and storm surge.

Healthy estuaries also provide multiple opportunities for outdoor recreation, such as recreational fishing, boating, birding, and a variety of water sports. The recreation industry dependent on healthy estuaries provides significant income to coastal regions. Restoration projects completed under this Strategy may incorporate recreational features that are compatible with the primary goal of restoring healthy habitat function.

In its review of project proposals, the Council will support projects developed in an ecosystem context with multiple benefits and those that utilize natural processes to restore and maintain estuary habitat. The Council will work with others to share examples of particularly effective projects that exemplify the ecosystem approach.

Partnerships

To achieve the goal of restoring one million-acres of estuarine habitat, it will be important to involve individuals and organizations from both the public and private sectors. Enhancing partnerships among agencies and establishing new public-private partnerships is a central theme of the Act and a critical part of this Strategy.

In order to meet the goals of the Act, the Council will improve coordination among existing restoration programs by reviewing and discussing programs administered by agencies represented on the Council, and developing shared goals and objectives for habitat restoration. Although agencies may differ in their implementation strategies, developing common goals will facilitate coordination. The Council will also coordinate with tribal and State habitat restoration programs to improve the effectiveness of restoration efforts.

In order to maximize public-private partnerships, the Council encourages collaboration among public agencies, private organizations, companies, and individuals (*e.g.*, private landowners, hunters, birders, fishermen, *etc.*) in restoration efforts. This connectivity encourages private organizations, companies, landowners and others to bring their resources (financial or in-kind) to the table to assist in planning and implementing successful restoration projects. There are several existing programs that provide models for successful partnerships, including the Coastal America Corporate Wetlands Restoration Partnership, a voluntary public-private partnership in which corporations join with Federal, tribal and State agencies to restore wetlands and other aquatic habitats. The Joint Venture Partnerships developed to implement the North American Waterfowl Management Plan provide another model of regionally based partnerships (public/private/tribal) that plan and implement habitat projects within a regional and international context using diverse funding sources, notably the North American Wetlands Conservation Act grants program. The Strategy recognizes that partnership models will vary throughout the country and need to be broad enough to allow for regional differences and local preferences.

Private support can range from providing materials or funding to the use of volunteers for hands-on restoration or monitoring. One way to encourage resourceful, active partnerships, and especially to acknowledge the efforts of volunteers, is to establish annual awards recognizing successful restoration efforts. These awards may be given to a wide variety of groups, including nongovernmental organizations, individuals, businesses, and local, State, tribal, and Federal agencies to reward efforts at all levels.

Private partnerships may also be critical for those projects involving demonstration or pilot testing of an innovative technology. The estuarine habitat restoration program established in the Act requires a non-Federal sponsor to provide a minimum of 35 percent of the costs of a restoration project. However, when innovative technology is involved, the percentage required to be contributed by the non-Federal sponsor shall be reduced to 15 percent for the incremental cost of using the new technology. The Council will

consider technology ''innovative'' if it involves a new process, technique, or material or uses existing processes, techniques, or materials in a new application. The non-Federal sponsors must provide all of the lands, easements, rights-of-way and relocations. The non-Federal sponsor is also responsible for all costs associated with operation, maintenance, replacement, repair and rehabilitation of the project, including monitoring. This presents many opportunities for the involvement of a broad array of individuals and organizations to participate in the restoration effort.

To expand the base of support for restoration, the Council will encourage member agencies and private partners to maintain and expand existing web sites that provide information on both public and private sources of funding for estuary projects. Web sites should include links to other web sites that emphasize accomplishments of completed restoration projects. Effective implementation of any restoration plan requires a well-developed funding strategy that identifies governmental, nonprofit, and private resources to provide support both in the near and long term. The Council will work with other Federal, tribal, State and local agencies, nongovernmental organizations and private parties to identify and publicize funding sources, and will also identify examples of effective partnerships that have implemented estuary restoration projects. Examples include: The U.S. Environmental Protection Agency's Environmental Finance Program, the National Oceanic and Atmospheric Administration's Community-based Restoration Program, the U.S. Fish and Wildlife Service's Coastal Program, the U.S. Department of Agriculture's Wetland Reserve Program, Restore America's Estuaries' inventory of federal funding sources, the National Fish and Wildlife Foundation and the Coastal America Corporate Wetlands Restoration Partnership.

Habitat Restoration Program

The Act establishes ''an estuary habitat restoration program under which the Secretary may carry out estuary habitat restoration projects and provide technical assistance in accordance with the requirements of this title.'' This is one means for achieving the one-million-acre goal of the Strategy. The statute includes requirements for non-Federal origination of projects, selection criteria, cost-sharing, operation and maintenance, authority for nongovernmental agencies to be sponsors, a requirement for a written agreement between the non-Federal partner and the Secretary, and potential delegation of project implementation.

The Act defines the term estuary habitat restoration activity to mean ''an activity that results in improving degraded estuaries or estuary habitat or creating estuary habitat (including both physical and functional restoration), with the goal of attaining a self-sustaining system integrated into the surrounding landscape.'' Projects funded under this program will be consistent with this definition. Eligible habitat restoration activities include establishment or improvement of chemical, physical, hydrologic, and biological features and components associated with an estuary. Projects that may be considered include, but are not limited to, improvement of estuarine wetland tidal exchange or reestablishment of historic hydrology, providing fish passage, establishment of riparian buffer zones, construction of reefs to promote fish and shellfish production, reintroduction of native species or populations, and control of invasive species. Cleanup of pollution for the benefit of estuarine habitat may be considered, as long as it does not meet the definition of excluded activities in the Act. Excluded activities are those required for mitigation of adverse effects of a regulated activity or that constitutes restoration for natural resource damages. However, synergy may be achieved by combining estuarine habitat restoration activities with otherwise ''excluded activities'' as long as the activities can be clearly separated for cost-sharing and other purposes.

Section 104(c) of the Act contains four required elements and seven selection factors to be considered by the Secretary of the Army when determining which projects to fund. Required elements include: contribution to meeting restoration needs identified in an estuary plan, consistency with this Strategy, inclusion of a monitoring plan, and satisfactory assurance that the non-Federal sponsor has adequate authority and resources. Selection factors listed in the Act are: Inclusion in an approved Federal plan, technical feasibility, scientific merit, encouragement of increased cooperation among government agencies at all levels, fostering of public-private partnerships, cost-effectiveness, and whether the State has a dedicated source of funding for acquisition or restoration of estuarine habitat. If a project merits selection based on the above criteria, then priority consideration will be given to a project if it: (a) Occurs within a watershed where there is a program being implemented that addresses sources of pollution and other activities that otherwise would adversely affect the restored habitat water quality in the watershed; or (b) includes an innovative technology having the potential to achieve better restoration results than other technologies in current practice, or comparable results at lower cost in terms of energy, economics, or environmental impacts. More detailed information about processes to be used for accepting, reviewing, evaluating and selecting projects to be funded under the Act will be contained in documents to be released at a future date.

The Council will consider the factors discussed above during its review and ranking of proposals for the Secretary's consideration. Additional criteria may also be developed by the Council to facilitate review and these will be included in the program guidance. The list of recommended projects will be provided in priority order. The Secretary may consider other factors when selecting projects to fund from the list provided by the Council.

In addition to considering the selection and priority factors in sections 104(c)(3) and (4), the Secretary will also select a balance of smaller and larger estuarine habitat projects and ensure an equitable geographic distribution of the funded projects. The Council recognizes that the scope and benefits of a project are not always directly proportional to the cost and that projects are sometimes difficult to characterize adequately in terms of acreage to be restored. For purposes of selecting a balance of smaller and larger estuarine habitat restoration projects, the Council will use a combination of cost and acreage as criteria to define small projects. In general, a small project would be one with a Federal cost-share (applied to planning, design and construction activities) of $250,000 or less and that manipulates 50 acres or less. The Council will discuss and classify projects that cannot be easily characterized as ''small'' or ''large'' because of conflicts between cost and acreage factors. The availability of funding, project costs, and the nature of the proposals will affect the ability to assure equitable geographic distribution of projects funded by this program. In any one year, the Council may recommend funding more projects in one region than another but will consider the number, scope and cost of funded projects in a region when making subsequent funding decisions.

The goal will be to select those projects that address national priorities while assuring that all regions of the country benefit from the program. The

Council will explore various means for defining national priorities and consider those priorities in project selection.

Innovative Technology

To support the incorporation of innovative technologies in restoration projects conducted under the Act, the Council, in cooperation with the National Estuarine Research Reserve System and other federal research and development facilities, will encourage the development of innovative restoration technology and monitoring capabilities. This will include efforts to identify and transfer innovative restoration technologies, methods, and monitoring strategies to program participants for future use in restoration activities carried out under the Act.

Ensuring Success

The Act stipulates that monitoring is essential for evaluating and documenting our progress toward reaching the goal of restoring one million-acres of estuarine habitat. By closely tracking progress at the project level, we can determine whether individual projects contribute to meeting the goals of estuary and regional restoration plans, and tally habitat acreage restored over a national scale. In addition to monitoring at the project level, ecosystem-level monitoring may also be needed to judge restoration success. Monitoring information will allow restoration planners and practitioners to modify their efforts according to on-the-ground results, and can build long-term public support for habitat protection and restoration efforts.

Because monitoring is essential to both documenting success and adapting project and program approaches, it should be a central concern of those designing a restoration project or regional restoration plan. For each habitat type to be restored, the monitoring plan should define the desired structure and functions in the context of project goals, and identify attributes indicating those functions. Quantitative performance standards for projects should include functional and structural elements and be linked to appropriate, local reference habitats that represent ''target conditions.'' It may also be useful to compare the project site to degraded, non-restored ''control'' sites to better document project-induced improvements in habitat condition.

Ideally, restoration goals should be quantitative, as well as spatially and temporally specific. Project goals should also be measurable and realistic. A realistic goal should consider causes of past decline of the habitat proposed for restoration and surrounding land cover and ecosystem conditions. Monitoring data should be used to guide project operations and maintenance.

Specific project goals will determine the appropriate complexity of each monitoring plan. The project must include monitoring on a regular basis and over a meaningful time period. The length of the ideal monitoring program will vary depending on the habitat type and project goals for restoring function, but should always include pre-construction measurements to establish baseline conditions, monitoring during project construction to determine whether to adjust techniques or goals, and post-construction monitoring to confirm success of the restoration and alert project managers to the need for adjustments. Project monitoring should document any changes to the original construction specifications, including what problems were encountered, the reasoning behind any changes, and any changes the project staff would recommend with the knowledge they now possess. Information on changes from baseline conditions and comparison to reference or control sites should be included as well.

Beyond monitoring individual restoration projects, local, tribal, State or regional groups should also conduct monitoring over the estuary or regional scale to allow a more complete evaluation of restoration successes. System-wide monitoring of water quality and other habitat parameters can gauge ecosystem improvements beyond those achieved at project sites. Additionally, remote sensing may be useful in documenting both baseline habitat information and large-scale changes in habitat coverage and conditions. Broad-scale monitoring programs such as those currently being developed through the National Oceanic and Atmospheric Administration's National Estuarine Research Reserve System program and the U.S. Environmental Protection Agency's National Estuary Program should be consulted in the development of long-term monitoring programs.

The restoration and maintenance of healthy coasts and estuaries will require the long-term support of a broad cross-section of the public. Including local communities in planning and implementing restoration projects will build interest in protecting and maintaining restored habitat. Increased awareness of the attributes needed to sustain healthy habitat will increase local stewardship of the environment and will help to ensure the long-term success of restoration projects.

The National Oceanic and Atmospheric Administration, in consultation with the Council, will develop standard data formats for project monitoring, along with requirements for types of data collected and frequency of monitoring. These standards will build on existing inter-agency efforts to develop monitoring protocols and restoration databases. These standards are not intended to limit the types of information gathered by project managers, but rather to ensure that data will be useful to other parties, and to facilitate regional and national tracking of restoration success. Consistent data collection and reporting standards should clarify results, make selection and justification of restoration methods more straightforward, ensure that success is documented based on sufficient data, enhance the restoration knowledge base, and increase the comparability of data among restoration projects.

In addition to developing monitoring data standards, the National Oceanic and Atmospheric Administration will also maintain a database of information concerning estuarine habitat restoration projects carried out under the Act, including information on project techniques, project completion, monitoring data, and other relevant information. This database will be Internet-accessible, to allow widespread dissemination and use of restoration project and monitoring data.

Conclusions

The actions described in this Strategy facilitate reaching the goal of restoring one million-acres of estuarine habitat by 2010. There are many existing programs and organizations actively involved in estuary restoration whose efforts will also contribute significantly to estuary restoration. Examples include the National Estuary Program, the National Estuarine Research Reserve System, the U.S. Fish and Wildlife Service's Coastal Program and North American Waterfowl and Wetlands Program, Restore America's Estuaries member organizations, and the program implementing the Coastal Wetlands Planning, Protection, and Restoration Act.

The Strategy is intended to be dynamic. Working with the organizations listed above and other interested stakeholders, the Council will review and refine this Strategy over time in an iterative process, as new information becomes available and progress toward meeting the goals of the Act is evaluated. Section 108(a) of the Act requires the Secretary to report to Congress at the end of the third and fifth

fiscal years. As part of this process the Council will review the Strategy and update as necessary.

The Council is preparing additional documents regarding habitat restoration program implementation and the development of monitoring standards that will be published upon completion. As indicated in this Strategy, the Council will promote a variety of efforts to facilitate promotion of partnerships and efficient, effective restoration of estuarine habitats.

References: Cowardin, L.M. V. Carter, F.C. Golet, and E.T. LaRoe. 1979. ''Classification of wetlands and deepwater habitats of the United States.'' U.S. Fish and Wildlife Service. Biological Services Program; FWS/OBS–79/31. 131 pp.

Restore America's Estuaries. 2002. ''A National Strategy to Restore Coastal and Estuarine Habitat.'' Arlington, VA.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–30570 Filed 12–2–02; 8:45 am]

BILLING CODE 3710–92–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 3, 2003.

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.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: November 26, 2003.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of the Chief Financial Officer

Type of Review: Revision.

Title: U.S. Department of Education Budget Information—Non-Construction Programs Form and Grant Performance Report Form.

Frequency: Once, only per application for new awards (524).

Affected Public: State, local, or tribal gov't, SEAs or LEAs; Not-for-profit institutions; Businesses or other for-profit.

Reporting and Recordkeeping Hour Burden: Responses: 23,250. Burden Hours: 421,875.

Abstract: This collection is necessary for the award and administration of discretionary and formula grants. The collections specific to ED forms are part of the reinvented process ED used for awarding multi-year discretionary grants. The new process substantially increases flexibility of the grant process by enabling all years of multi-year budget to be negotiated in at the time of initial award (Budget Information Non-Construction Programs, ED FORM 524). The U.S. Department of Education Grant Performance Report (ED Form 524B) is one of the tools used by ED Staff as a monitoring tool in the Post-Award and Grant Administration functions.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2149. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov.* Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to 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. 02–30554 Filed 12–2–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 3, 2003.

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.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: November 26, 2002.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of the Undersecretary

Type of Review: New.

Title: Evaluation of Title I Accountability Systems and School Improvement Efforts (TASSIE).

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 100. Burden Hours: 100.

Abstract: The purpose of the Evaluation of Title I Accountability Systems and School Improvement Efforts (TASSIE) is to examine and evaluate ESEA Title I accountability systems and school improvement efforts in a nationally representative sample of districts and schools. This project addresses both the implementation of accountability practices in 1,300 school districts and 740 schools. The state data collection component of TASSIE will provide data on the impact of state policies that impact district and school responses to accountability requirements.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2190. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov.* Requests may also be electronically mailed to the internet address OCIO_RIMG@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to 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. 02–30555 Filed 12–2–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Correction notice.

SUMMARY: On November 19, 2002, the Department of Education published a 30-day public comment period notice in the **Federal Register** (Page 69729, Column 1) for the information collection, ''School Improvement: Foreign Language Assistance Program for Local Educational Agencies''. Under reporting and recordkeeping burden, responses were stated as 150 and burden hours as 12,000. The correct responses are 250 and the burden hours are 20,000. 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: Sheila Carey at her e-mail address *Sheila.Carey@ed.gov*

Dated: November 26, 2002.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

[FR Doc. 02–30540 Filed 12–2–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Correction notice.

SUMMARY: On November 22, 2002, the Department of Education published a 30-day public comment period notice in the **Federal Register** (page 70415, column 2) for the information collection, ''Tech-Prep Demonstration Grants''. Under Type of Review, the correct type of information collection should be Revision, not Reinstatement. 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: Sheila Carey at her e-mail address *Sheila.Carey@ed.gov.*

Dated: November 26, 2002.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

[FR Doc. 02–30541 Filed 12–2–02; 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 January 2, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Lauren_Wittenberg@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the 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 26, 2002.

John Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: Revision.

Title: Direct Loan Income Contingent Repayment Plan Alternative Documentation of Income.

Frequency: Annually.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 690,685.

Burden Hours: 227,927.

Abstract: A William D. Ford Federal Direct Loan Program borrower (and, if married, the borrower's spouse) who chooses to repay under the Income Contingent Repayment Plan uses this form to submit alternative documentation of income if the borrower's adjusted gross income is not available or does not accurately reflect the borrower's current income.

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 2127. 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 Lew Oleinick at his e-mail address *Lew.Oleinick@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. 02–30542 Filed 12–2–02; 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 January 2, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Lauren_Wittenberg@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the 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 26, 2002.

John Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: Revision.

Title: Direct Loan Income Contingent Repayment Plan—Consent to Disclosure of Tax Information.

Frequency: Once every 5 years.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 314,861.

Burden Hours: 62,972.

Abstract: This form is the means by which a William D. Ford Federal Direct Loan Program borrower (and, if married, the borrower's spouse) who chooses to repay under the Income Contingent Repayment Plan provides written consent for the Internal Revenue Service to disclose certain tax return information to the Department of Education and its agents for the purpose of calculating the borrower's monthly repayment amount.

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 2126. 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 Lew Oleinick at his e-mail address *Lew.Oleinick@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. 02–30543 Filed 12–2–02; 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 January 2, 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 26, 2002.

John Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: New.

Title: Even Start and Title I Preschool Classroom Literacy Environment and Outcomes (CLEO) Study.

Frequency: On Occasion.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 3,500.

Burden Hours: 1,155.

Abstract: CLEO will test the effectiveness of three different two-generation family literacy interventions in a sample of Even Start projects and will conduct a screener in a national sample of Title I preschool projects to evaluate the feasibility of conducting an impact study.

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 2142. 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 James Jones at his e-mail address *James.Jones@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. 02–30552 Filed 12–2–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Correction notice/extension of comment period.

SUMMARY: On October 15, 2002, the Department of Education published a 30-day public comment period notice in the **Federal Register** (Page 63635, Column 3) for the information collection, ''Annual Progress Reporting Form for the American Indian Vocational Rehabilitation Services (AIVRS) Program.'' Because of a system software error, the contents of *http://edicsweb.ed.gov* were not updated to reflect the materials submitted to OMB. The Leader, Regulatory Management Group, Office of the Chief Information Officer, sincerely apologizes for any inconvenience caused by this error and hereby extends the public comment period through January 3, 2003.

While the contents of *http://edicsweb.ed.gov* have been updated to reflect the correct information, written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *Vivian.Reese@ed.gov*. Requests may also be 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 *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.

Dated: November 26, 2002.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

[FR Doc. 02–30553 Filed 12–2–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice 03–12; Environmental Management Science Program (EMSP): Research Related to Transuranic and Mixed Wastes

AGENCY: U.S. Department of Energy.

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Biological and Environmental Research (OBER) of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announce its interest in receiving grant applications to support the performance of innovative, fundamental research on the characterization of transuranic (TRU) and mixed wastes (MW) that are currently stored at DOE sites, or will be produced as part of DOE's environmental cleanup efforts.

DATES: The deadline for receipt of formal applications is 4:30 p.m., e.s.t., Tuesday, March 4, 2003, in order to be accepted for merit review and to permit timely consideration for award in Fiscal Year 2003.

ADDRESSES: Formal applications in response to this solicitation are to be electronically submitted by an authorized institutional business official through DOE's Industry Interactive Procurement System (IIPS) at: *http://e-center.doe.gov/*. IIPS provides for the posting of solicitations and receipt of applications in a paperless environment via the Internet. In order to submit applications through IIPS your business official will need to register at the IIPS website. The Office of Science will include attachments as part of this

notice that provide the appropriate forms in PDF fillable format that are to be submitted through IIPS. Color images should be submitted in IIPS as a separate file in PDF format and identified as such. These images should be kept to a minimum due to the limitations of reproducing them. They should be numbered and referred to in the body of the technical scientific application as Color image 1, Color image 2, etc. Questions regarding the operation of IIPS may be E-mailed to the *IIPS Help Desk at: HelpDesk@e-center.doe.gov* or you may call the help desk at: (800) 683–0751. Further information on the use of IIPS by the Office of Science is available at: *http://www.science.doe.gov/production/grants/grants.html*.

If you are unable to submit an application through IIPS please contact the Grants and Contracts Division, Office of Science at: (301) 903–5212 in order to gain assistance for submission through IIPS or to receive special approval and instructions on how to submit printed applications.

FOR FURTHER INFORMATION CONTACT:

Dr. Roland F. Hirsch, Mail Stop F–237, Medical Sciences Division, Office of Biological and Environmental Research, SC–73/Germantown Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, telephone: (301) 903–9009, facsimile: (301) 903–0567, E-mail: *roland.hirsch@science.doe.gov*, or

Mr. Mark Gilbertson, Office of Science and Technology, Office of Environmental Management, EM–50, 1000 Independence Avenue, SW., Washington, DC 20585, telephone: (202) 586–7150, facsimile: (202) 596–1492, E-mail: *mark.gilbertson@em.doe.gov*.

The full text of Program Notice 03–12 is available on the World Wide Web at: *http://www.science.doe.gov/production/grants/grants.html*.

SUPPLEMENTARY INFORMATION: *The Environmental Management Science Program:* Over the past 60 years, the United States created an industrial complex to develop, test, manufacture, and maintain nuclear weapons for national security purposes. The production and testing of nuclear weapons created a legacy of significant environmental contamination, ranging from uranium mining and milling, waste disposal, and radionuclide migration in ground water and soil. In 1995, the 104th Congress authorized creation of the Environmental Management Science Program (EMSP) to develop a long term, basic science infrastructure that would focus on scientific and technical challenges facing DOE's environmental cleanup effort. Since its inception in 1996, the Program has held seven competitions and has awarded over $320 million in funding to nearly 400 research projects. To address the largest environmental cleanup program in the world, from a cost perspective, EMSP has the following objectives:

- To provide scientific knowledge that will revolutionize technologies and cleanup approaches to significantly reduce future costs, schedules, and risks;
- To ''bridge the gap'' between broad fundamental research that has wide-ranging applicability and needs-driven applied technology development;
- To focus the Nation's science infrastructure on critical DOE environmental management problems.

Basic research proposed under this Notice should contribute to DOE's environmental management activities by decreasing risk for the public and workers, providing opportunities for major cost reductions, reducing the time required to achieve DOE's mission goals, and, in general, should address problems that are considered intractable without new knowledge.

TRU and Mixed Waste Challenge: DOE's inventory of transuranic and mixed wastes (TM wastes) includes about 155,000 cubic meters of waste stored on some 30 DOE sites and another 450,000 cubic meters of buried waste at least some of which is likely to require retrieval in the course of DOE's site cleanup program. Most of the stored inventory is in 55-gallon drums or other containers. Although some of the buried waste is similarly packaged, knowledge of the condition of the containers and their contents is limited.

Information on DOE's waste inventory has been summarized in a recent report (USDOE, 2001), and is also available via the World Wide Web at DOE's Central Internet Database (*http://cid.em.doe.gov*). A short summary of the nature of DOE's TM wastes, including definitions of TRU and MW, is given in the ''Background Information'' section of this Notice.

While DOE is making a concerted effort to accelerate the removal of TM wastes from its sites, the size of the inventory translates to a multi-decade effort that will require handling, characterizing, shipping, and disposing of hundreds of thousands of waste drums and other containers at a total cost of billions of dollars.

Overall, it is the intent of this Notice to solicit and encourage research that will provide the scientific basis for the new technologies and approaches that will be necessary to characterize DOE's MW and TRU wastes over the next decades, and to enhance the quantity and quality of scientific information available for decision-making.

Research Needs: This research Notice has been developed for Fiscal Year 2003, with the primary objective of developing scientific knowledge that will enable major advances in technologies available for characterizing TRU and MW waste. This section provides a summary of research needs in this area, and is based on a National Academy of Sciences, National Research Council (NRC) report published in 2002 entitled ''Research Opportunities for Managing the Department of Energy's Transuranic and Mixed Wastes (National Research Council, 2002''). That report identified significant knowledge gaps and research opportunities in a number of areas; however, due to the limited funds expected to be available to support new EMSP projects in Fiscal Year 2003, this Notice focuses on research needs for waste characterization, including characterization and detection of buried wastes.

Research is needed to improve the efficiency of characterizing DOE's TRU and mixed waste inventory. This includes research toward developing faster and more sensitive characterization and analysis tools to reduce costs and accelerate throughput, particularly for waste that produces sufficient penetrating radiation that it requires remote handling. It also includes research to develop a fuller understanding of how waste characteristics may change with time (chemical, biological, radiological, and physical processes) to aid in decision making about disposition paths and to simplify the demonstration of regulatory compliance.

Determining the physical, chemical, and radiological properties of TM wastes pertinent to handling, processing, transportation, and storage is costly and time-consuming. The problem is amplified by the wide variety of the wastes and their heterogeneity. Improving and simplifying waste characterization can reduce costs and increase the rate of shipping wastes to disposal facilities.

There is a need for faster and more sensitive characterization technologies, for making automated sampling more reliable, and for improving statistical sampling methods. There is a lack in basic knowledge of how waste characteristics may change with time, including both short-term changes that affect storage and shipment and long-

term changes that may occur in a disposal facility. This lack of knowledge drives conservatism in characterization, transportation, and disposal requirements. Possible microbial effects in waste have generally been ignored.

The greatest challenges for the next generation of characterization technologies will be to provide the following:

- More rapid, automated nondestructive assay and evaluation methods;
- More sensitive nondestructive assay and evaluation technologies for larger containers and hard-to-detect contaminants; and
- Improved methods, based on fundamental modeling, to derive present and future waste characteristics from a limited number of sampling parameters.

Research toward new, noninvasive, remote imaging and image recognition methods and in-drum sensors to provide faster and more sensitive technologies for characterization could lead to significant savings in time, cost, and risk of worker exposure. Although noninvasive diagnostics are highly preferred, the use of minimally invasive sensors also has promise.

Research is needed to evaluate the microbiology of MW and TRU wastes. This research should focus on identifying the microorganisms that exist in the waste, and evaluating their relationship to waste materials (*i.e.*, whether these microbes affect the hazardous or radioactive components of the waste in ways that make it more or less toxic, or more or less suitable for disposal in hazardous waste, low-level waste, or other landfills or repositories. Additional research is needed to develop tools for rapidly diagnosing microbial activity or identifying specific microbes.

One of the most beneficial cost-saving tools would be the formulation of more reliable predictive models, validated by experimental data, of how waste characteristics may change with time due to chemical, biological, radiological, and physical processes. This would be most useful in predicting deleterious processes that might occur in the waste, such as gas generation or matrix degradation.

Program Funding: It is anticipated that up to a total of $2,000,000 of Fiscal Year 2003 funds will be available for new EMSP awards resulting from this Notice. Multiple-year funding of grant awards is anticipated, contingent upon the availability of appropriated funds. Award sizes are expected to be on the order of $100,000–$300,000 per year for total project costs for a typical three-year grant. Collaborative projects involving several research groups or more than one institution may receive larger awards if merited. The program will be competitive and offered to investigators in universities or other institutions of higher education, other non-profit or for-profit organizations, non-Federal agencies or entities, or unaffiliated individuals. DOE reserves the right to fund in whole or part any or none of the applications received in response to this Notice. A parallel Notice with a similar potential total amount of funds will be issued to DOE Federally Funded Research and Development Centers (FFRDCs). All projects will be evaluated using the same criteria, regardless of the submitting institution.

Collaboration and Training: Applicants to the EMSP are encouraged to collaborate with researchers in other institutions, such as universities, industry, non-profit organizations, federal laboratories and FFRDCs, including the DOE National Laboratories, where appropriate. Applicants are also encouraged to provide training opportunities, including student involvement, in applications submitted to EMSP.

Application Format: Applicants are expected to use the following format in addition to following instructions in the Office of Science Application Guide (*see: http://www.science.doe.gov/production/grants/guide.html*). Applications must be written in English, with all budgets in U.S. dollars. In the case of applications involving multiple institutions, only one application that encompasses the entire scope of the proposed research should be submitted; however, the application should include separate budgets and budget explanations for each participating institution.

- Office of Science Face Page (DOE F 4650.2 (10–91))
- Application classification sheet (a plain sheet of paper with one selection from the list of scientific fields listed in the Application Categories Section)
- Table of Contents
- Project Abstract (no more than one page)
- Budgets for each year and a summary budget page for the entire project period (using DOE F–4620.1)
- Budget Explanation. (Note: applicants are requested to include in the travel budget funds to attend: (1) An initial research kick-off meeting; (2) an annual EMSP workshop; and (3) one or more extended visits (1 to 2 weeks in duration) to a cleanup site by the Principal Investigator, a senior staff member, or a collaborator
- Budgets and Budget explanations for each collaborating institution, if any
- Project Narrative (recommended length is no more than 20 pages; multi-investigator collaborative projects may use more pages if necessary, up to a total of 35 pages)

—Project Goals
—Significance of Project to the EM Mission
—Background
—Preliminary Studies (if applicable) and/or Summary of Results from Previous Research (if application is a renewal)
—Research Plan
—Research Design and Methodologies

- Literature Cited
- Collaborative Arrangements (if applicable)
- Biographical Sketches of Senior Investigators (limit 2 pages per investigator)
- Description of Facilities and Resources
- Current and Pending Support for each senior investigator

Application Categories: In order to properly classify each application for evaluation and review, the documents must indicate the applicant's preferred scientific research field, selected from the following list.

Field of Scientific Research

1. Actinide Chemistry.
2. Analytical Chemistry and Instrumentation.
3. Engineering Sciences.
4. Geochemistry.
5. Geophysics.
6. Inorganic Chemistry.
7. Materials Science.
8. Biology (including Microbiology).
9. Other.

Application Evaluation and Selection

Scientific Merit: Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following criteria listed in descending order of importance as codified at 10 CFR part 605.10(d):

1. Scientific and/or technical merit of the project;
2. Appropriateness of the proposed method or approach;
3. Competency of applicant's personnel and adequacy of proposed resources;
4. Reasonableness and appropriateness of the proposed budget.

External peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers may be used, and submission of an application constitutes agreement that

this is acceptable to the investigator(s) and the submitting institution(s).

Relevance to Mission: In addition to the formal scientific merit review, applications that are judged to be scientifically meritorious will be evaluated by DOE for relevance to the objectives of EMSP. DOE will also consider, as part of the evaluation, program policy factors such as an appropriate balance among the program areas, including research already in progress. Additional information about the general program can be found at: *http://emsp.em.doe.gov.* Past research solicitations, abstracts, and research reports of projects funded under EMSP can be found at: *http://emsp.em.doe.gov/researcher.htm.*

Applicants are encouraged to demonstrate a linkage between their research projects and significant problems related to MW and TRU waste at DOE sites. This linkage can be established in a variety of ways; for example, by elucidating the scientific problems to be addressed by the proposed research and explaining how the solution of these problems could lead to improved capabilities that would reduce costs, accelerate throughput, or reduce the risk of worker exposure. It is understood that given the nature of basic research, there will not always be a clear pathway between research results and application to site remediation.

A listing of points of contact and site web pages is provided for applicants who may have site-specific questions related to TRU and MW problems:

Hanford (http://www.hanford.gov): Rudy Garcia, (509) 376–5494, *Rudolph_F_Garcia@rl.gov.*

Idaho (http://www.id.doe.gov): William Owca, (208) 526–1983, *owcawa@id.doe.gov.*

Oak Ridge (http://www.oro.doe.gov): for TRU—Gary Riner, (805) 241–3498, *rinerg@oro.doe.gov;* for MW—Brian Westich, (805) 241–2198, *westichb@oro.doe.gov.*

Savannah River (http://sro.srs.gov): for TRU—Bert Crapse, (803) 725–9866, *Herbert.Crapse@srs.gov* or Ann Gibbs, (803) 952–2265, *Ann.Gibbs@srs.gov;* for MW—Mike Simmons, (803) 725–1627, *Jonathan.Simmons@srs.gov* or Bernie Mayancsik, (803) 952–2271, *Bernadette.Mayancsik@srs.gov.*

Waste Isolation Pilot Plant (http://www.wipp.carlsbad.nm.us): George Basabilvazo, (505) 234–7488, *George.Basabilvazo@wipp.ws*

Application Guide and Forms: Information about the development, submission of applications, eligibility, limitations, evaluation, the selection process, and other policies and procedures may be found in 10 CFR part 605, and in the Application Guide for the Office of Science Financial Assistance Program. Electronic access to the Guide and required forms is available on the World Wide Web at: *http://www.science.doe.gov/production/grants/grants.html.* DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is made.

Background Information: Information on DOE's waste inventory has been summarized in a recent report (USDOE, 2001), and is also available via the World Wide Web at DOE's Central Internet Database (*http://cid.em.doe.gov*). The two categories of waste listed in these sources that are pertinent to this Notice are transuranic (TRU) and mixed low-level waste (MLLW). Transuranic waste is defined by DOE Order 435.1 as waste that contains more than 100 nanocuries per gram arising from alpha-emitting radionuclides having atomic numbers greater than that of uranium (92) and half-lives greater than 20 years. Low-level waste (LLW) is defined in the Low-Level Radioactive Policy Amendments Act of 1985 by what it is not, and consequently is a very broad category of waste. LLW is defined as waste that is not spent nuclear fuel, not high-level waste resulting from reprocessing of spent nuclear fuel, and not byproduct material as defined in section 11e.2 of the Atomic Energy Act of 1954. LLW encompasses materials that are slightly above natural radiation background levels to highly radioactive materials that require extreme caution when handling. Hazardous waste is defined by the U.S. Environmental Protection Agency (EPA) in Title 40 of the Code of Federal Regulations, parts 260 and 261, as a subset of solid wastes that pose substantial or potential threats to public health or the environment and that meet any of the following three criteria: (1) Waste that is specifically listed as a hazardous waste by EPA; (2) waste that exhibits one or more of the characteristics of hazardous waste (ignitability, corrosiveness, reactivity, and/or toxicity); or (3) waste that is generated by the treatment of hazardous waste, or is contained in a hazardous waste. Mixed low-level waste (MLLW) is waste that meets the above definitions of both LLW and hazardous waste. It contains low levels of radioactive contamination as well as materials that are chemically hazardous. Mixed transuranic waste (MTRU) is waste that meets the definitions of both TRU and hazardous wastes. The EPA estimates that over half of DOE's TRU inventory is MTRU (EPA 2002); however, because all of DOE's retrievably stored, defense TRU wastes are slated for disposal in the Waste Isolation Pilot Plant (WIPP), DOE no longer distinguishes MTRU as a special category in its inventory (USDOE, 2001).

Since 1970, DOE sites have stored most TRU waste and MW in retrievable 55-gallon drums or larger containers for future treatment (if needed) and disposal. Prior to 1970, DOE sites buried materials that meet the current definition of TRU waste and MW in shallow land facilities, within about 30 meters of the surface. A much smaller fraction of these wastes were buried at depths between 30 and 300 meters. Most of this waste was buried in 55-gallon drums; however, some was buried in other types of containers, and some had no form of durable containment. At the time, DOE considered buried wastes to be permanently disposed, but some of the buried wastes may require retrieval and treatment.

The previous practice of discharging low-level liquid wastes to retention basins has resulted in the generation of contaminated soils and sediments. DOE recognizes that some of these materials are sufficiently contaminated to warrant retrieval. Such materials are termed ''*ex-situ* contaminated media'' in the inventory summary (USDOE 2001). If they are retrieved, both the pre-1970 buried wastes and the *ex-situ* media will be considered newly generated waste. In addition to these historical wastes, activities at DOE sites, including environmental cleanup activities, will continue to generate new MLLW and TRU wastes over the next several decades.

The materials making up DOE's inventory of MW and TRU wastes are extremely diverse. This diversity was described in a report (USDOE, 1995) based on data compiled by the various DOE sites in order to develop site remediation plans. The inventory was divided into five groups, each with various subcategories:

1. Debris

- Metallic debris (including materials containing lead and cadmium)
- Inorganic, nonmetallic debris (*e.g.*, concrete, glass, graphite, and rock)
- Organic debris (*e.g.*, such as rubber, leaded gloves, halogenated and nonhalogenated plastics, wood, paper, and biological materials
- Heterogeneous debris (*e.g.*, composite fillers, asphalt, electronic

equipment, and other types of organic and inorganic materials)

2. Inorganic Homogenous Solids and Soils

- Homogeneous solids (*e.g.*, ash, sandblasting media, inorganic particulate absorbents, absorbed organic liquids, inorganic ion-exchange media, metal chips and turnings, glass, ceramics, and activated carbon)
- Sludges (*e.g.*, sludges arising from wastewater treatment ponds, off-gas treatment, plating activities, and low-level reprocessing)
- Other wastes (*e.g.*, paint chips, solids, and sludges, salt waste containing chlorides, sulphates, nitrates, metal oxides/hydroxides, and other inorganic chemicals)
- Solidified homogeneous solids (*e.g.*, soil and gravel)

3. Organics

- Liquids (aqueous streams containing both halogenated and nonhalogenated organic compounds)
- Homogeneous solids (*e.g.*, particulate matter such as resins and absorbents, biological sludges, halogenated and nonhalogenated organic sludges, and organic chemicals)

4. Unique wastes

- Lab packs (*e.g.*, organic, aqueous, and solid laboratory chemicals and scintillation cocktails)
- Special wastes (*e.g.*, elemental mercury, lead, and cadmium, beryllium dust, batteries, reactive metals in bulk and as contamination in/on other components, pyrophoric particulates, explosives or propellants, and compressed gasses and aerosols)
- All others (materials placed in a final waste form are included in this category)

5. Wastewaters

- Aqueous liquids and slurries ranging from acidic to basic pH, including cyanide-containing materials.

The 1995 inventory also characterized DOE's level of confidence as to how well the wastes were characterized. In general terms, DOE has high or medium confidence that the physical nature (*i.e.*, soil or sludge) of most wastes is correctly identified, but it lacks confidence in the existing quantitative data on the wastes' chemical and radioactive constituents.

The volume and diversity of DOE's MW and TRU wastes pose significant challenges for disposing of this waste. Currently, DOE's TRU waste disposal efforts are focused on maximizing the utility of the WIPP. Several hundred thousand drums of TRU waste will need to be shipped to WIPP, and the characterization required for shipping and acceptance at the WIPP currently requires many hours and costs thousands of dollars for each drum of waste generated prior to 1999. Methods to improve characterization are therefore likely to result in significant savings of time and money.

Some components in TRU waste are problematic for shipping to or disposal in the WIPP. About two percent (approximately 14,200 drum equivalents) of DOE's TRU waste contains organic materials that continue to pose shipping problems due to potential gas generation, especially of hydrogen. Drums containing reactive and corrosive chemicals, as well as drums containing liquids, sealed containers, and gas cylinders (including paint cans) may not be accepted by the WIPP, and they are currently removed by manually sorting through the waste. Waste that is contaminated with polychlorinated biphenyls (PCBs) constitutes about one percent of the inventory, and currently cannot be accepted by the WIPP. Approximately two to four percent of the TRU waste inventory produces sufficient penetrating radiation from fission products that it requires remote handling, rather than hands-on operator contact. The requirement for remote handling greatly increases the cost and difficulty of characterizing, treating, and packaging or repackaging of this waste. Meeting the per-drum limits on heat generation and fissile material content can necessitate repackaging of the waste. In addition to increasing the waste volume, repackaging to meet these limits is expensive, time-consuming, and creates the potential for worker exposure.

DOE currently relies primarily on private contractors and commercial facilities for treating and disposing of its MLLW. (MLLW cannot be disposed in the WIPP because under current law, only TRU waste can be disposed there). The characterization and treatment of MLLW that will be necessary to meet the disposal requirements of the Resource Conservation and Recovery Act (RCRA) have received relatively little attention compared to TRU waste. Despite the general lack of quantitative chemical characterization, it is known that much of DOE's MLLW inventory contains hazardous chemicals that can be difficult to treat (*e.g.*, heavy metals, solvents and other organics, and mercury). Furthermore, there is considerable commingling of these materials, which complicates the selection of disposition options. MLLW that contains certain specified materials is prohibited from near-surface disposal under current EPA and Nuclear Regulatory Commission (NRC) regulations. These include the following:

- Liquids,
- Reactive or explosive materials,
- Flammable materials,
- Untreated biological material,
- Materials that may emit toxic gases or fumes,
- Other materials subject to the EPA's land disposal restrictions, as listed in 40 CFR 268,
- Radioactive isotopes that exceed the NRC limits for Class C wastes (>700 Ci/m3 of 63Ni, or >7,000 Ci/m3 of 90Sr, or >4,600Ci/m3 of 137Cs).

In order to be disposed, these wastes will require treatment that may be difficult and expensive. Characterization of the wastes is a necessary first step in the selection of disposition options.

References

National Research Council, 2002, *Research Opportunities for Managing the Department of Energy's Transuranic and Mixed Wastes.* National Academy Press, Washington, DC, 118pp. *http://www.nap.edu/books/0309084717/html/.*

USEPA, 2002, *Mixed Waste Glossary.* EPA Radiation Protection Program Waste Management Team. Available at: *http://www.epa.gov/radiation/mixed-waste/mw_pg5.htm.*

USDOE, 1995, *The DOE National 1995 Mixed Waste Inventory Report.* U.S. Department of Energy, Washington DC.

USDOE, 2001, *Summary Data on the Radioactive Waste, Spent Nuclear Fuel, and Contaminated Media Managed by the U.S. Department of Energy.* April 2001, U.S. Department of Energy, Washington DC *http://cid.em.doe.gov/.*

(The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.)

Issued in Washington DC on November 25, 2002.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 02–30561 Filed 12–2–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice 03–10; Experimental Program To Stimulate Competitive Research (EPSCoR); Building EPSCoR-State/National Laboratory Partnerships

AGENCY: U.S. Department of Energy.

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Basic Energy Sciences (BES) of the Office of Science (SC), U.S. Department of Energy (DOE), in keeping with its energy-related mission to assist in strengthening the Nation's scientific research enterprise through the support of basic science, engineering, and mathematics, announces its interest in receiving grant applications for collaborative partnerships between academic or industrial researchers from states eligible for the DOE/EPSCoR program and researchers at DOE's National Laboratories, facilities, and centers. The purpose of the DOE/EPSCoR program is to enhance the capability of designated states to conduct nationally competitive energy-related research, and to develop science and engineering manpower in energy-related areas to meet current and future needs. The purpose of this program notice is to initiate and promote partnering and collaborative relationships that build beneficial energy-related research programs with strong participation by students, postdoctoral fellows, and young faculty from EPSCoR states.

DATES: Potential applicants are required to submit a brief preapplication. All preapplications, referencing Program Notice 03–10, must be received by April 16, 2003, (preapplications received after this date will not be considered). Due to special review process for this program no FAX or e-mail submission will be accepted. A response to the preapplications encouraging or discouraging a formal application will be communicated to the applicant within approximately thirty days of receipt. To permit timely consideration for award in Fiscal Year 2004, formal applications submitted in response to this notice must be received by July 9, 2003, (formal applications received after this date will not be considered).

ADDRESSES: All preapplications, referencing Program Notice 03–10, should be sent to Dr. Matesh N. Varma, Office of Basic Energy Sciences, Division of Materials Sciences and Engineering, SC–132/Germantown Building, Office of Science, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–1290.

After receiving notification from DOE concerning successful preapplications, applicants may prepare formal applications. No other formal applications will be considered.

Formal applications in response to this solicitation are to be electronically submitted by an authorized institutional business official through DOE's Industry Interactive Procurement System (IIPS) at: *http://e-center.doe.gov/.* IIPS provides for the posting of solicitations and receipt of applications in a paperless environment via the Internet. In order to submit applications through IIPS your business official will need to register at the IIPS Web site. The Office of Science will include attachments as part of this notice that provide the appropriate forms in PDF fillable format that are to be submitted through IIPS. Color images should be submitted in IIPS as a separate file in PDF format and identified as such. These images should be kept to a minimum due to the limitations of reproducing them. They should be numbered and referred to in the body of the technical scientific proposal as Color image 1, Color image 2, etc. Questions regarding the operation of IIPS may be e-mailed to the IIPS Help Desk at: *HelpDesk@e-center.doe.gov* or you may call the help desk at: (800) 683–0751. Further information on the use of IIPS by the Office of Science is available at: *http://www.sc.doe.gov/production/grants/grants.html.*

If you are unable to submit an application through IIPS, please contact the Office of the Director, Grants and Contracts Division, Office of Science, DOE, at: (301) 903–5212 in order to gain assistance for submission through IIPS, or to receive special approval and instructions on how to submit printed applications.

FOR FURTHER INFORMATION CONTACT: Dr. Matesh N. Varma, DOE/EPSCoR Program Manager, Division of Materials Sciences and Engineering, SC–132/Germantown Building, Office of Science, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–1290. Telephone: (301) 903–3209; Fax: (301) 903–9513; E-Mail: *matesh.varma@science.doe.gov.*

SUPPLEMENTRY INFORMATION: To continue to enhance the competitiveness of states and territories identified for participation in the Experimental Program to Stimulate Competitive Research (EPSCoR), DOE encourages the formation of partnerships between academic and industrial researchers in EPSCoR states and the researchers at DOE's National Laboratories, facilities and centers in scientific areas supported by DOE's Office of Science. These collaborations should address areas of research of current interest to the Department. Undergraduate and graduate students, postdoctoral fellows, and young faculty must be active members of the research team, and it is encouraged that these investigators spend a summer or significant time during the academic year at a National Laboratory, facility, or center. It is also encouraged that collaborating scientists from the National Laboratories visit collaborating EPSCoR state faculty for exchange of scientific ideas and fostering active collaboration. Subcontracting arrangements with DOE National Laboratories will not be permitted. DOE eligible states and territories for the EPSCoR program are: Alaska, Alabama, Arkansas, Hawaii, Idaho, Kansas, Kentucky, Louisiana, Maine, Mississippi, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, South Carolina, South Dakota, Vermont, West Virginia, Wyoming, and the Commonwealth of Puerto Rico.

Program Funding

It is anticipated that approximately $1,200,000 will be available in Fiscal Year 2004, for research that encourages and facilitates collaborative efforts between researchers from EPSCoR states and researchers at DOE's National Laboratories, facilities, and centers. Multiple-year funding of grant awards is expected subject to satisfactory progress of the research, the availability of funds, and evidence of substantial interactions between the EPSCoR researchers and the National Laboratory partner. Awards are expected to range up to a maximum of $150,000 annually with terms up to three years. The number of awards and range of funding will depend on the number of applications received and selected for award. Cost sharing of exactly 10% of the total budget is required from non-federal sources. All DOE/EPSCoR award funds will be provided to the recipient organization within the EPSCoR state for the purpose of supporting activities in the EPSCoR state and may include travel and lodging, faculty or student stipends, materials, services, and equipment.

Applications

To minimize undue effort on the part of applicants and reviewers, interested parties must submit preapplications. Only one application per individual is permitted, and individuals currently receiving DOE EPSCoR funds are not eligible to apply. The preapplications

will be evaluated relative to the scope and research needs of the Department of Energy. The brief preapplication must consist of (1) one to two pages of narrative describing the research objectives and methods of accomplishment, (2) a letter from the appropriate state EPSCoR coordinator endorsing the preapplication, and (3) a letter of intent from the DOE National Laboratory researcher confirming willingness to collaborate on the project. The preapplications will be grouped according to programmatic areas of interest to the DOE and will be reviewed by DOE laboratory management to determine the priority of the proposed research. The preapplications will also be reviewed by the relevant programmatic research area program manager. DOE program managers will be asked to rank EPSCoR preapplications by program priority. They will also be asked for their willingness to provide co-funding if a project is selected for approval. Based on this review, DOE/EPSCoR management will recommend formal submission of applications to the Department. A telephone number, facsimile number, and e-mail address are required parts of the preapplication. Instructions regarding the contents of a preapplication and other preapplication guidelines can be found on the SC Grants and Contracts web site at: *http://www.sc.doe.gov/production/grants/preapp.html.* DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is not made. In addition to the project description, all preapplications and formal applications must include the following information:

(1) Applications should explain the relevance of the proposed research to the agency's programmatic needs. On the cover page, applicants should specify the relevant DOE technical program office, and if known, the name of the program manager, and telephone number. DOE program descriptions and the contact person information may be accessed via the web at: *http://www.doe.gov.*

(2) Applications must demonstrate clear evidence of collaborative intent, including a delineation of each partner's role and contribution to the research effort as well as a ''Letter-of-Intent'' from the participating DOE National Laboratory, facility, or center.

(3) Applications must explain the individual value to both the EPSCoR and the National Laboratory partners. There should be clear objectives, not necessarily the same, for each partner.

Merit Review

Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following evaluation criteria, listed in descending order of importance as codified at 10 CFR part 605.10(d).

1. Scientific and/or Technical Merit of the Project;

2. Appropriateness of the Proposed Method or Approach;

3. Competency of Applicant's Personnel and Adequacy of Proposed Resources;

4. Reasonableness and Appropriateness of the Proposed Budget.

The evaluation will include program policy factors such as the relevance of the proposed research to the terms of the announcement and an agency's programmatic needs and priority. External peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers will often be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

Applications received by SC under its current competitive application mechanisms that meet the criteria outlined in this notice may also be deemed appropriate for consideration under this announcement and may be funded under this program.

General information about the development and submission of preapplications, applications, eligibility, limitations, evaluation and selection processes, and other policies and procedures are contained in the Application Guide for the Office of Science Financial Assistance Program and 10 CFR part 605. Electronic access to the latest version of SC's Application Guide is possible via the Internet at the following web address: *http://www.sc.doe.gov/production/grants/grants.html.*

Additional information regarding format, preparation and specific requirements for this program may be found at the following web address: *http://www.sc.doe.gov/production/bes/EPSCoR/APPLI1.HTM* and takes precedence.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington, DC on November 25, 2002.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 02–30559 Filed 12–2–02; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency information collection activities: submission for OMB review; comment request.

SUMMARY: The EIA has submitted the energy information collection listed at the end of this notice to the Office of Management and Budget (OMB) for review and a three-year extension under section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (44 U.S.C. 3501 et seq).

DATES: Comments must be filed by January 2, 2003. If you anticipate that you will be submitting comments but find it difficult to do so within that period, you should contact the OMB Desk Officer for DOE listed below as soon as possible.

ADDRESSES: Send comments to Bryon Allen, OMB Desk Officer for DOE, Office of Information and Regulatory Affairs, Office of Management and Budget. To ensure receipt of the comments by the due date, submission by FAX (202–395–7285) or e-mail (*BAllen@omb.eop.gov*) is recommended. The mailing address is 726 Jackson Place NW., Washington, DC 20503. The OMB DOE Desk Officer may be telephoned at (202) 395–3087. (A copy of your comments should also be provided to EIA's Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Herbert Miller. To ensure receipt of the comments by the due date, submission by FAX (202–287–1705) or e-mail (*herbert.miller@eia.doe.gov*) is recommended. The mailing address is Statistics and Methods Group (EI–70), Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0670. Mr. Miller may be contacted by telephone at (202) 287–1711.

SUPPLEMENTARY INFORMATION: This section contains the following

information about the energy information collection submitted to OMB for review: (1) The collection numbers and title; (2) the sponsor (*i.e.*, the Department of Energy component); (3) the current OMB docket number (if applicable); (4) the type of request (*i.e.*, new, revision, extension, or reinstatement); (5) response obligation (*i.e.*, mandatory, voluntary, or required to obtain or retain benefits); (6) a description of the need for and proposed use of the information; (7) a categorical description of the likely respondents; and (8) an estimate of the total annual reporting burden (*i.e.*, the estimated number of likely respondents times the proposed frequency of response per year times the average hours per response).

1. ERA–766R.
2. General Counsel.
3. OMB Number 1903–0073.
4. Three-year approval requested.
5. Mandatory.
6. The ERA–766R is the recordkeeping requirements contained in 10 CFR 210.1 of DOE's General Allocation and Price Rules. The data are used to help DOE's General Counsel in its efforts to complete the enforcement program with respect to prior petroleum price and allocation regulations. No data are submitted; only maintenance of records is required.
7. Business or other for-profit.
8. 400 hours (100 respondents × 1 response per year × 4 hours per response).

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13)(44 U.S.C. 3501 et seq).

Issued in Washington, DC, November 27, 2002.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 02–30562 Filed 12–2–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Policy Statement; Energy Information Administration Policy for Release of the Weekly Petroleum Status Report; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Policy statement. Energy Information Administration Policy for release of the weekly petroleum status report; comment request.

SUMMARY: The Energy Information Administration (EIA) is soliciting comments on a proposed change in the policy for the release time of EIA's Weekly Petroleum Status Report (WPSR). Under the proposed policy, the release time would be changed to coincide with normal New York Mercantile Exchange (NYMEX) and International Petroleum Exchange (IPE) trading hours.

DATES: Comments must be filed by January 2, 2003. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Send comments to Ronald W. O'Neill. To ensure receipt of the comments by the due date, submission by FAX (202–586–5846) or e-mail (*ron.oneill@eia.doe.gov*) is recommended. The mailing address is Ronald W. O'Neill, M.S. EI–42, Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0640. Alternatively, Mr. O'Neill may be contacted by telephone at (202) 586–2991.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Ronald W. O'Neill at the address above. The WPSR is available on EIA's Internet site at *http://www.eia.doe.gov/oil_gas/petroleum/data_publications/weekly_petroleum_status_report/wpsr.html.*

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. No. 93–275, 15 U.S.C. 761 *et seq.*) and the DOE Organization Act (Pub. L. No. 95–91, 42 U.S.C. 7101 *et seq.*) requires that EIA carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and long term domestic demands.

EIA provides the public and other Federal agencies with opportunities to comment on collections of energy information conducted by EIA. As appropriate, EIA also requests comments on important issues relevant to EIA's dissemination of energy information. Comments received help EIA when preparing information collections and information products necessary to EIA's mission.

EIA's Weekly Petroleum Status Report (WPSR) provides timely information on supply and selected prices of crude oil and principal petroleum products. It serves the industry, the press, planners, policymakers, consumers, analysts, and State and local governments with a ready, reliable source of current information.

II. Current Actions

The WPSR data are based primarily on weekly company submissions of information as of 7 a.m. Eastern Standard Time (EST) Friday. Weekly data are filed with EIA by 5 p.m. EST on the following Monday. Currently, the WPSR data are publicly released electronically at 9 a.m. each Wednesday, and the printed version is available on Friday. For weeks that include holidays, release of the WPSR may be delayed by one day.

The American Petroleum Institute (API) has released its version of the same data about 5 p.m. on Tuesday. As a result, the API release was the most closely watched and had the greatest impact on petroleum markets. More significantly, the Tuesday night release occurred when all major petroleum trading markets were closed. The API recently announced that, starting January 8, 2003, they would begin releasing their weekly data at 9 a.m. on Wednesdays.

With market focus now turning to both EIA and API data, EIA is soliciting public opinion on the best or most beneficial release time for the data. To the extent that the weekly supply data reflect current market conditions, and thereby facilitate market efficiency, EIA is considering moving its release time to 10:10 a.m. on Wednesday to coincide with normal NYMEX and IPE trading hours. However, public opinion is sought on alternative times as well.

III. Request for Comments

The public should comment on the actions discussed in item II concerning the proposed policy change in the WPSR release schedule.

Comments submitted in response to this notice will be considered during final development of EIA's policy for scheduled releases of the WPSR. The comments will also become a matter of public record. After EIA has considered any comments and developed the final WPSR release policy, a Federal Register notice will be issued announcing the policy.

Statutory Authority: Section 52 of the Federal Energy Administration Act (Pub. L. No. 93–275, 15 U.S.C. 790a).

Issued in Washington, DC, November 27, 2002.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 02–30563 Filed 12–2–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–19–000, et al.]

El Paso Merchant Energy, et al.; Electric Rate and Corporate Filings

November 26, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. El Paso Merchant Energy North America Company, Kenneth M. Pollock and Connie J. Pollock Rado, Mt. Carmel Cogen, Inc.

[Docket No. EC03–19–000]

Take notice that on November 21, 2002, El Paso Merchant Energy North America Company (EPME), Kenneth M. Pollock and Connie J. Pollock Rado (the Pollocks), and Mt. Carmel Cogen, Inc. (Mt. Carmel) (jointly Applicants) filed with the Federal Energy Regulatory Commission (Commission) an application pursuant to section 203 of the Federal Power Act for authorization to effectuate a transfer of all shares of stock in Mt. Carmel (which constitutes an indirect change in control over Mt. Carmel's jurisdictional facilities) from EPME to the Pollocks. Mt. Carmel owns and operates a 45–MW generating facility in Mount Carmel, Pennsylvania. Applicants also request expedited consideration of this application and privileged treatment for certain exhibits pursuant to 18 CFR 33.9 and 388.112.

Comment Date: December 12, 2002.

2. Prairie State Generating Company, LLC

[Docket No. EG02–21–000]

Take notice that on November 21, 2002, Prairie State Generating Company, LLC (Prairie State) with a principle place of business at 701 Market Street, Suite 900, St. Louis, MO 63101 filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission regulations.

Prairie State states that it is a wholly owned subsidiary of Peabody Energy Corporation, a private-sector coal company. Prairie State filed its application in conjunction with the proposed construction of two 750 MW mine-mouth pulverized coal generating units to be located in Washington County, Illinois.

Comment Date: December 16, 2002.

3. TransCanada Power Marketing Ltd.

[Docket No. ER98–564–007]

Take notice that on November 21, 2002, TransCanada Power Marketing Ltd. (TCPM) filed with the Federal Energy Regulatory Commission (Commission) a notification of a change in status to reflect certain departures from the facts the Commission relied upon in granting market-based rate authority.

Comment Date: December 12, 2002.

4. Idaho Power Company

[Docket No. ER03–66–001]

Take notice that on November 21, 2002, Idaho Power Company tendered for filing with the Federal Energy Regulatory Commission (Commission) an amendment to its filing in the above-captioned docket.

Comment Date: December 12, 2002.

5. PPL Electric Utilities Corporation

[Docket No. ER03–77–000]

Take notice that on November 21, 2002, PPL Electric Utilities Corporation (PPL Electric Utilities) tendered for filing with the Federal Energy Regulatory Commission (Commission) a notice of withdrawal of its filing made on October 23, 2002, in the above-captioned proceeding.

The notice of the withdrawal has been served on Long Island Lighting Company.

Comment Date: December 12, 2002.

6. PPL Electric Utilities Corporation

[Docket No. ER03–79–000]

Take notice that on November 21, 2002, PPL Electric Utilities Corporation (PPL Electric Utilities) tendered for filing with the Federal Energy Regulatory Commission (Commission) a notice of withdrawal of its October 23, 2002, filing in the above-captioned proceeding.

The notice of the withdrawal has been served on Consolidated Edison Company of New York, Inc.

Comment Date: December 12, 2002.

7. PPL Electric Utilities Corporation

[Docket No. ER03–80–000]

Take notice that on November 21, 2002, PPL Electric Utilities Corporation (PPL Electric Utilities) tendered for filing with the Federal Energy Regulatory Commission (Commission) a notice of withdrawal of its October 23, 2002, filing in the above-captioned proceeding.

The notice of the withdrawal has been served on Electric Clearinghouse, Inc.

Comment Date: December 12, 2002.

8. Termoelectrica US, LLC

[Docket No. ER03–175–001]

Take notice that on November 19, 2002, Termoelectrica US, LLC (Termoelectrica US) filed with the Federal Energy Regulatory Commission (Commission) an errata to its November 12, 2002, filing of a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its proposed Rate Schedule FERC No. 1 authorizing Termoelectrica U.S. to make sales at market-based rates. The errata corrects an error in the header of the Rate Schedule.

Termoelectrica U.S. intends to sell electric power and ancillary services at wholesale. In transactions where Termoelectrica U.S. sells electric power or ancillary services it proposed to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. The Rate Schedule provides for the sale of energy and capacity and ancillary services at agreed prices.

Termoelectrica U.S. is requesting an effective date of November 13, 2002.

Comment Date: December 10, 2002.

9. Pacific Gas and Electric Company

[Docket No. ER03–198–000]

Take notice that on November 20, 2002, Pacific Gas and Electric Company (PG&E) tendered for filing with the Federal Energy Regulatory Commission (Commission) a petition requesting clarification that PG&E is authorized to make wholesale power sales outside the California Power Exchange at market-based rates by granting certain waivers and accepting for filing a proposed tariff governing sales of electric capacity, energy and certain ancillary services at market-based rates in the Western Interconnection pursuant to section 205 of the Federal Power Act.

Comment Date: December 11, 2002.

10. New York Independent System Operator, Inc.

[Docket No. ER03–200–000]

Take notice that on November 18, 2002, the New York Independent System Operator, Inc. (NYISO) filed a new attachment V of its Open Access Transmission Tariff (OATT) regarding

the ISO's Working Capital Fund. The NYISO has requested an effective date of January 17, 2003 for the filing.

The NYISO has served a copy of this filing upon all parties that have executed service agreements under the NYISO's Open Access Transmission Tariff or the Market Administration and Control Area Services Tariff and upon the New York State Public Service Commission.

Comment Date: December 9, 2002.

11. EnCana Energy Services Inc.

[Docket No. ER03–201–000]

Take notice that on November 21, 2002, EnCana Energy Services Inc. tendered for filing with the Federal Energy Regulatory Commission (Commission) a notice of cancellation of its market based rate tariff, Rate Schedule FERC No. 1.

Comment Date: December 12, 2002.

12. New England Power Pool

[Docket No. ER03–202–000]

Take notice that on November 21, 2002, the New England Power Pool (NEPOOL) Participants Committee submitted a filing that contains a weekly billing agreement between NEPOOL, ISO New England Inc. and NRG Power Marketing Inc., on behalf of itself and several affiliates (collectively, the NRG Participants). The filing reflects billing arrangements for the NRG Participants that are being followed by ISO New England Inc. as NEPOOL's billing agent on and after November 15, 2002, the date that the agreement was executed.

The Participants Committee states that copies of this filing were sent to the NEPOOL Participants and the New England state governors and regulatory commissions.

Comment Date: December 12, 2002.

13. Wisconsin Public Service Corporation

[Docket No. ER03–203–000]

Take notice that on November 21, 2002, Wisconsin Public Service Corporation (WPSC) tendered for filing with the Federal Energy Regulatory Commission (Commission) a notice of cancellation of its T–1 tariff for transmission service, FERC Electric Tariff, Original Volume No. 4. In conformity with Order No. 614, WPSC also tendered a cancelled tariff sheet.

WPSC respectfully requests that the Commission accept its filing and allow the cancellation to become effective as of November 22, 2002, the day after filing.

A copy of the filing was served upon the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment Date: December 12, 2002.

14. Southwest Power Pool, Inc.

[Docket No. ER03–204–000]

Take notice that on November 21, 2002, Southwest Power Pool, Inc. (SPP) submitted for filing an executed service agreement for Firm Point-to-Point Transmission Service with Western Resources d.b.a. Westar Energy (Transmission Customer). SPP seeks an effective date of November 1, 2002 for this service agreement.

The Transmission Customer was served with a copy of this filing.

Comment Date: December 12, 2002.

15. CES Marketing, LLC

[Docket No. ER03–205–000]

Take notice that on November 21, 2002, CES Marketing, LLC tendered for filing, under section 205 of the Federal Power Act (FPA), a request for authorization to make wholesale sales of electric energy, capacity, replacement reserves, and ancillary services at market-based rates, to reassign transmission capacity, and to resell firm transmission rights.

Comment Date: December 12, 2002.

16. CES Marketing II, LLC

[Docket No. ER03–206–000]

Take notice that on November 21, 2002, CES Marketing II, LLC tendered for filing, under section 205 of the Federal Power Act (FPA), a request for authorization to make wholesale sales of electric energy, capacity, replacement reserves, and ancillary services at market-based rates, to reassign transmission capacity, and to resell firm transmission rights.

Comment Date: December 12, 2002.

17. CES Marketing III, LLC

[Docket No. ER03–207–000]

Take notice that on November 21, 2002, CES Marketing III, LLC tendered for filing, under section 205 of the Federal Power Act (FPA), a request for authorization to make wholesale sales of electric energy, capacity, replacement reserves, and ancillary services at market-based rates, to reassign transmission capacity, and to resell firm transmission rights.

Comment Date: December 12, 2002.

18. CES Marketing IV, L.P.

[Docket No. ER03–208–000]

Take notice that on November 21, 2002, CES Marketing IV, L.P. tendered for filing, under section 205 of the Federal Power Act (FPA), a request for authorization to make wholesale sales of electric energy, capacity, replacement reserves, and ancillary services at market-based rates, to reassign transmission capacity, and to resell firm transmission rights.

Comment Date: December 12, 2002.

19. CES Marketing V, L.P.

[Docket No. ER03–209–000]

Take notice that on November 21, 2002, CES Marketing V, L.P. tendered for filing, under section 205 of the Federal Power Act (FPA), a request for authorization to make wholesale sales of electric energy, capacity, replacement reserves, and ancillary services at market-based rates, to reassign transmission capacity, and to resell firm transmission rights.

Comment Date: December 12, 2002.

20. New England Power Pool, ISO New England Inc.

[Docket No. ER03–210–000]

Take notice that on November 22, 2002, the New England Power Pool (NEPOOL) Participants Committee submitted for filing the Ninety-Second Agreement Amending New England Power Pool Agreement (Ninety-Second Agreement) which proposes changes to the Restated NEPOOL Agreement to implement Market rule 1, and the Ninety-Third Agreement Amending New England Power Pool Agreement (Ninety-Third Agreement) which proposes changes to the NEPOOL tariff to implement Market rule 1. In the same filing, NEPOOL and ISO New England (ISO–NE) jointly filed amendments to Market rule 1 and its appendices.

The NEPOOL Participants Committee states that copies of these materials were sent to the NEPOOL participants, non-participant transmission customers and the New England state governors and regulatory commissions.

Comment Date: December 13, 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, 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.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30560 Filed 11–29–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7415–8]

Inquiry to Learn Whether Businesses Assert Business Confidentiality Claims Covering Information Contained in Notifications of Intent to Export Hazardous Waste From the United States, or Notifications Under 40 CFR Part 262, Subpart H, Manifests for Shipments of Hazardous Waste From the United States and Other Documents Containing the Same Information; Notice of Opportunity To Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has received Freedom of Information (FOIA) requests for the Hazardous Waste Export Data System and documents contained therein pertaining to the export of hazardous waste from the United States. The purpose of this notice is to contact affected businesses other than those who furnished the documents sought in the FOIA requests and to provide notice to those businesses of the opportunity to submit comments to EPA regarding whether the information sought in those FOIA requests is entitled to treatment as confidential business information.

DATES: You must ensure that your comments are postmarked or hand delivered to the EPA office designated below by January 2, 2003. The period for submission of comments may be extended if, before the comments are due, you make a request for an extension of the comment period and it is approved by the EPA legal office. Except in extraordinary circumstances, the EPA legal office will not approve such an extension without the consent of any person whose request for release of the information under 5 U.S.C. 552 is pending.

ADDRESSES: Comments concerning this inquiry and notice should be submitted to Joseph F. Schive, Enforcement Planning, Targeting and Data Division (MC 2222A), Office of Compliance, Office of Enforcement and Compliance Assurance, Environmental Protection Agency, Room 5146A, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Joseph F. Schive, 202–564–4156.

SUPPLEMENTARY INFORMATION: The three types of documents subject to the document requests are the notification of intent to export (NOI) (part 262, subpart E) or notification (part 262, subpart H), submitted to EPA in accordance with 40 CFR 262.53 and 262.83, respectively; the manifest,[1] a copy of which is given to the United States Customs Service on leaving the United States, in accordance with 40 CFR 263.20(g)(4), and is then forwarded by Customs to EPA; and the annual report, submitted to EPA in accordance with 40 CFR 262.56 or 262.87(a).[2]

For the purposes of this notice, submitters of NOIs, notifications, manifests and annual reports shall be referred to as ''submitters,'' and non-submitters which might be expected to assert a claim of business confidentiality because their information also is contained in the database or the requested documents shall be referred to as ''other affected businesses.'' The types of businesses which comprise the category of submitters are the primary exporters[3] (NOI and annual report) and notifiers[4] (notification and annual report), and the generators[5] (manifest). The two types of businesses included in the category of other affected businesses are the transporters[6] of hazardous waste; and the consignees[7] (and alternate consignees) under subpart E, or consignees[8] and recovery facilities[9] under subpart H. The latter are located outside the United States, in the receiving or importing countries. Thus, affected businesses may include foreign business entities, as well as domestic businesses.

The submitters of the documents sought in the FOIA requests did not assert a claim of business confidentiality covering part or all of that information. As set forth in the Resource Conservation and Recovery Act (RCRA) regulations, at 40 CFR 260.2(b), ''if no such claim accompanies the information when it is received by EPA, it may be made available to the public without further notice to the person submitting it.'' Moreover, as EPA pointed out in the preambles to the proposed and final RCRA export rules, 51 FR 8744 (March 13, 1986) and 51 FR 28644 (August 8, 1986), respectively, EPA does not believe that notification information and also manifest information generally are entitled to treatment as confidential business information. Nevertheless, EPA is mindful of the fact that the cited provision must be read in conjunction with the protection which the FOIA regulations afford other affected businesses.

[1] Section 260.10 defines ''manifest'' as ''the shipping document EPA form 8700–22 and, if necessary, EPA form 8700–22A, originated and signed by the generator in accordance with the instructions included in the appendix to part 262.''

[2] Other documents contained in the database, including renotifications (40 CFR 262.53(c)), transit notifications, acknowledgments of consent (*id.* § 262.53(f)), and exception reports (*id.* §§ 262.56 and 262.87(b)), also involve the same parties and some of the same types of information. To the extent the parties and information overlap, this inquiry and notice will provide the opportunity to claim confidential business information treatment for these documents as well.

[3] Section 262.51 defines ''primary exporter'' as ''any person who is required to originate the manifest for a shipment of hazardous waste in accordance with 40 CFR part 262, subpart B, or equivalent State provision, which specifies a treatment, storage or disposal facility in a receiving country as the facility to which the hazardous waste will be sent and any intermediary arranging for the export.''

[4] Section 262.81 defines ''notifier'' as ''the person under the jurisdiction of the exporting country which has, or will have at the time the planned transfrontier movement commences, possession or other forms of legal control of the wastes and who proposes their transfrontier movement for the ultimate purpose of submitting them to recovery operations. When the United States (U.S.) is the exporting country, notifier is interpreted to mean a person domiciled in the U.S.''

[5] Section 260.10 defines ''generator'' as ''any person, by site, whose act or process produces hazardous waste identified or listed in part 261 of this chapter or whose act first causes a hazardous waste to become subject to regulation.''

[6] Section 260.10 defines ''transporter'' as ''a person engaged in the offsite transportation of hazardous waste by air, rail, highway or water.''

[7] Section 262.51 defines ''consignee'' for purposes of subpart F as ''the ultimate treatment, storage or disposal facility in a receiving country to which the hazardous waste will be sent.''

[8] Section 262.83 defines ''consignee'' for purposes of subpart H as ''the person to whom possession or other form of legal control of the waste is assigned at the time the waste is received in the importing country.''

[9] Section 262.83 defines ''recovery facility'' as ''an entity which, under applicable domestic law, is operating or is authorized to operate in the importing country to receive wastes and to perform recovery operations on them.''

1. Other Affected Businesses

EPA regulations regarding FOIA requirements, at 40 CFR 2.204(c)(1), require an EPA office which is responsible for responding to a request under 5 U.S.C. 552 for the release of business information (EPA office) ''to determine which businesses, if any are affected businesses (*see* § 2.201(d)) * * *'' ''Affected business'' is defined at § 2.201(d) as

''* * * with reference to an item of business information, a business which has asserted (and not waived or withdrawn) a business confidentiality claim covering the information, or a business which could be expected to make such a claim if it were aware that disclosure of the information to the public was proposed.''

EPA has furnished, to those persons whose request for release of information is pending under 5 U.S.C. 552, a determination (in accordance with 40 CFR 2.113) that the information may be entitled to confidential treatment under this subpart and 5 U.S.C. 552(b)(4), that further inquiry by EPA pursuant to this subpart is required before a final determination on the request can be issued, that the persons' requests are therefore initially denied, and that after inquiry a final determination will be issued by an EPA legal office. 40 CFR 2.204(d)(1)(ii).

2. The Purposes of This Notice

This notice encompasses two distinct steps in the process of communication with other affected businesses: the preliminary inquiry and the notice of opportunity to comment.

a. Inquiry to Learn Whether Other Affected Businesses Assert Claims Covering the Information

Section 2.204(c)(2) provides:

If the examination conducted under paragraph (c)(1) of this section discloses the existence of any business which, although it has not asserted a claim, might be expected to assert a claim if it knew EPA proposed to disclose the information, the EPA official shall contact a responsible official of each such business to learn whether the business asserts a claim covering the information.

b. Notice of Opportunity To Submit Comments

Sections 2.204(d)(1)(i) and 2.204(e) require that written notice be provided to businesses stating that EPA is determining under this subpart whether the information is entitled to confidential treatment, and affording the businesses an opportunity to comment.

3. The Use of Publication in the Federal Register

Section 2.0204(e)(1) requires that this type of notice be furnished by certified mail (return receipt requested), by personal delivery, or by other means which allows verification of the fact and date of receipt. EPA, however, has determined that in the present circumstances the use of a **Federal Register** notice is the only practical and efficient way to contact other affected businesses and to furnish the notice of opportunity to submit comments. Its determination to follow this course was made in recognition of the large number of businesses included in the pertinent universe. EPA estimates that there are approximately 400 other affected businesses, including approximately 100 transporters, 150 consignees and alternate consignees under subpart E, and 150 consignees and recovery facilities under subpart H. Employment of publication in the **Federal Register** also dispenses with orally informing a responsible representative of the business that it should expect to receive a written notice, and requesting the business to contact the EPA office if the written notice has not been received within a few days, so that EPA may furnish a duplicate notice. 40 CFR 2.204(e)(3).

4. Submission of Your Response in the English Language

All responses to this notice must be in the English language.

5. The Effect of Failure To Respond to This Notice

In accordance with 40 CFR 2.204(e), EPA will construe your failure to furnish timely comments as a waiver of the business's claim.

6. What To Include in Your Comments

If you feel that some or all of the information contained in the two types of documents which are subject to FOIA requests is entitled to confidential treatment, please specify which portions of the information you consider confidential. Information not specifically identified as subject to a confidentiality claim will be disclosed to the requestor without further notice to you.

For each item or class of information that you identify as being subject to your claim, please answer the following questions:

1. For what period of time do you request that the information be maintained as confidential? If the occurrence of a specific event will eliminate the need for confidentiality, please specify that event.

2. Information submitted to EPA becomes stale over time. Why should the information you claim as confidential be protected for the time period specified in your answer to question no. 1?

3. What measures have you taken to protect the information claimed as confidential?

Have you disclosed the information to anyone other than a governmental body or someone who is bound by an agreement not to disclose the information further?

If so, why should the information still be considered confidential?

4. Has any governmental body made a determination as to the confidentiality of the information? If so, please attach a copy of the determination.

5. Is the information contained in any publicly available material such as promotional publications, annual reports, articles, *etc.*? Is there any means by which a member of the public could obtain access to the information?

6. For each category of information claimed as confidential, discuss with specificity why release of the information is likely to cause substantial harm to your competitive position. Explain the nature of those harmful effects, why they should be viewed as substantial, and the causal relationship between disclosure and such harmful effects. How could your competitors make use of this information to your detriment?

7. Do you assert that the information is ''voluntarily submitted'' as defined at 40 CFR 2.201(i)? If so, explain why, and how disclosure would tend to lessen EPA's ability to obtain similar information in the future.

8. Any other issue you deem relevant.

Please note that *you bear the burden of substantiating your confidentiality claim* pursuant to 40 CFR 2.208(e). Conclusory allegations will be given little or no weight in the determination. If you wish to claim any of the information in your response as confidential, you must mark the response ''CONFIDENTIAL'' or with a similar designation, and must bracket all text so claimed. Information so designated will be disclosed by EPA only to the extent allowed by, and by means of the procedures set forth in 40 CFR part 2. If you fail to claim the information as confidential upon submission it may be made available to the public without further notice to you.

Dated: November 22, 2002.

Michael M. Stahl,

Director, Office of Compliance.

[FR Doc. 02–30597 Filed 12–2–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7416–1]

Intent to Grant an Exclusive Patent License

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Intent to Grant an Exclusive Patent License.

SUMMARY: Pursuant to 35 U.S.C. 207 and 37 CFR Part 404, EPA hereby gives notice of its intent to grant an exclusive, royalty-bearing, revocable license to practice the inventions described and claimed in the patents listed below, all corresponding patents issued throughout the world, and all reexamined patents and reissued patents granted in connection with such patents, to BHA Group, Inc., Kansas City, Missouri. The patents are:

U.S. Patent No. 5,217,511 ('511 patent), entitled ''Enhancement of Electrostatic Precipitation with Electrostatically Augmented Fabric Filtration,'' issued June 8, 1993.

U.S. Patent No. 6,152,988 ('988 patent), entitled ''Enhancement of Electrostatic Precipitation with Precharged Particles and Electrostatically Augmented Fabric Filtration,'' issued November 28, 2000.

The '511 patent was announced as being available for licensing in the March 9, 1992 issue of the **Federal Register** (57 FR 8330) as U.S. Patent Application No. 07/826,302, filed January 24, 1992. The '988 patent has not been previously announced as being available for licensing. However, EPA has the authority under 37 CFR 404.7(a)(1) to proceed without a notice of availability when expeditious granting of the license will best serve the interests of the Federal government and the public. Under that authority, EPA has decided not to issue a notice of availability for the '988 patent because a notice had been published for the associated technology embodied in the '511 patent and because the only applicant, BHA Group, Inc., has filed an application for an exclusive license under 37 CFR 404.8 and is prepared to enter into an exclusive license agreement. Therefore, expeditious granting of the license is in the public's interest because the products will be brought to market sooner. Expeditious granting of the license is also in the Federal government's interest because the royalty income generated can be more quickly used for the purposes permitted under the Federal Technology Transfer Act.

The proposed exclusive license will contain appropriate terms, limitations, and conditions to be negotiated in accordance with 35 U.S.C. 209 and 37 CFR 404.5 and 404.7 of the U.S. Government patent licensing regulations.

EPA will negotiate the final terms and conditions and grant the exclusive license, unless within 15 days from the date of this notice EPA receives, at the address below, written objections to the grant, together with supporting documentation. The documentation from objecting parties having an interest in practicing the above patents should include an application for an exclusive or nonexclusive license with the information set forth in 37 CFR 404.8. The EPA Patent Counsel and other EPA officials will review all written responses and then make recommendations on a final decision to the Director of the National Risk Management Research Laboratory, who has been delegated the authority to issue patent licenses under EPA Delegation 1–55.

DATE: Comments on this notice must be received by EPA at the address listed below by December 18, 2002.

FOR FURTHER INFORMATION CONTACT: Alan Ehrlich, Patent Counsel, Office of General Counsel (Mail Code 2377A), Environmental Protection Agency, Washington, DC 20460, Telephone (202) 564–5457.

Marla E. Diamond,

Associate General Counsel, Finance and Operations Law Office.

[FR Doc. 02–30601 Filed 12–2–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7415–9]

OSWER 9355.0–85 Contaminated Sediment Remediation Guidance for Hazardous Waste Sites; Request for Comment on Draft Guidance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Office of Solid Waste and Emergency Response (OSWER) is requesting comments on OSWER 9355.0–85, the draft ''Contaminated Sediment Remediation Guidance for Hazardous Waste Sites.'' EPA will accept comments on all aspects of the draft guidance, but comments are specifically solicited for the following topics: Approaches to sediment characterization; evaluation methods for sediment stability; measurement methods for natural recovery processes; methods to reduce dredging resuspension and residual contamination; new in-situ technologies; and monitoring methods. Comments received may be used to revise the draft guidance or to assist with future EPA guidance on this topic. A written response to comments will not be issued.

DATES: Comments are due on or before March 3, 2003.

ADDRESSES: This draft guidance is available electronically at: *http://www.epa.gov/superfund/resources/sediment.* A limited number of copies on compact disk (CD) may be requested by electronic mail to the address below. Comments may be submitted electronically, by mail, through hand delivery/courier, or by facsimile.

1. *By Email.* You may submit comments or requests by electronic mail to *evison.leah@epa.gov.* Please include ''Sediment Guidance'' in the topic line of your email and include the sender's address in the body of the message.

2. *By U.S. Mail.* Send comments to: Leah Evison, U.S. EPA Headquarters, Mail Code 5204G, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention: Sediment Guidance Comments.

3. *By Hand Delivery/Courier.* Deliver comments to: Leah Evison, U.S. EPA Crystal Gateway (12th fl. Customer Service Desk), 1235 Jefferson Davis Highway, Arlington, VA 22202, Attention: Sediment Guidance Comments

4. *By Facsimile.* Fax your comments to: (703) 603–9100, Attention: Leah Evison, Sediment Guidance Comments.

FOR FURTHER INFORMATION CONTACT: Stephen Ells, phone (703) 603–8822, Sediment Team Leader, Office of Emergency and Remedial Response (Mail Code 5204G), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: EPA is authorized under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Resource Conservation and Recovery Act (RCRA) to respond to releases of hazardous substances. The draft Contaminated Sediment Remediation Guidance for Hazardous Waste Sites provides technical and policy guidance for project managers and management teams making risk management decisions for contaminated sediment sites. The purpose of the guidance is to increase project managers' understanding of sediment

environments and all potential cleanup methods for sediment and to improve national consistency in decision-making for sediment sites. It is primarily intended for project managers considering remedial response actions or non-time-critical removal actions under CERCLA, or more commonly known as Superfund, although technical aspects of the guidance are also intended to assist project managers addressing sediment contamination under RCRA.

Following the introductory chapter (Chapter 1), the guidance presents information concerning sediment-specific considerations during the Remedial Investigation (Chapter 2) and the Feasibility Study (Chapter 3); information concerning evaluation of the three major cleanup methods for sediment, Monitored Natural Recovery, In-Situ Capping, and Dredging and Excavation (Chapters 4, 5 and 6); information about selecting sediment remedies (Chapter 7) and about monitoring sediment sites (Chapter 8). Although some issues concerning site characterization and risk are discussed early in the guidance, the emphasis of this guidance is on evaluating and selecting cleanup methods for contaminated sediment.

Dated: November 12, 2002.

Marianne Lamont Horinko,

Assistant Administrator, Office of Solid Waste and Emergency Reponse.

[FR Doc. 02–30598 Filed 12–2–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7416–2]

Proposed CERCLA Administrative Agreement Relating to the Liberty Industrial Finishing Superfund Site, Town of Oyster Bay, Nassau County, New York

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with the Agency's May 24, 1995, ''Guidance on Agreements with Prospective Purchasers of Contaminated Property,'' notice is hereby given of a proposed prospective purchaser agreement (''PPA agreement'') with the Town of Oyster Bay (the ''Town'') concerning their possible acquisition, by eminent domain, of an approximately 15-acre parcel of real property (the ''Property'') included within the Liberty Industrial Finishing Superfund Site in the Town of Oyster Bay, Nassau County, New York (the ''Site''). Under the PPA agreement, the United States would covenant not to sue or take administrative action against the Town under section 106 or 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA'') if the Town becomes the owner of the Property. In exchange, the Town will pay to EPA the difference between the value of the Property, determined as though the Property was not contaminated, and the amount that the Town is required to pay to the owners of the Property for the eminent domain taking, but in no event less than $500,000 nor more than $5,300,000. By publication of this notice, a 30 day period has been established in which the Agency will accept written comments relating to the PPA agreement. The Agency will consider all comments received and may modify or withdraw its consent to the PPA agreement if comments received disclose facts or considerations which indicate that the agreement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region II, Office of Regional Counsel, New York/Caribbean Superfund Branch, 290 Broadway, 17th Floor, New York, NY 10007–1866.

DATES: Comments must be submitted on or before January 2, 2003.

ADDRESSES: The proposed PPA agreement is available for public inspection at the U.S. Environmental Protection Agency, Region II, Superfund Records Center, 290 Broadway, 18th Floor, New York, NY 10007–1866. A copy of the proposed PPA agreement may be obtained from the individual listed below. Comments should reference the Liberty Industrial Finishing Superfund Site, Nassau County, New York and EPA Index No. CERCLA–02–2002–2019, and should be addressed to the individual listed below.

FOR FURTHER INFORMATION CONTACT: Michael A. Mintzer, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 290 Broadway, 17th Floor, New York, NY 10007–1866, Telephone: (212) 637–3168.

Dated: November 18, 2002.

William J. Muszynski,

Deputy Regional Administrator, U.S. Environmental Protection Agency, Region II.

[FR Doc. 02–30600 Filed 12–2–02; 8:45 am]

BILLING CODE 6560–50–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Meeting of the R&D Investment Subcommittee of the President's Council of Advisors on Science and Technology

ACTION: Notice of open meeting.

SUMMARY: This notice announces that the Subcommittee on Federal Research and Development Investment and its National Benefits, of the President's Council of Advisors on Science and Technology (PCAST), will hold an open public forum on federal technology transfer mechanisms. The PCAST panel invites all interested persons to attend.

DATES AND PLACE: December 12, 2002, Washington, DC, beginning at 9:00 a.m. The meeting will be held in the RAND Washington Office, 1200 S. Hayes St., Arlington, VA, Room 4204. The location is accessible from the Pentagon City metro stop, or with parking at the Pentagon City shopping mall.

REGISTRATION AND FURTHER INFORMATION: Guests are requested to pre-register for this event by December 6. A Web site has been set up for information, agenda, and registration for this forum: *http://www.rand.org/scitech/stpi/TechTransfer/*. Information may also be obtained by emailing *ttsubmit@rand.org* or calling 703–413–1100 x5674.

Proposed Schedule and Agenda

The PCAST Subcommittee on Federal Research and Development (R&D) Investment and its National Benefits is scheduled to host an open forum on Thursday, December 12, 2002, at approximately 9:00 a.m., to discuss technology transfer of federally funded R&D. The forum is scheduled to begin with an overview of the subject of technology transfer from university, federal laboratory, and federally funded industry R&D. A roundtable discussion will follow at approximately 10:15 a.m. and ''open session'' is scheduled to begin approximately 1:00 p.m. A particular focus will be discussion of the goals of technology transfer, how technology transfer is measured, and best practices from a variety of perspectives. The forum will end at approximately 4:00 p.m.

Public Comments

The afternoon ''open session'' will be devoted to receipt of public comments on any aspect of technology transfer from federally funded R&D. To pre-register to make public comments or to submit brief written comments, please fill out the form located on the web http://www.rand.org/scitech/stpi/TechTransfer/. All those who have not submitted an overview prior to December 6, 2002 may speak following those who have. The time for public comments will be limited to no more than 3–5 minutes per person. Written comments are welcome at any time prior to or following the meeting. Written comments should be faxed to 703–414–4785 or mailed to Tech Transfer Forum, c/o RAND Science & Technology Policy Institute, MS–W7154, 1200 South Hayes Street, Arlington, VA 22202–5050. Please note that public seating for this meeting is limited and is available on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: For information regarding time, place and agenda, please refer to the website or call Gabrielle Bloom at 703–413–1100 x5674, prior to 3:00 p.m. on Friday, December 6, 2002.

SUPPLEMENTARY INFORMATION: The President's Council of Advisors on Science and Technology was established by Executive Order 13226, on September 30, 2001. The purpose of PCAST is to advise the President on matters of science and technology policy, and to assist the President's National Science and Technology Council in securing private sector participation in its activities. The Council members are distinguished individuals appointed by the President from non-Federal sectors. The PCAST is co-chaired by Dr. John H. Marburger, III, the Director of the Office of Science and Technology Policy, and by E. Floyd Kvamme, a Partner at Kleiner Perkins Caufield & Byers. PCAST established the R&D Investment subcommittee to explore various aspects of the federal R&D effort, including federal technology transfer programs, and to make draft findings and recommendations to the full PCAST.

Shana Dale,

Chief of Staff and General Counsel, Office of Science and Technology Policy.

[FR Doc. 02–30595 Filed 12–2–02; 8:45 am]

BILLING CODE 3170–01–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Meetings for 2003

Board Action: Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), as amended, and the FASAB Rules Of Procedure, as amended in October, 1999, notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) will meet on the following dates in room 7C13 of the GAO Building.

—Wednesday and Thursday, February 12 and 13, 2003

—Wednesday and Thursday, April 23 and 24, 2003

—Wednesday and Thursday, June 18 and 19, 2003

—Wednesday and Thursday, August 13 and 14, 2003

—Wednesday and Thursday, October 8 and 9, 2003

—Wednesday and Thursday, December 10 and 11, 2003

The purpose of the meeting is to discuss issues related to:

—National Defense PP&E,

—Consolidated Financial Reporting,

—Stewardship Reporting,

—Technical Agenda, and

—Any other topics as needed.

A more detailed agenda can be obtained from the FASAB web site (*www.fasab.gov*) one week prior to each meeting.

Any interested person may attend the meetings as an observer. Board discussion and reviews are open to the public. GAO Building security requires advance notice of your attendance. Please notify FASAB of your planned attendance by calling 202–512–7350, and for the subsequent meetings one day prior to the respective meeting.

FOR FURTHER INFORMATION CONTACT: Wendy Comes, Executive Director, 441 G St., NW., Mailstop 6K17V, Washington, DC 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. Pub. L. No. 92–463.

Dated: November 26, 2002.

Wendy M. Comes,

Executive Director.

[FR Doc. 02–30578 Filed 12–2–02; 8:45 am]

BILLING CODE 1610–01–M

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of New Exposure Draft Accounting for Imputed Intra-Departmental Costs: An Interpretation of SFFAS No. 4

Board Action: Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), as amended, and the FASAB rules of procedure, as amended in October, 1999, notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) has published a new exposure draft, *Accounting for Imputed Intra-departmental Costs: An interpretation of SFFAS No. 4.*

A Summary of the Proposed Interpretation Follows: The proposed interpretation clarifies that paragraph 110 of SFFAS No. 4 does not limit the recognition of imputed intra-departmental costs. The proposed interpretation further explains that intra-departmental costs should be accounted for in accordance with the full cost provisions of SFFAS No. 4, which includes the recognition of imputed intra-departmental costs.

The exposure draft is available on the FASAB home page *http://www.fasab.gov/exposure.htm.* Copies can be obtained by contacting FASAB at (202) 512–7350, or *loughanm@fasab.gov.*

Respondents are encouraged to comment on any part of the exposure draft. Written comments are requested by January 8, 2003, and should be sent to: Wendy M. Comes, Executive Director, Federal Accounting Standards Advisory Board, 441 G Street, NW., Suite 6814, Mail Stop 6K17V, Washington, DC 20548.

FOR FURTHER INFORMATION CONTACT: Wendy Comes, Executive Director, 441 G Street, NW., Washington, DC 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act, Pub. L. No. 92–463.

Dated: November 26, 2002.

Wendy M. Comes,

Executive Director.

[FR Doc. 02–30579 Filed 12–2–02; 8:45 am]

BILLING CODE 1610–01–M

FEDERAL COMMUNICATIONS COMMISION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

November 21, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing

effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a current valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before February 3, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *lesmith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Les Smith at 202–418–0217 or via the Internet at *lesmith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0398.

Title: Equipment Authorization Measurement Standards, Sections 2.948 and 15.117(g)(2).

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 320.

Estimated Time per Response: 28.44 hours (avg.).

Frequency of Response: Recordkeeping; Three year reporting requirements.

Total Annual Burden: 9,100 hours.

Total Estimated Cost: None.

Needs and Uses: 47 CFR 2.948 and 15.117(g)(2) of FCC rules require that data accompanying all requests for equipment authorization are valid and that proper testing procedures are used. Testing ensures that potential interference to radio communications is controlled, and if necessary, the data may be used for investigating complaints or harmful interference, or for verifying the manufacturer's compliance with FCC rules. Manufacturers were no longer required to file UHF noise figure data documenting the performance of TV receivers tested and marketed in the U.S. following release of the FCC's Report and Order in ET Docket No. 95–144.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–30557 Filed 12–2–02; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL COMMUNICATIONS COMMISION

Notice of Public Information Collection(s) Being Reviewed By the Federal Communications Commission for Extension Under Delegated Authority 5 CFR 1320 Authority, Comments Requested

November 21, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a current valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before February 3, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *lesmith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Les Smith at 202–418–0217 or via the Internet at *lesmith@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0473.

Title: Section 74.1251, Technical and Equipment Modifications.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities.

Number of Respondents: 100.

Estimated Time per Response: 30 mins. (0.50 hrs.).

Frequency of Response: Recordkeeping; On occasion reporting requirements.

Total Annual Burden: 50 hours.

Total Annual Costs: None.

Needs and Uses: 47 CFR 74.1251 requires station owners/licensees to certify compliance with technical requirements when they replace a transmitter without first seeking FCC approval. Additionally, section 74.1251 requires FM translator licensees to notify the FCC in writing of any changes in the primary FM station being retransmitted. The station owners use these records to provide the FCC with up-to-date information about modifications to their station's equipment.

OMB Control Number: 3060–0310.

Title: Registration Statement Required, Section 76.1801.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities.

Number of Respondents: 600.

Estimated Time per Response: 15 mins. (0.25 hrs.).

Frequency of Response: One time reporting requirement.

Total Annual Burden: 150 hours.

Total Annual Costs: $28,200.

Needs and Uses: 47 CFR 76.1801 requires a registration statement be filed with the Commission before a system community unit is be authorized to

commence operation. A system community unit is a cable television system, or portion of a cable television system, that operates within a separate and distinct community or municipal entity. The Commission staff use these data to maintain complete records on cable systems and to ensure compliance with our rules.

OMB Control Number: 3060–0288.

Title: Specific Temporary Authority (Cable Television Relay Stations), Section 78.33.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities.

Number of Respondents: 35.

Estimated Time per Response: 140 hours.

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 1,500 hours.

Total Annual Costs: $4,585.

Needs and Uses: 47 CFR 76.1801 requires cable television relay stations (CARS) to file informal requests for special temporary authority to install and operate equipment in a manner different than the way normally authorized in the station license. The special temporary authority also may be used by cable operators and equipment suppliers to conduct field surveys to determine necessary data in connection with preparing a formal application for installation of a radio system, or to conduct equipment, program, service, and path tests.

OMB Control Number: 3060–0546.

Title: Definition of Markets for Purposes of the Cable Television Mandatory Television Broadcast Signal Carriage Rules.

From Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 150.

Estimated Time per Response: 4 to 40 hours.

Total Annual Burden: 1,680 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Costs: $721,500.

Needs and Uses: On May 26, 1999, the Commission released an *Order on Reconsideration and Second Report and Order* (''Order''), which, among other things, established final rules for procedures for refining the market modification process by adopting a standardized evidence approach to the market modification process. The Order also made various changes to 47 CFR part 76, which concern the definitions applicable to the must carry rules and the specific information submission requirements for the market modification process.

OMB Control Number: 3060–0564.

Title: Cost accounting and cost allocation requirements, section 76.924.

From Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 50.

Estimated Time per Response: 40 hours.

Total Annual Burden: 2,000 hours.

Frequency of Response: Recordkeeping; Third party disclosure.

Total Annual Costs: None.

Needs and Uses: 47 CFR 76.924 of FCC rules specifies cost accounting and cost allocation requirements for regulated cable operators. Section 76.924 was established as part of the cable rate regulation requirements set forth in the *Cable Television Consumer Protection and Competition Act of 1992* (''1992 Cable Act''), which requires cable operators to rearrange their accounting records to comply with the requirements set forth in section 76.924. Because these requirements became effective July 21, 1993, existing cable operators are assumed to have already rearranged their accounting records and comply with this recordkeeping requirement. Cable operators use the information derived from their accounting records to complete their rate filings, while the local franchising authorities use it to review these rate filings.

OMB Control Number: 3060–0176.

Title: Experimental Authorizations, Section 73.1510.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities.

Number of Respondents: 55.

Estimated Time per Response: 15 mins. (0.25 hrs.).

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 14 hours.

Total Annual Costs: $34,500.

Needs and Uses: 47 CFR 73.1510 requires that a licensee of an AM, FM, and TV broadcast station file an informal application with the FCC to request an experimental authorization to conduct technical experimentation directed toward improvement of the technical phases of operation and service. This request shall describe the nature and purpose of experimentation to be conducted, the nature of the experimental signal transmission, and the proposed hours and duration of the experimentation. FCC staff use these data to maintain complete technical information about a broadcast station and to ensure that such experimentation does not cause interference to other broadcast stations.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–30558 Filed 12–2–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

November 21, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before January 2, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judith Boley Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to *jboley@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith Boley Herman at 202–418–0214 or via the Internet at *jboley@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0740.

Title: Section 95.1015, Disclosure Policies.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 203.

Estimated Time Per Response: 1 hour.

Frequency of Response: On occasion reporting requirement, third party disclosure requirement.

Total Annual Burden: 203 hours.

Total Annual Cost: $10,000.

Needs and Uses: Prior to operating a Low Power Radio Service (LPRS) transmitter for Automated Maritime Telecommunications System (AMTS) purposes, an AMTS licensee must notify, in writing, each television station that may be affected by such operations, as defined in § 80.215(h) of this chapter. The notification provided with the station's license application is sufficient to satisfy this requirement if no new television stations would be affected. The information is used by the Commission staff and affected television stations to be aware of the location of potential harmful interference from AMTS operations.

OMB Control No.: 3060–XXXX.

Title: Section 27.602, Guard Band Manager Agreements.

Form No.: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit.

Number of Respondents: 62.

Estimated Time Per Response: 6 hours.

Frequency of Response: On occasion reporting requirement, third party disclosure requirement and recordkeeping requirement.

Total Annual Burden: 372 hours.

Total Annual Cost: N/A.

Needs and Uses: This rule section is necessary for Guard Band Managers to maintain their written agreements with spectrum users at their principal place of business, and retain such records for at least two years after the date such agreements expire. The records must be kept current and be made available upon request for inspection by the Commission or its representative.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–30556 Filed 12–2–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Governors of the Federal Reserve System

ACTION: Notice

SUMMARY: BACKGROUND.

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–I's and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for Comment on Information Collection Proposal.

The following information collection, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. the accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the ethodology and assumptions used;

c. ways to enhance the quality, utility, and clarity of the information to be collected; and

d. ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before February 3, 2003.

ADDRESSES: Comments may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e–mail to *regs.comments@federalreserve.gov*, or faxing them to the Office of the Secretary at 202–452–3819 or 202–452–3102. Comments addressed to Ms. Johnson may also be delivered to the Board's mail facility in the West Courtyard between 8:45 a.m. and 5:15 p.m., located on 21st Street between Constitution Avenue and C Street, NW. Members of the public may inspect comments in Room MP–500 between 9 a.m. and 5 p.m. on weekdays pursuant to 261.12, except as provided in 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14 A copy of the comments may also be submitted to the OMB desk officer for the Board: Joseph Lackey, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83–I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below. Cindy Ayouch, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Proposal to Approve Under OMB Delegated Authority the Extension for Three Years, with Revision, of the Following Report:

Report title: Survey of Terms of Bank Lending.

Agency form number: FR 2028A, FR 2028B, and FR 2028S

OMB control number: 7100-0061.

Frequency: Quarterly.

Reporters: commercial banks (all three reports) and U.S. branches and agencies

of foreign banks (FR 2028A and FR 2028S).

Annual reporting hours: 8,095 hours.

Estimated average hours per response: FR 2028A: 4.0. FR 2028B: 1.5. FR 2028S: 0.1.

Number of respondents: FR 2028A: 398. FR 2028B: 250. FR 2028S: 567.

Small businesses are affected.

General description of report: This information collection is voluntary (12 U.S.C. § 248(a)(2)) and is given confidential treatment (5 U.S.C. § 552(b)(4)).

Abstract: The Survey of Terms of Bank Lending provides unique information concerning the price and certain nonprice terms of loans made to businesses and farmers by commercial banks. The reports are completed for the first full business week of the mid–month of each quarter (February, May, August, and November). The FR 2028A and B collect detailed data on individual loans made during the survey week. The FR 2028S collects the prime interest rate for each day of the survey. From these sample STBL data, estimates of the terms of business and farm loans extended during the reporting week at all insured U.S. commercial banks are constructed. The estimates for business loans are published in the quarterly E.2 release, ''Survey of Terms of Bank Lending,'' while estimates for farm loans are published in the quarterly E.15 release, ''Agricultural Finance Databook.''

Current actions: The Federal Reserve proposes to revise the FR 2028A by: (1) adding a field for the date on which the terms, including pricing, for loans made under formal commitment became effective, (2) reducing the number of base pricing rate options from five to one, (3) deleting the item indicating whether loans are callable, (4) modifying the format of the recalculation and maturity date items, and (5) making minor clarifications to the instructions. The Federal Reserve also proposes to revise the FR 2028B by modifying the format of the recalculation and maturity date items. The proposed revisions to reporting forms and instructions would be effective for the May 2003 survey week. No changes are proposed to the FR 2028S. The FR 2028A and FR 2028B reporting instructions would be revised according to the proposed changes, with other minor clarifications.

Board of Governors of the Federal Reserve System, November 26, 2002.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 02–30546 Filed 12–2–02; 8:45 am]

BILLING CODE 6210–01–S

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 17, 2002.

A. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Ronald R. Bramlage, Junction City, Kansas, and Frederick Bramlage, Manhattan, Kansas; to retain control of Fort Riley Bancshares, Inc., and thereby indirectly retain control of Fort Riley National Bank, both of Fort Riley, Kansas.

Board of Governors of the Federal Reserve System, November 27, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–30632 Filed 12–2–02; 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 27, 2002.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30303:

1. Tropical Bancshares of Florida, Inc., Englewood, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Englewood Bank, Englewood, Florida.

B. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Bancorp V, Inc., Olathe, Kansas; to become a bank holding company by acquiring 97.2 percent of the voting shares of Bank of Leeton, Leeton, Missouri.

Board of Governors of the Federal Reserve System, November 27, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–30633 Filed 12–2–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Government in the Sunshine Meeting Notice

AGENCY: Board of Governors of the Federal Reserve System.

TIME AND DATE: 12 p.m., Monday, December 9, 2002.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551

STATUS: Closed.

MATTERS TO BE CONSIDERED: 1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Assistant to the Board; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: November 29, 2002.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 02–30757 Filed 11–29–02; 12:35 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request the Office of Management and Budget (OMB) to allow the proposed information collection project: ''Pilot Study of the Hospital Adverse Event Reporting Survey''. In accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)), AHRQ invites the public to comment on this proposed information collection.

The proposed information collection was previously published in the **Federal Register** on September 23, 2002, and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by January 2, 2003.

ADDRESSES: Written comments should be submitted to: OMB Desk Officer at the following address: Allison Eydt, Human Resources and Housing Branch, Office of Information and Regulatory Affairs, OMB: New Executive Office Building Room 10235; Washington, DC 20503.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of the proposed information collection. All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Cynthia D. McMichael, AHRQ Reports Clearance Officer, (301) 594–3132.

SUPPLEMENTARY INFORMATION:

Proposed Project

''Pilot Study of the Hospital Adverse Event Reporting Survey''

The Pilot Study of the Hospital Adverse Event Reporting Survey will pilot test a survey instrument which was developed to examine and characterize adverse event reporting in the nation's hospitals. The survey will collect information from staff for a nationally representative sample of U.S. non-Federal hospitals. The Pilot Study will test the survey and methodology of its administration at 40 hospitals. Different staff, specifically, risk managers, directors of nursing, pharmacy, laboratory medicine, and transfusion medicine, infection control officers; and medical directors will complete a questionnaire.

Two versions of the questionnaire have been developed: One to be administered to hospital risk managers, and the other to be administered to the above-named Departmental managers.

To achieve responses from 40 hospitals, AHRQ will contact 50 hospitals to enlist their cooperation (thus, AHRQ anticipates an 80% response rate). Contacting 50 hospitals should yield 40 risk managers with whom to conduct an interview. In addition, we plan to conduct interviews with six specific Department heads. Not all hospitals will have such positions, and thus, we anticipate at most, 240 interviews with Departmental managers (assuming an 80% response rate).

The questionnaire will ask whether hospitals collect information on adverse events, and how the information is stored. The questionnaire also asks about the hospital's case definition of a reportable event and whether information on the severity of the adverse event is collected. It inquires about who might report information and whether they can report to a system which is confidential and/or anonymous. The questionnaire also asks about the uses of the data that are collected, reporting systems, and whether information is used for purposes including analytic uses, personnel action, and intervention design. Finally, the questionnaire asks about the other sources of information that are useful for patient safety-related interventions.

The sample will be randomly drawn from the American Hospital Association Field Guide (the ''AHA Guide''). The AHA Guide is a listing of 5,890 registered hospitals, which include Department of Defense, and Veteran's Administration hospitals. The AHA believes its database is close to 100 percent complete. AHA gathers additional information directly from hospitals via an annual survey. The resulting database includes over 600 fields in areas such as organizational structure, facilities, bed numbers, finances and services specialties.

Their survey results are published annually in the AHA Guide. In our sample, AHRQ will include only non-Federal hospitals and we will aim to pilot the instruments in large, medium and small hospitals.

Mandate for Data Collection; Sponsorship

In the Fiscal Year 2002 Senate Appropriations Report for the Departments of Labor, HHS, and Education (Rpt. 107–84), AHRQ was given the following specific requirements:

> The Committee further directs AHRQ to provide a report detailing the results of its efforts to reduce medical errors. The report should include how hospitals and other healthcare facilities are reducing medical errors; how these strategies are being shared among healthcare professionals; how many hospitals and other healthcare facilities record and track medical errors; how medical error information is used to improve patient safety; what types of incentives and/or disincentives have helped healthcare professionals reduce medical errors and; a list of the most common root causes of medical errors.

This project is sponsored by the Federal Quality Interagency Taskforce (QuIC) Errors Workgroup. The QuIC is responsible for the Federal Interagency coordination of patient safety efforts. AHRQ serves as provider of operational support to the chair of the QuIC.

Method of Collection

As a pilot study, this survey offers researchers the opportunity to experiment with the mode in which to collect the information.

Accordingly, in this pilot study, respondents from one-half of the hospitals will be mailed a self-administered questionnaire. Respondents from the other hospitals will be telephoned and administered the questionnaire by a trained interviewer. The following steps outline the data collection procedures.

1. All sample hospitals will be contacted and ''screened'' to obtain the Risk Manager's name, direct telephone number, Fax number and verify the hospital's mailing address.

2. Half of the sample will then be randomly assigned to either the mail or telephone mode of data collection.

3. All Risk Managers will receive an advance letter explaining the study and notifying them that they will soon receive a telephone call or survey in the mail.

4. When the Risk Manager receives the survey/telephone call, he/she will be asked to provide the names of Departmental Managers.

5. The Departmental Managers will be contacted in the same fashion (telephone or mail) as their institution's Risk Manager. Thus, they will receive an advance letter and then a telephone call or mail survey.

A thank you/reminder postcard will be sent to all mail respondents. A second questionnaire will be mailed to the nonrespondents in the mail mode. Finally, all the mail nonrespondents will be contacted by telephone to complete the questionnaire.

Estimated Annual Respondent Burden

The estimated annual hour burden is as follows:

Type of respondent	Number of respondents	Estimated time per respondent in hours	Estimated total burden hours	Estimated annual cost to the government
Risk Manager	40	.58	23.2	$628.72
Departmental Manager	240	.42	100.8	$4,048.13

Request for Comments

In accordance with the above-cited legislation, comments on the AHRQ information collection proposal are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of functions of the Agency, including whether the information will 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 the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: November 22, 2002.

Carolyn M. Clancy,

Acting Director.

[FR Doc. 02–30630 Filed 12–2–02; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request the Office of Management and Budget (OMB) to allow the proposed information collection project: ''Pilot Data for the Development of a Hospital Patient Safety Culture Survey''. In accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)), AHRQ invites the public to comment on this proposed information collection.

The proposed information collection was previously published in the **Federal Register** on September 23, 2002, and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by January 2, 2003.

ADDRESSES: Written comments should be submitted to: OMB Desk Officer at the following address: Allison Eydt, Human Resources and Housing Branch, Office of Information and Regulatory Affairs, OMB: New Executive Office Building, Room 10235; Washington, DC 20503.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of the proposed information collection. All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Cynthia D. McMichael, AHRQ Reports Clearance Officer, (301) 594–3132.

SUPPLEMENTARY INFORMATION:

Proposed Project

''Pilot Data for the Development of a Hospital Patient Safety Culture Survey''

The project is being conducted in partial response to an AHRQ task order entitled ''Patient Safety Measures'' (issued under Contract 290–96–0004). With AHRQ's Director chairing the Quality Interagency Coordination Task Force (QuIC), and AHRQ coordinated the Federal response to the Institute of Medicine's (IOM) 1999 report on medical errors. The response outlined specific initiatives the QuIC agencies would take.

This project addresses the need for a measurement tool to assess patient safety culture within health care institutions.

The project is to develop a hospital patient safety culture survey, conduct cognitive pretesting, collect pilot data using the survey, analyze the pilot data to determine the psychometric properties of the survey (internal consistently, reliability, response variability, *etc.*), and then, to prepare survey administration procedures accordingly. The overall goal of this study is to provide AHRQ with a reliable employee survey instrument to assess a hospital's patient safety culture. The survey instrument will be made publicly available to enable hospitals throughout the nation to evaluate aspects of their organizational culture that impact medical errors, error reporting, and patient safety.

The hospital patient safety culture survey to be pilot tested for this project is an employee survey that places an emphasis on medical error reporting. The survey also includes scales that measure other aspects of organizational culture that impact patient safety, such as: organizational learning, overall perceptions of safety, compliance with procedures, attitudes and frequency of error reporting, nonpunitive response to error, reasons errors occur, and employee teamwork. Through the proposed project, a reliable hospital

patient safety culture survey will be developed and then made available to the public, to reduce the burden to hospitals in developing their own instruments, to reduce the proliferation and use of untested instruments, and to foster benchmarking across hospitals.

Method of Collection

The purpose of this pilot data collection is to gather enough survey responses to evaluate the internal consistency, reliability, response variability, and other psychometric properties of a newly developed survey, not to produce national estimates. Therefore, a purposive sample (hand-chosen, non-statistical sample) of 12 hospitals will suffice to participate in the study.

Hospitals will be selected based on two factors: bed size and teaching vs. non-teaching status (two large/teaching, two medium/teaching, two small/teaching, two large/non-teaching, two medium/non-teaching, two small/non-teaching).

Surveys will be distributed to 100 employees at each of the 12 sites (a total of 1,200 employees). A contact person at each hospital will be asked to select 100 employees using a systematic random sample of employees. The contact person at each hospital will distribute the paper surveys to the 100 selected employees at each site. For purposes of individual confidentiality, no individuals identifiers will be used, so it will not be possible to track individual responses. Respondents will be instructed to mail their completed surveys directly to the research organization conducting the study using a postage-paid return envelope that will be provided. The hospitals will at no time have access to individual responses.

The survey will be distributed to a total of 1,200 hospital employees (100 individuals at each of 12 hospitals), with a target response rate of 75%, or 900 returned surveys. Standard techniques like using a prenotification letter, a cover letter of support from the hospital, a follow-up postcard, and distribution of a second survey will be used to achieve the target response rate. Respondents should take approximately 20 minutes to complete the survey. Therefore, we estimate that the respondent burden for completing the survey will be 300 hours (900 completes multiplied by 20 minutes per completed survey).

Estimated Annual Respondent Burden

Data collection effort	Number of respondents	Estimated time per respondent (in minutes)	Estimated total burden hours
Safety Culture Survey Pilot	900	20	300

Respondents will not be asked to maintain any records. No additional equipment purchases will be made to support data collection processes or record keeping. Respondents will incur no monetary cost in completing the survey.

Estimated Annual Costs to the Federal Government

The total cost to the government for conducting this survey development project is approximately $227,000 which includes the cost of survey development, pretesting, data collection, analysis, preparation of survey administration procedures, and preparation of a final report. The estimated cost of the data collection component is $50,000, which includes labor costs, fringe expenses, administrative expenses, and costs associated with copying, postage, and telephone expenses.

Request for Comments

In accordance with the Paperwork Reduction legislation cited in the summary section above, comments on the AHRQ information collection proposal are requested with regard to any of the following:

(a) Whether the proposed collection of information is necessary for the proper performance of functions of the Agency, including whether the information will 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 the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: November 22, 2002.

Carolyn M. Clancy,

Acting Director.

[FR Doc. 02–30631 Filed 12–2–02; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: 45 CFR 1309 Head Start Facilities Purchase.

OMB No.: 0970–0193.

Description: This rule contains the administrative requirements applicable to Head Start grantees when applying for funding to purchase Head Start program facilities. The rule ensures that standard business practices are applied when acquiring real property to protect the federal interest in properties purchased with public funds. The rule further ensures compliance with all other federal statutes applicable to the expenditure of public funds when purchasing real property.

Respondents: Head Start and Early Head Start grantees applying to purchase program facilities.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Regulation	200	1	41	8,200

ANNUAL BURDEN ESTIMATES—Continued

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Estimated Total Annual Burden Hours				8,200

Additional Information

Copies of the proposed collection may be obtained 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.

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACF.

Dated: November 25, 2002.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 02–30645 Filed 12–2–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administrative for Children and Families

Submission for OMB Review; Comment Request

Title: 45 CFR 1302 Head Start Grants Administration.

OMB No.: 0980–0243.

Description: 45 CFR contains provisions applicable to program administration and grants administration under the Head Start Act, as amended. The provisions specify the requirements for grantee agencies for insurance, bonding, the submission of audits, matching of federal funds, accounting systems certifications and other provisions applicable to personnel administration.

Respondents: Head Start and Early Start grantees.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
45 CFR Part 1301	2500	2	2	5,000

Estimated Total Annual Burden Hours: 5,000.

Additional Information

Copies of the proposed collection may be obtained 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.

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACF.

Dated: November 25, 2002.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 02–30646 Filed 12–2–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0116]

Agency Information Collection Activities; Announcement of OMB Approval; Veterinary Feed Directive

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Veterinary Feed Directive 21 CFR Part 558,'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 19, 2002 (67 FR 53806), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0363. The approval expires on October 31, 2005. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: November 26, 2002.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 02–30643 Filed 12–2–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0476]

Bavarian Red Cross; Revocation of U.S. License No. 1002

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the revocation of the biologics license (U.S. License No. 1002), issued to the Bavarian Red Cross (BRC), for the manufacture of Whole Blood and Red Blood Cells. In a letter to FDA dated June 3, 2002, BRC voluntarily requested revocation of its licenses without prejudice and thereby waived its opportunity for a hearing. In a letter dated July 22, 2002, FDA revoked the firm's license.

DATES: The revocation of the biologics license (U.S. License No. 1002) is effective July 22, 2002.

FOR FURTHER INFORMATION CONTACT: Michael D. Anderson, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION: FDA has revoked the biologics license (U.S. License No. 1002), issued to BRC, Herzog-Heinrich-Strasse 4, D–80336, Munich, Germany, for the manufacture of Whole Blood and Red Blood Cells. Additional locations affected by the revocation include: Prof.-Ernst-Nathan-Str. 1, D–90419, Nurnburg, Germany; Klinikstrasse 5, D–97070, Wurzburg, Germany; Dr. Franz-Strasse 3, D–95445, Bayreuth, Germany; Westheimer Strasse 80, D–86156, Augsburg, Germany; Nikolaus-Fey-Strasse 32, D–97353, Wiesentheid, Germany; and Hoher Kreuz Weg 7, D–93055, Regensburg, Germany.

FDA inspected four of the six licensed locations of the BRC from October 27 through November 13, 1997. The inspections were conducted at the Munich, Wiesentheid, Nurnberg, and Bayreuth facilities. During the inspections, FDA observed significant deviations from the standards established in the license as well as the applicable Federal regulations. The standards and regulations are designed to ensure the continued safety, purity, and potency of the manufactured product. FDA also determined that the firm had discontinued the manufacture of Whole Blood and Red Blood Cells intended for distribution in the United States. FDA concluded that a meaningful inspection of BRC's ability to appropriately manufacture products under the license could not be made. The deviations noted during the inspections included, but were not limited to, the following: (1) In violation of 21 CFR 640.3(b), donor suitability was not adequately determined, in that questions were not asked, concurrently with the direct questions on high risk behavior, for exclusion of donors who are at increased risk for human immunodeficiency virus–1 (HIV–1) group O infection; (2) in violation of §§ 606.140, 610.40, and 610.45 (21 CFR 606.140, 610.40, and 610.45), inspections of the Nurnburg and Munich facilities disclosed that the Abbott Prism system, a device that was not approved by FDA, was utilized to test for antibody to HIV types 1 and 2 plus O (anti-HIV 1/2), the hepatitis B surface antigen (HBsAg), the antibody to hepatitis B core antigen (anti-HBc), and antibody to hepatitis C virus encoded antigen (anti-HCV). Additionally, blood and blood products were not tested for HIV–1 antigen and antibody to human lymphotropic virus type I (anti-HTLV–I); (3) in violation of § 606.140, the New LAV-Bolt I by Sanofi Diagnostics Pasteur, an HIV–1 western blot assay that was not approved by FDA, was used as an assay for reentry of donors; (4) in violation of § 606.140, the New LAV-Bolt II by Sanofi Diagnostics Pasteur, an HIV–2 western blot assay that was not approved by FDA, was used as an assay for reentry of donors; and (5) in violation of 21 CFR 606.121(c)(5)(i), blood and blood products that were intended for transfusion and collected from paid donors were not labeled as to distinguish them from blood products collected from volunteer donors.

In a letter dated July 8, 1998, and issued under § 601.5(b) (21 CFR 601.5(b)), FDA outlined the deviations noted at the inspection. FDA notified BRC of FDA's intent to revoke U.S. License No. 1002 and announced its intent to offer an opportunity for hearing unless the deviations were adequately addressed. In a letter to FDA dated July 30, 1998, BRC addressed FDA's concerns about the inability to inspect products prepared under the U.S. License No. 1002.

In a certified, return-receipt letter dated January 21, 1999, to BRC, FDA stated that the firm's July 30, 1998, response was inadequate to address all the violations that FDA documented at the inspections. FDA advised BRC that its response was unsatisfactory in that BRC had not provided a comprehensive corrective action plan, adequate to bring the firm into compliance with the applicable Federal standards and regulations. In the same letter, FDA suggested that the firm voluntarily request that U.S. License No. 1002 be revoked, and a new application be submitted at a later date.

In a letter dated November 3, 2000, FDA notified BRC that since the receipt of the July 30, 1998, letter to FDA, FDA had not received any additional response from the firm. The letter stated under § 601.5(b)(2), FDA had provided a reasonable period for the firm to demonstrate or achieve compliance with the applicable standards established in the license and regulations before proceeding to initiate revocation of U.S. License No. 1002. Since BRC did not submit a response addressing the methods intended to demonstrate or achieve compliance and did not waive an opportunity for hearing, FDA notified the firm in the same letter of FDA's intent to revoke the license and to issue a notice of opportunity for hearing under 21 CFR 12.21(b).

In the **Federal Register** of May 9, 2002 (67 FR 31348), FDA announced a notice of opportunity for a hearing on a proposal to revoke the biologics license (U.S. License No. 1002) issued to BRC. In a letter to FDA dated June 3, 2002, BRC voluntarily requested revocation of its licenses without prejudice and thereby waived its opportunity for a hearing. In a letter to BRC dated July 22, 2002, FDA revoked the firm's license.

FDA had placed copies of the documents relevant to the revocation on file with the Dockets Management Branch (address above) under the docket number found in brackets in the heading of this document.

Accordingly, under section 351 of the Public Health Service Act (42 U.S.C. 262) and sections 201, 501, 502, 505, and 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 355, and 371), and under the authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director of the Center for Biologics Evaluation and Research (21 CFR 5.202), the biologics license (U.S. License No. 1002) issued to BRC was revoked, effective July 22, 2002.

Dated: November 22, 2002.

Kathryn C. Zoon,

Director, Center for Biologics Evaluation and Research.

[FR Doc. 02–30642 Filed 12–2–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee on Interdisciplinary, Community-Based Linkages; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act, Public Law 92–463), notice is hereby given of the following meeting. The meeting will be open to the public.

Name: Advisory Committee on Interdisciplinary, Community-Based Linkages.

Date and Time: December 8, 2002, 7 p.m.–9 p.m. December 9, 2002, 8 a.m.–5:30 p.m. December 10, 2002, 8:30 a.m.–3 p.m.

Place: Wyndham Washington Hotel, 1400 M Street, NW, Washington, DC 20005.

Agenda: Agenda items will include, but not be limited to: Welcome, plenary session on bioterrorism and public health preparedness with presentations by speakers representing the Department of Health and Human Services (DHHS), constituent groups, field experts and committee members. Meeting content will address the critical nature of bioterrorism, current activities related to public health preparedness by the DHHS, state responses to bioterrorism and public health preparedness, and how the constituency groups of the committee are incorporating and will further incorporate bioterrorism and public health preparedness into their workforce education and training efforts. Proposed agenda items are subject to change as priorities dictate.

Public Comments: Public comment will be permitted before lunch and at the end of the Committee meeting on December 10, 2002. Oral presentations will be limited to 5 minutes per public speaker. Persons interested in providing an oral presentation should submit a written request, with a copy of their presentation to: Jennifer Donovan, Deputy Executive Secretary, Division of State, Community and Public Health, Bureau of Health Professions, Health Resources and Services Administration, Room 9–105, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–8044.

Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The Division of State, Community and Public Health will notify each presenter by mail or telephone of their assigned presentation time. Persons who do not file a request in advance for a presentation, but wish to make an oral statement may register to do so at the Wyndham Washington Hotel, Washington, D.C., on December 10, 2002. These persons will be allocated time as the Committee meeting agenda permits.

FOR FURTHER INFORMATION CONTACT: Anyone requiring information regarding the Committee should contact Jennifer Donovan, Division of State, Community and Public Health, Bureau of Health Professions, Health Resources and Services Administration, Room 9–105, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–8044.

Dated: November 26, 2002.

Jon L. Nelson,

Associate Administrator for Management and Program Support.

[FR Doc. 02–30551 Filed 12–2–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A notice listing all currently certified laboratories is published in the **Federal Register** during the first week of each month. If any laboratory's certification is suspended or revoked, the laboratory will be omitted from subsequent lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This notice is also available on the internet at the following websites: *http://workplace.samhsa.gov* and *http://www.drugfreeworkplace.gov.*

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, 5600 Fishers Lane, Rockwall 2 Building, Room 815, Rockville, Maryland 20857; Tel.: (301) 443–6014, Fax: (301) 443–3031.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, ''Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies,'' sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection.

To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840/800–877–7016, (Formerly: Bayshore Clinical Laboratory).

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 585–429–2264.

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770/888–290–1150.

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400.

Alliance Laboratory Services, 3200 Burnet Ave., Cincinnati, OH 45229, 513–585–6870, (Formerly: Jewish Hospital of Cincinnati, Inc.).

American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 20151, 703–802–6900.

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite

250, Las Vegas, NV 89119–5412, 702–733–7866/800–433–2750.
Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783, (Formerly: Forensic Toxicology Laboratory Baptist Medical Center).
Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215–2802, 800–445–6917.
Cox Health Systems, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652/417–269–3093, (Formerly: Cox Medical Centers).
Diagnostic Services Inc., dba DSI, 12700 Westlinks Drive, Fort Myers, FL 33913, 239–561–8200/800–735–5416.
Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31602, 912–244–4468.
DrugProof, Divison of Dynacare, 543 South Hull St., Montgomery, AL 36103, 888–777–9497/334–241–0522, (Formerly: Alabama Reference Laboratories, Inc.).
DrugProof, Division of Dynacare/Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206–386–2661/800–898–0180, (Formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.).
DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310.
Dynacare Kasper Medical Laboratories*, 10150–102 Street, Suite 200, Edmonton, Alberta, Canada TJ5 5E2, 780–451–3702/800–661–9876.
ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 662–236–2609.
Express Analytical Labs, 3405 7th Avenue, Suite 106, Marion, IA 52302, 319–377–0500.
Gamma-Dynacare Medical Laboratories*, A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall St., London, ONT, Canada N6A 1P4, 519–679–1630.
General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6225.
Kroll Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823, (Formerly: Laboratory Specialists, Inc.).
LabOne, Inc., 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845, (Formerly: Center for Laboratory Services, a Division of LabOne, Inc.).
Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288 / 800–800–2387.
Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400 / 800–437–4986, (Formerly: Roche Biomedical Laboratories, Inc.).
Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group).
Laboratory Corporation of America Holdings, 10788 Roselle Street, San Diego, CA 92121, 800–882–7272, (Formerly: Poisonlab, Inc.).
Laboratory Corporation of America Holdings, 1120 Stateline Road West, Southaven, MS 38671, 866–827–8042/800–233–6339, (Formerly: LabCorp Occupational Testing Services, Inc., MedExpress/National Laboratory Center).
Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–331–3734.
MAXXAM Analytics Inc.*, 5540 McAdam Rd., Mississauga, ON, Canada L4Z 1P1, 905–890–2555, (Formerly: NOVAMANN (Ontario) Inc.).
Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43699, 419–383–5213.
MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 651–636–7466/800–832–3244.
MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295.
Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, Minnesota 55417, 612–725–2088.
National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515.
Northwest Drug Testing, a Division of NWT Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 801–293–2300/800–322–3361, (Formerly: NWT Drug Testing, NorthWest Toxicology, Inc.).
One Source Toxicology Laboratory, Inc., 1705 Center Street, Deer Park, TX 77536, 713–920–2559, (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory).
Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 541–687–2134.
Pacific Toxicology Laboratories, 6160 Variel Ave., Woodland Hills, CA 91367, 818–598–3110 / 800–328–6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory.
Pathology Associates Medical Laboratories, 110 West Cliff Drive, Spokane, WA 99204, 509–755–8991/800–541–7891x8991.
PharmChem Laboratories, Inc., 4600 N. Beach, Haltom City, TX 76137, 817–605–5300, (Formerly: PharmChem Laboratories, Inc., Texas Division; Harris Medical Laboratory).
Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339–0372/800–821–3627.
Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590/800–729–6432, (Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories).
Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 800–824–6152, (Moved from the Dallas location on 03/31/01; Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories).
Quest Diagnostics Incorporated, 400 Egypt Rd., Norristown, PA 19403, 610–631–4600/877–642–2216, (Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories).
Quest Diagnostics Incorporated, 506 E. State Pkwy., Schaumburg, IL 60173, 800–669–6995/847–885–2010, (Formerly: SmithKline Beecham Clinical Laboratories, International Toxicology Laboratories).
Quest Diagnostics Incorporated, 7600 Tyrone Ave., Van Nuys, CA 91405,

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. DHHS, with the DHHS' National Laboratory Certification Program (NLCP) contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

* Upon finding a Canadian laboratory to be qualified, the DHHS will recommend that DOT certify the laboratory (Federal Register, 16 July 1996) as meeting the minimum standards of the ''Mandatory Guidelines for Workplace Drug Testing'' (59 FR, 9 June 1994, Pages 29908–29931). After receiving the DOT certification, the laboratory will be included in the monthly list of DHHS certified laboratories and participate in the NLCP certification maintenance program.

818–989–2520/800–877–2520, (Formerly: SmithKline Beecham Clinical Laboratories).
Scientific Testing Laboratories, Inc., 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130.
S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300/800–999–5227.
South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 574–234–4176x276.
Southwest Laboratories, 2727 W. Baseline Rd., Tempe, AZ 85283, 602–438–8507/800–279–0027.
Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, 517–377–0520, (Formerly: St. Lawrence Hospital & Healthcare System).
St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052.
Sure-Test Laboratories, Inc., 2900 Broad Avenue, Memphis, Tennessee 38112, 901–474–6028.
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 2703 Clark Lane, Suite B, Lower Level, Columbia, MO 65202, 573–882–1273.
Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260.
US Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson Street, Fort George G. Meade, MD 20755–5235, 301–677–3714.

Richard Kopanda,
Executive Officer, SAMHSA.
[FR Doc. 02–30385 Filed 12–2–02; 8:45 am]
BILLING CODE 4160–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Correction of Application Deadline for the Grant Program, Community Collaborations to Prevent Youth Violence and Promote Youth Development (SM 03–005) (Short Title: Youth Violence Prevention Grants)

AGENCY: Substance Abuse and Mental Health Services Administration (SAMHSA), DHHS.

ACTION: Correction of application deadline for the grant program, Community Collaborations to Prevent Youth Violence and Promote Youth Development (SM 03–005) (Short Title: Youth Violence Prevention Grants).

SUMMARY: This notice is to inform the public that the application deadline published on November 26, 2002, for the grant program, Community Collaborations to Prevent Youth Violence and Promote Youth Development (SM 03–005) (Short Title: Youth Violence Prevention Grants), is incorrect. The correct application deadline is January 22, 2003.

Program Contact

For questions about the due date for this program or other program issues relating to this program, contact: Pat Shea, M.S.W., M.A., Special Programs Development Branch, CMHS/SAMHSA, Parklawn Building, Room 17C–26, 5600 Fishers Lane, Rockville, MD 20857. (301) 443–3655. (Email) *pshea@samhsa.gov.*

Dated: November 26, 2002.

Richard Kopanda,
Executive Officer, SAMHSA.
[FR Doc. 02–30644 Filed 12–2–02; 8:45 am]
BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4797–N–01]

Notice of Reminder for Fiscal Year 2002 HOPE VI Demolition Grant Applicants of the Need For Prior Demolition Approval

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: This notice reminds potential applicants for Fiscal Year 2002 HOPE VI demolition grants, that they must secure demolition approval under section 18 of the United States Housing Act of 1937 on or before the HOPE VI demolition grant application deadline.

FOR FURTHER INFORMATION CONTACT: Caroline Clayton, Office of Public and Indian Housing, Room 4130, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 401–8812. (This number is not toll-free). For hearing- and speech-impaired persons, this number may be accessed via TTY (text telephone) by calling the toll-free Federal Information Relay Service at 1–800–877–8339. The section 18 demolition application form (HUD–52860) is available at *http://www.hudclips.org/sub_nonhud/html/pdfforms/52860.pdf.*

SUPPLEMENTARY INFORMATION: HUD anticipates that it will soon publish the FY 2002 HOPE VI demolition notice of funding availability (NOFA). This notice serves to remind public housing authorities that anticipate applying for a Fiscal Year (FY) 2002 HOPE VI demolition grant that demolition approval must be obtained on or before the HOPE VI demolition grant application deadline. Section 18 of the United States Housing Act of 1937 (42 U.S.C. 1437p) establishes the demolition approval application process for properties not already approved for demolition through a Mandatory Conversion Plan or HOPE VI Revitalization Plan. In addition, regulations at 24 CFR part 970 describe the administrative steps required to perform demolition/disposition activity in accordance with the United States Housing Act of 1937. Public housing agencies are also advised that HUD's Special Application Center, which processes demolition approval applications, requires 100 days to process an application.

This notice applies to demolition-only grants, not demolition conducted pursuant to a HOPE VI revitalization grant or a Mandatory Conversion Plan approved under applicable regulations (24 CFR part 971). Guidance on preparing a demolition approval application and links to the regulations and applicable notices, is available though HUD's Web site at *http://www.hud.gov/offices/pih/centers/sac/demo_dispo/.* The section 18 demolition application form (HUD–52860) is available at *http://www.hudclips.org/sub_nonhud/html/pdfforms/52860.pdf.*

Dated: November 25, 2002.

Michael Liu,
Assistant Secretary for Public and Indian Housing.
[FR Doc. 02–30572 Filed 12–2–02; 8:45 am]
BILLING CODE 4210–33–P

DEPARTMENT OF INTERIOR

Bureau of Land Management

[UT–060–1610–DU]

Notice of Intent

AGENCY: Bureau of Land Management.

ACTION: Notice of Intent to prepare two Environmental Assessments (EAs) and consider amending the Grand Resource Area Resource Management Plan (RMP); Moab, Utah.

SUMMARY: Pursuant to the Bureau of Land Management (BLM) Planning Regulations (43 CFR 1600) this notice advises the public that the Utah Bureau of Land Management (BLM), Moab Field Office, is considering amending an

existing planning document. The BLM will prepare two Environmental Assessments (EAs) to consider amending the 1985 Grand Resource Area RMP. Off Highway Vehicle (OHV) categories in the Utah Rims and Cameo Cliffs areas will be re-evaluated to create potential opportunities for sustainable motorized recreation. In addition, mountain bike travel will be addressed. This action is being considered in response to recent and anticipated increases in visitor use.

DATES: The comment period for this proposed plan amendment will commence with publication of this notice. For 30 days from the date of publication of this notice in the **Federal Register**, the BLM will accept comments on this potential action. There will also be an opportunity for public comment during the planning process.

ADDRESSES: Comments should be sent to the BLM Moab Field Office, 82 East Dogwood Avenue, Moab, Utah 84532. Comments, including names and street addresses of respondents, will be available for public review at the Utah BLM Moab Field Office and will be subject to disclosure under the Freedom of Information Act (FOIA). They may be published as part of the EA and other related documents. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review and disclosure under the FOIA, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses will be made available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Katie Stevens (Cameo Cliffs) or Chad Niehaus (Utah Rims) at the above address or telephone (435) 259–2100. Existing planning documents and information are also available at the Moab Field Office.

SUPPLEMENTARY INFORMATION: After interdisciplinary review, no specific planning criteria were determined necessary for this proposed plan amendment. OHV designations and mountain bike travel have been identified as the preliminary issues for the proposed plan amendments, representing the BLM's knowledge to date on the existing issues and concerns with current management.

Utah Rims is a 15,337 acre area located in Grand County, Utah just west of Rabbit Valley (the motorized portion of Colorado Canyons National Conservation Area) between the Colorado River and Interstate 70. The 1985 Grand RMP divided the Utah Rims Recreation Area into two OHV designations. The central portion of Utah Rims (2,560 acres) was ''limited to existing roads and trails'' to reduce saline soil discharge into the Colorado River, while the remainder (12,771 acres) was placed in the ''open'' category.

On January 22, 200l, 5,756 of these open acres were designated as ''limited to existing roads and trails for motorized and mechanized use'' on an interim basis through a **Federal Register** notice to facilitate management of increased recreational use.

The Cameo Cliffs area is located in San Juan County, Utah, south of Moab along the east side of U.S. Highway 191 between Utah State Route 46 and San Juan County Road 114 and includes the Casa Colorado Rock area. The 1985 Grand RMP designated the entire Cameo Cliffs area (24,666 acres) as ''open.''

As a result of the proposed action, existing OHV designations and mountain bike management could change for both Utah Rims and Cameo Cliffs Recreation Areas.

Dated: November 22, 2002.

Sally Wisely,

State Director, Utah.

[FR Doc. 02–30498 Filed 12–2–02; 8:45 am]

BILLING CODE 3410–$$–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection, Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of a currently approved information collection (OMB Control Number 1010–0135).

SUMMARY: To comply with the Paperwork Reduction Act (PRA) of 1995, we are inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) is titled ''30 CFR 208.11(a), (b), (d) and (e)—Surety Requirements (Forms MMS–4071 and MMS–4072).

DATES: Submit written comments on or before February 3, 2003.

ADDRESSES: Submit written comments to Sharron L. Gebhardt, Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS320B2, Denver, Colorado 80225. If you use an overnight courier service, our courier address is Building 85, Room A–614, Denver Federal Center, Denver, Colorado 80225. You may also email your comments to us at *mrm.comments@mms.gov.* Include the title of the information collection and the OMB control number in the ''Attention'' line of your comment. Also include your name and return address. Submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. If you do not receive a confirmation we have received your email, contact Ms. Gebhardt at (303) 231–3211.

FOR FURTHER INFORMATION CONTACT: Sharron L. Gebhardt, telephone (303) 231–3211, FAX (303) 231–3385, or e-mail *sharron.gebhardt@mms.gov.*

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 208.11 (a), (b), (d) and (e)—Surety Requirements.

OMB Control Number: 1010–0135.

Bureau Form Numbers: Forms MMS–4071 and MMS–4072.

Abstract: The Department of the Interior (DOI) is responsible for matters relevant to mineral resource development on Federal and Indian Lands and the Outer Continental Shelf (OCS). The Secretary of the Interior (Secretary) is responsible for managing the production of minerals from Federal and Indian lands and the OCS; collecting royalties from lessees who produce minerals; and distributing the funds collected in accordance with applicable laws. MMS performs the royalty management functions for the Secretary.

When the Secretary determines that sufficient need exists among small refining companies to justify taking royalty oil in kind and offering this oil for sale to eligible refiners, small refiners may apply to participate in this sale of Federal royalty oil and follow procedures under which contracts for the purchase of royalty oil will be awarded. Completed applications to participate in the sale bid proposals, signed contracts, and surety instruments are submitted to MMS.

The application must be complete and timely filed, and applicants for royalty oil may be required to provide a surety instrument with their bid package. This surety instrument may be a Letter of Credit (Form MMS–4071) or a Royalty-In-Kind Contract Surety Bond (Form MMS–4072), or other acceptable commercial surety.

MMS is requesting OMB's approval to continue to collect this information. Without the surety protection, the Government can lose money if a refiner does not pay for oil he has received. Proprietary information submitted is

protected, and there are no questions of a sensitive nature included in this ICR.

We have also changed the title of this ICR to clarify the regulatory language we are covering under 30 CFR part 208.

Frequency of Response: On occasion.

Estimated Number and Description of Respondents: 10 purchasers.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: 10 burden hours. The following chart shows the breakdown of the estimated burden hours by CFR section and paragraph.

30 CFR section	Reporting requirement	Burden hours per response	Annual number of responses	Annual burden hours
208.11 (a), (b), (d), and (e)	The eligible purchaser, prior to execution of the contract, shall furnish an ''MMS-specified surety instrument,'' in an amount equal to the estimated value of royalty oil that could be taken by the purchaser in a 99-day period, plus related administrative charges * * * The purchaser or its surety company may elect not to renew the letter of credit at any monthly anniversary date, but must notify MMS of its intent not to renew at least 30 days prior to the anniversary date. * * * The ''MMS-specified surety instrument'' shall be in the form specified by MMS instructions or approved by MMS. All surety instruments must be in a form acceptable to MMS and must include such other specific requirements as MMS may require adequately to protect the Government's interests.	1	10	10
Total	.....	.....	.....	10

Estimated Annual Reporting and Recordkeeping ''Non-Hour Cost'' Burden: We have identified no cost burdens for this collection.

Comments: The PRA (44 U.S.C. 3501, *et seq.*) provides an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *. Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The PRA also requires agencies to estimate the total annual reporting ''non-hour cost'' burden to respondents or record keepers resulting from the collection of information. We have not identified non-hour cost burdens for this information collection. If you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our ICR submission for OMB approval, including appropriate adjustments to the estimated burden. We will provide a copy of the ICR to you without charge upon request, and the ICR will also be posted on our Web site at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm.*

Public Comment Policy: We will post all comments in response to this notice on our Web site at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm.* We will also make copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request we withhold their home address from the public record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you request that we withhold your name and/or address, state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: November 25, 2002.

Lucy Querques Denett,

Associate Director for Minerals Revenue Management.

[FR Doc. 02–30565 Filed 12–2–02; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Environmental Statement; Notice of Availability

AGENCY: National Park Service.

ACTION: Notice of Availability for public review of a Draft Environmental Impact Statement (EIS) for the General Management Plan Amendment (GMPA) for Biscayne National Park in the State of Florida.

SUMMARY: The National Park Service (NPS) has prepared a draft Environmental Impact Statement on the General Management Plan Amendment for Biscayne National Park. The statement evaluates potential environmental impacts associated with various management alternatives for the preservation and use of 7 structures collectively known as Stiltsville in the northern portion of Biscayne Bay within the National Park. This GMPA and EIS have been prepared in response to the requirements of the National Parks and Recreation Act of 1978, Public Law 95–625, and in accord with Director's Order Number 2, the planning guidance for National Park Service units that became effective May 27, 1998. The NPS has conducted public scoping meetings in the local area to receive input from interested parties on issues, concerns, and suggestions pertinent to the management of the Stiltsville area of Biscayne National Park. The comment period for this draft GMPA/EIS will be 60 days from the publication of the Environmental Protection Agency's Notice of Availability in the **Federal Register**.

Please note that due to public disclosure requirements, the National Park Service, if requested, is required to make the names and addresses of those who submit written comments public. Individual respondents may request that we withhold their names and addresses from the public record. If you wish to withhold your name and/or address, you must state that request prominently at the beginning of your comment. Anonymous comments will be included in the public record. However, the National Park Service is not legally required to consider or respond to anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

DATES: Two public meetings will be conducted to receive comments on the draft EIS for the GMPA. On Monday, December 16, 2002, a meeting will be held at Keys Gate Golf and Tennis Club, 2300 Palm Drive, Homestead, Florida from 3 p.m. until 8 p.m. On Tuesday, December 17, 2002, a meeting will be held at the Renaissance Ballroom, 5910 SW 8 Street, Miami, Florida from 3 p.m. until 8 p.m.

ADDRESSES: Comments on the EIS should be submitted to the following address to ensure adequate consideration by the Service: Superintendent, Biscayne National Park, 9700 SW. 328th Street, Homestead, Florida, 33033–5634 or by email, *bisc_stiltsville@nps.gov.*

FOR FURTHER INFORMATION CONTACT: Superintendent, Biscayne National Park, 9700 SW. 328th Street, Homestead, Florida, 33033–5634, (305) 230–1144, ext. 3002.

SUPPLEMENTARY INFORMATION: The Draft and Final General Management Plan Amendment and Environmental Impact Statement will be made available to all known interested parties and appropriate agencies. Full public participation by federal, state, and local agencies as well as other concerned organizations and private citizens is invited throughout the preparation process of this document.

The responsible official for this Environmental Impact Statement is Patricia A. Hooks, Acting Regional Director, Southeast Region, National Park Service, 100 Alabama Street SW., 1924 Building, Atlanta, Georgia 30303.

Dated: September 26, 2002.

Jerre Brumbelow,

Acting Regional Director, Southeast Region.

[FR Doc. 02–30490 Filed 12–2–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Draft Environmental Impact Statement/General Management Plan, For Vancouver National Historic Site, Clark County, Washington; Notice of Availability

SUMMARY: Pursuant to § 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended), and the Council on Environmental Quality Regulations (40 CFR part 1500–1508), the National Park Service (NPS), Department of the Interior, has prepared a draft general management plan (GMP) and environmental impact statement (EIS) for Fort Vancouver National Historic Site (NHS) located in Vancouver, Washington. This GMP describes and analyzes three alternatives which respond to both NPS planning requirements and to the issues identified during the public scoping process. These alternatives address visitor use and the preservation of the cultural and natural resources that provide the environment in which the Hudson's Bay Company story is presented to the public. *Alternative A* constitutes the No Action alternative and assumes that existing programming, facilities, staffing, and funding would generally continue at their current levels. *Alternative B,* the Preferred Alternative, expands opportunities for the visitor to appreciate the broad sense of history that occurred at Fort Vancouver and its place in Northwest history. *Alternative C,* proposes full reconstruction within the Fort and additional reconstruction or delineation elsewhere within the NHS. The environmental consequences of all the alternatives, and mitigation strategies, are identified and analyzed in the EIS.

Scoping: Public meetings were initiated in January 1999 to solicit early participation into the conservation planning and environmental impact analysis process, and aided in defining the range of issues to be analyzed. A Notice of Intent announcing the decision to prepare the general management plan and environmental impact statement was published in the **Federal Register** on January 7, 1999. A newsletter was produced and mailed to approximately 600 people on the park's mailing list to encourage participation and comment on critical park issues. The park received 29 written comment letters. The NPS held two public meetings in January 2000 and received and recorded over 150 oral comments during the two meetings. Scoping comments continued to be accepted and considered through the end of March 1999. During this period, the NPS facilitated discussions and briefings to park staff, the Vancouver National Historic Reserve Trust Board, congressional staff, elected officials, tribal representatives, public service organizations, educational institutions, and other interested members of the public.

Proposed Plan and Alternatives: The draft EIS/GMP includes two action alternatives and a no-action (existing conditions) alternative. Under all the alternatives, the agricultural fields around the fort palisade would be restored as part of the Hudson's Bay Company (HBC) historic landscape when the City of Vancouver vacates Pearson Airfield T-hangars and the former aviation museum building by the end of the year 2002. In addition, The NPS staff would administer any and all portions of the south and east Vancouver Barracks area determined to be excess to the needs of the U.S. Army by the Secretary of the Army. Use of this area could include restoring the Vancouver Barracks cultural landscape, adapting and reusing existing historic buildings, leasing properties to the City of Vancouver, providing for additional parking, staging public transportation operations, and incorporating administrative functions. Decisions

would be made in consultation with the Reserve Partners.

Alternative A is the no-action alternative and assumes that existing conditions, including programming, facilities, staffing, and funding, would generally continue at their current levels. This alternative would include fulfilling the existing commitments and relationships with the Reserve Partners and providing technical assistance to the McLoughlin House National Historic Site in Oregon City, Oregon, currently an affiliated unit of the National Park System. No new substantial facility or program initiatives would be proposed under this alternative. The NHS would continue to work with the City of Vancouver to extend the City's proposed Discovery Historic Loop Trail through the Village of the NHS and along East Fifth Street. In cooperation with the City of Vancouver and Washington Department of Transportation, the pedestrian overpass would be built over State Route 14 and the railroad to connect the Fort Vancouver Waterfront and the City's Old Apple Tree Park to link the Fort and HBC Village. The current NHS visitor center would be retained in its current configuration and location, as would the current Vancouver National Historic Reserve visitor center situated in the historic General O.O. Howard House at the Vancouver Barracks.

Alternative B constitutes the Preferred Alternative, and this proposed course of action has also been determined to be the ''environmentally preferred'' alternative. *Alternative B* contains several new elements for implementation that would result in expanded opportunities for the visitor to appreciate the broad sense of history that occurred at Fort Vancouver and its place in Northwest history. Specific actions include the reconstruction of nine HBC period structures within the fort palisade and two at the Village. A research and education center would be developed within the fort. Interpretive components would be added including wayside exhibits and delineation of structures in certain locations. Much of the historic landscape would be restored. The NPS would develop an interpretive area at the Waterfront by partially reconstructing the Salmon Store as an interpretive shed, and delineating several other historic HBC structures. The original location of the wharf would be simulated and the historic pond delineated with wetland plants. A portion of Columbia Way would be realigned to better accommodate visitor circulation and interpretation.

In cooperation with the City of Vancouver and the Washington Department of Transportation, the pedestrian overpass would be widened as a land bridge to allow for interpretation devices and vegetation. A local transit authority, in cooperation with NPS and other Reserve Partners, would implement a shuttle system to facilitate visitation. Other cooperative sharing would include administrative, maintenance, and visitor facilities with Reserve Partners. The NPS would recommend that one of the four buildings fronting the historic Parade Ground as determined excess by the Secretary of the Army be renovated as the joint administrative headquarters for the part and other Reserve offices. Maximum use would be made of existing structures including renovation of the existing Fort Vancouver visitor center as the Vancouver National Historic Reserve visitor center jointly managed by the Reserve Partners including the NPS.

Implementation of this alternative would result in development of additional educational outreach programs and new research facilities related to the HBC and early U.S. Army period. This alternative recommends that the McLoughlin House National Historic Site in Oregon City, Oregon become a unit of Fort Vancouver NHS and be managed by Fort Vancouver National Historic Site staff. An act of Congress would be required to implement this recommendation.

Alternative C contains many of the same actions as the Preferred Alternative, but key differences include: Full reconstruction within the fort palisade, along with the reconstruction of the two historic School Houses and a barn to the north of the Fort. Additional delineation of structures would occur at the Waterfront and the Village. The historic Salmon Store would be reconstructed along the Columbia River shoreline, as would the historic wharf and other waterfront features. An ethnobotanical garden would be constructed to interpret the local historic uses of native plants. An opening in the railroad berm would be created to visually link the Fort to the Waterfront. To facilitate visitor use and interpretation, a portion of Columbia Way would be closed to vehicular traffic in cooperation with the City of Vancouver. The current NHS visitor center would be renovated and retained for more detailed interpretation concerning Fort Vancouver, while a new location would be sought for a joint Vancouver National Historic Reserve visitor facility to provide the public with information and orientation to all the Reserve stories and venues. The location for this facility is yet to be determined, but priority would be given to rehabilitation of an historic structure within the Vancouver Barracks Historic District that is listed in the National Register of Historic Places. The research and education center would be located within the Vancouver Barracks portion of the Reserve.

Public Review and Comment: The draft EIS\GMP is now available for public review. Interested persons and organizations wishing to express any concerns or provide relevant information are encouraged to obtain the document from the Superintendent, Fort Vancouver National Historic Site, 612 East Reserve Street, Vancouver, Washington 98661, or via telephone at (360) 696–7655. The document may also be reviewed at area libraries, or obtained electronically via the park's Web site at *http://www.nps.gov/fova/news.htm.*

In addition, the park will conduct public meetings to facilitate public review and comment on the draft EIS\GMP. At this time, meetings are scheduled for December 11 (Vancouver, Washington) and December 12 (Oregon City, Oregon). Confirmed details on meeting locations, times, etc., will be posted on the park's Web site, or can be obtained by contacting the Superintendent, as noted above.

All written comments must be postmarked not later than 60 days following the date the EPA notice of filing is published in the **Federal Register**, or February 8, 2003, *whichever is later*—immediately upon determination of the actual date this will be announced via local and regional news media and posted on the park's Web site. All comments will become part of the public record. If individuals submitting comments request that their name or\and address be withheld from public disclosure, the request 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: the NPS will make available to public inspection all submissions from organizations or businesses and from persons identifying themselves as representatives or officials or organizations; and, anonymous comments may not be considered.

Decision: Following the review period for the draft EIS\GMP, all comments received will be considered in preparing the final EIS\GMP. The final document is anticipated to be completed during spring 2003. Its availability will be

similarly announced in the **Federal Register**. As this is a delegated EIS, the official responsible for the final decision is the Regional Director, Pacific West Region; subsequently the official responsible for implementation would be the Superintendent, Fort Vancouver National Historic Site.

Dated: November 25, 2002.

Arthur E. Eck,

Acting Regional Director, Pacific West Region.

[FR Doc. 02–30485 Filed 12–2–02; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Lake Meredith National Recreation Area and Alibates Flint Quarries National Monument, Texas

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of availability of a Record of Decision on the Final Environmental Impact Statement/Oil and Gas Management Plan for Lake Meredith National Recreation Area and Alibates Flint Quarries National Monument, Potter, Hutchinson, and Moore Counties, Texas.

SUMMARY: On September 26, 2002, the Director, Intermountain Region, approved the Record of Decision for the project. As soon as practical, the National Park Service will begin to implement the Oil and Gas Management Plan as described as the Preferred Alternative (Alternative B) contained in the FEIS issued on August 9, 2002. In the Preferred Alternative, all areas of the two NPS units would be formally designated as Special Management Areas (SMA's), and specific operating stipulations would be applied. While this alternative was not deemed to be the environmentally preferred alternative, it was determined to best accomplish the legislated purposes of the two NPS units by balancing the statutory mission of the NPS to provide long-term protection to the NPS units' resources and significance, while allowing for the exercise of rights to oil and gas not owned by the United States. It was also determined that implementation of the Preferred Alternative will not constitute an impairment of park resources and values. This course of action and two alternatives were analyzed in the Draft and Final Environmental Impact Statements. The full range of foreseeable environmental consequences was assessed, and appropriate mitigating measures identified.

The full Record of Decision includes a statement of the decision made; synopses of the alternatives considered, a description of the environmentally preferable alternative; the decision rationale used in selecting the alternative; a finding on impairment of park resources and values; a description of mitigation measures and monitoring plans that will be implemented for the selected alternative; a statement that addresses how all practical means to avoid or minimize environmental harm from the selected alternative have been adopted; and a description of public involvement in the decision-making process.

Basis for Decision

In reaching its decision to select the preferred alternative, the National Park Service considered the purposes for which the two NPS units were established, and other laws and policies that apply to lands in the units, including the Organic Act, National Environmental Policy Act, and the *NPS Management Policies.* The National Park Service also carefully considered public comments received during the planning process.

FOR FURTHER INFORMATION CONTACT: Karren Brown, Superintendent, Lake Meredith National Recreation Area and Alibates Flint Quarries National Monument, P.O. Box 1460, Fritch, TX 79036, Telephone: 806–857–3131.

SUPPLEMENTARY INFORMATION: A limited number of individual copies of the Record of Decision may be obtained from the Superintendent listed above.

Dated: September 26, 2002.

Karen Wade,

Director, Intermountain Region, National Park Service.

[FR Doc. 02–30487 Filed 12–2–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Golden Gate National Recreation Area, Big Lagoon Wetland and Redwood Creek Restoration, Marin County, California; Notice of Intent to Prepare an Environmental Impact Statement

SUMMARY: In accordance with § 102 (2)(C) of the National Environmental Policy Act (42 U.S.C. 4321 *et. seq*), the National Park Service (NPS) is undertaking a comprehensive conservation planning and environmental impact analysis process regarding the proposed restoration/enhancement of the lower Redwood Creek watershed at Muir Beach. The purpose of the project is to restore or enhance ecological conditions and processes, reducing flooding of local infrastructure, and providing public access to the beach and restored wetland and creek. Key issues to be addressed will include habitat for fish and wildlife, ecosystem conditions and processes, effects on special status plant and animal species, hydrology, flood hazards, traffic, visitor access, and visitor experience. Notice is hereby given that a public scoping process has been initiated. The purpose of the public scoping process is to elicit public comment regarding the full spectrum of issues and concerns, a suitable range of alternatives, the nature and extent of potential environmental impacts or ecological benefits, and appropriate mitigation strategies that should be addressed in preparing a draft Environmental Impact Statement (EIS).

Background: The Big Lagoon project site is located at the mouth of the Redwood Creek watershed, which drains an 8.9-square-mile area on the southwestern slopes of Mt. Tamalpais in coastal Martin County. Approximately half of the restoration planning area is federally owned and is situated within the Golden Gate National Recreation Area (GGNRA); the remainder is owned by the San Francisco Zen Center. The project site is a popular destination in the park, receiving approximately 440,000 visitors annually. Historically this area supported a freshwater and brackish lagoon with associated permanent and seasonal wetlands, riparian forest, and beach dune communities. The entire area of Muir Beach and the adjacent lowland pastures were part of the Redwood Creek floodplain. The creek meandered across the valley floor and, during floods, deposited sediment across the floodplain area. Today, the creek has been confined and much of the floodplain eliminated due to the combined effects of road and levee construction, channeling projects, and placement of the NPS parking lot and picnic area.

Restoration Goals: The GGNRA is preparing an EIS to address possible extent of restoration and/or enhancement of natural resource values. The goals of the proposal include the following:

- Restore a functional, self-sustaining ecosystem, including wetland, aquatic, dune, upland, and riparian components.
- Develop a restoration design that: (a) Functions in the context of the watershed and other pertinent regional boundaries, (b) identifies and, to the extent possible, mitigates factors that reduce the site's full restoration

potential. Understanding of historical and current conditions and physical processes in the watershed is required to meet this objective.

• Consistent with restoring a functional ecosystem, create habitat adequate to support sustainable populations of special status species.

• Reduce flooding on Pacific Way and in the Muir Beach community on a long-term basis, and work with Marin County to ensure that vehicle access is provided to the Muir Beach community.

• Work with Comprehensive Transportation Management Plan staff to identify transportation alternatives that are consistent with ecosystem restoration.

• Provide for visitor experience, public access, and resource interpretation that are compatible with ecosystem restoration and historic preservation.

• Protect cultural resources and work with the Federated Indians of Graton Rancheria to incorporate cultural values and indigenous archaeological sites into the restoration design and site stewardship.

• Provide opportunities for public education and community-based restoration, including engaging local and broader communities in site stewardship and restoration planning.

Public Process to Date: The National Park Service drafted a preliminary Environmental Assessment (EA) for restoration measures considered for this area in 1994; however the EA process was not ever completed and no project was implemented. Since that time, the site has changed and new information has been developed. Due to the changed conditions, a new analysis of restoration options, mitigation issues, etc will be undertaken. At this time, public scoping meetings for the Big Lagoon wetlands and Redwood Creek restoration are scheduled as follows: Oct. 22, 2002 at the regular meeting of the GGNRA Citizens' Advisory Commission, Oct. 29, 2002 at the Muir Beach Community Center, and Nov. 2, 2002 at Tamalpais High School in Mill Valley. Site walk-thrus are be conducted on Nov. 9, 2002. Also, early technical scoping reviews were held on-site throughout July and August 2002 with experts of various disciplines (archaeology, biology, wetland and riparian ecology, geomorphology, and visitor access) to assist the project team in building a knowledge base on which study designs and preliminary alternatives will be formulated. To support the public process and foster ready access to information, GGNRA is developing a website for the project that will be hosted on the GGNRA Web site (*http://www.nps.gov/goga/admin/planning*). The Web site will be a key component of the public involvement strategy and will allow the public to view and retrieve planning documents, fact sheets, and meeting notices for the project. Following scoping and with continued input from the public and regulatory and resources agencies, a full range of preliminary project alternatives will be developed and evaluated. GGNRA staff anticipate a minimum of three alternatives, including the *No-Action* Alternative. An ''environmentally preferred'' alternative will be disclosed in the draft EIS.

Comments and Public Scoping: As noted above, three scoping meetings are scheduled during Fall 2002. Confirmed details on all scoping meetings will be announced through direct mailing, the project Web site, and local and regional media. Interested individuals, organizations and agencies are invited to attend these meetings to comment orally and/or provide written comments or suggestions. Interested persons may also refer to the GGNRA Web site for more information on this project. A scoping document (including applicable information from the 1994 EA) and site information will be available at the above Web site, or can be obtained by writing or telephoning the GGNRA staff person listed below. Comments, suggestions, or relevant information (or requests to be added to the project mailing list) should be sent to: Big Lagoon Wetland and Redwood Creek Restoration, Golden Gate National Recreation Area (*Attn:* Jennifer Vick, Project Manager), Building 201, Fort Mason, San Francisco, CA 94123 [Telephone (415) 561–4942]. All written comments for the scoping phase of Big Lagoon Wetland and Redwood Creek Restoration EIS must be postmarked not later than 45 days following the publication of this notice in the **Federal Register**.

All respondents are advised that individual names and addresses of persons commenting on the project EIS may be included as 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.

Decision Process: Availability of the draft EIS for review and written comment will be announced in the **Federal Register**, as well as through local and regional news media, the GGNRA Web site, and direct mailing to the project mailing list. At this time, the draft EIS is anticipated to be available for public review in early 2004. To ensure further opportunity to comment on the draft EIS after it is distributed, additional public meetings will be held (dates and locations to be determined). Notice of the availability of the final EIS will similarly be published 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 is the Superintendent, Golden Gate National Recreation Area.

Dated: October 9, 2002.

Jonathan B. Jarvis,

Regional Director, Pacific West Region.

[FR Doc. 02–30489 Filed 12–2–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Notice of Intent to Prepare an Environmental Assessment and Notice of Public Meeting

AGENCY: National Park Service, Rock Creek Park, Washington, DC.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA) (Pub. L. 91–109 section 102(c)) and pursuant to a court order, the National Park Service (NPS) is preparing an Environmental Assessment (EA) regarding two privately owned and operated cellular communications towers located within Rock Creek Park pursuant to an NPS permit.

SUPPLEMENTARY INFORMATION: In 1998, pursuant to the Telecommunications Act of 1996, Bell Atlantic filed applications for permits to locate two cellular towers along with their associated equipment shelters within Rock Creek Park. In 1999, pursuant to NEPA, NPS prepared an EA that considered the environmental impacts of siting the two towers inside the park. After completing the EA, NPS concluded that the towers would not have a significant impact to the quality of the human environment, and issued a Finding of No Significant Impact (FONSI). Subsequently NPS issued the permits necessary for Bell Atlantic to construct and operate within Rock Creek Park one 100-foot monopole at the

Tennis Center, and one 130-foot monopole in the Maintenance Yard. Both towers have since been built and are currently in use. In 2000, suit was filed opposing these cellular towers, and on July 2, 2002 the Federal district court for the District of Columbia, in *Audubon Naturalist Society of the Central Atlantic States* v. *NPS and Bell Atlantic Mobile,* ordered the NPS to prepare this new EA.

Meeting and Public Scoping Information: To facilitate this process, during December 2002, NPS will hold a public meeting that will provide an opportunity for public input into the scoping for the EA. The date, time, and location of this meeting will be announced through local media and direct mailings to interested parties known to the NPS. The purpose of the meeting will be to obtain both written and verbal comments from the public to assist NPS in preparing the new EA. In addition, NPS is seeking comments on the issues and alternatives to be addressed in the EA.

The EA is expected to be completed and available for public review in early 2003.

FOR FURTHER INFORMATION CONTACT: Written comments may be directed to the address below: Superintendent, Rock Creek Park, 3545 Williamsburg Lane NW., Washington, DC 20008–1207, or *ROCR@den.nps.gov.*

Terry R. Carlstrom,

Regional Director, National Capital Region.

[FR Doc. 02–30486 Filed 12–2–02; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Delaware Water Gap National Recreation Area Citizen Advisory Commission Meeting

AGENCY: National Park Service; Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces public meetings of the Delaware Water Gap National Recreation Area Citizen Advisory Commission. Notice of these meetings is required under the Federal Advisory Committee Act (Public Law 92–463).

Meeting Date and Time: Saturday, January 11, at 9 a.m.

Address: Bushkill Visitor Center, Bushkill, PA 18324.

The agenda will include reports from Citizen Advisory Commission members, specifically Commission vacancies and setting up a timetable for annual reports. Superintendent William Laitner will give a report on various park issues, including an update on the park's historic leasing program. The agenda is set up to invite the public to bring issues of interest before the Commission. These issues typically include treatment of historic buildings within the recreation area, monitoring of waste water facilities outside the recreation area but emptying into the Delaware River, and wildlife management issues.

Meeting Date and Time: Thursday, April 3 at 7 p.m.

Address: New Jersey District Office, Walpack, New Jersey 07881.

The agenda for this meeting will consist of Commission reports which typically include natural resources, recreation, and historic structures. The Superintendent will provide reports on park issues and items of interest brought forth by the Commission and the public. The agenda is set up to invite the public to bring issues of interest before the Commission.

Meeting Date and Time: Thursday, April 3 immediately following previous meeting.

Address: New Jersey District Office, Walpack, New Jersey 07881.

Congressional Listing for Delaware Water Gap NRA

Honorable Jon Corzine, United States Senate, Washington, DC 20510.
Honorable Robert G. Torricelli, U.S. Senate, Washington, DC 20510–3001.
Honorable Richard Santorum, U.S. Senate, SR 120 Senate Russell Office Bldg., Washington, DC 20510.
Honorable Arlen Specter, U.S. Senate, SH–530 Hart Senate Office Bldg., Washington, DC 20510–3802.
Honorable Pat Toomey, U.S. House of Representatives, Cannon House Office Bldg., Washington, DC 20515.
Honorable Don Sherwood, U.S. House of Representatives, 2370 Rayburn House Office Bldg., Washington, DC 20515–3810.
Honorable Margaret Roukema, U.S. House of Representatives, 2244 Rayburn House Office Bldg., Washington, DC 20515–3005.
Honorable Paul E. Kanjorski, 2353 Rayburn House Office Building, S. Capitol Street & Independence Avenue, SW., Washington, DC 20515.
Governor of Pennsylvania, State Capitol, Harrisburg, PA 17120.
Governor of New Jersey, State House, Trenton, NJ 08625.

The agenda for this meeting will consist of the annual Commission meeting and election of officers for 2003–2004.

SUPPLEMENTARY INFORMATION: The Delaware Water Gap National Recreation Area Citizen Advisory Commission was established by Public Law 100–573 to advise the Secretary of the Interior and the United States Congress on matters pertaining to the management and operation of the Delaware Water Gap National Recreation Area, as well as on other matters affecting the recreation area and its surrounding communities.

FOR FURTHER INFORMATION CONTACT: Superintendent, Delaware Water Gap National Recreation Area, Bushkill, PA 18324, 570–588–2418.

Dated: October 9, 2002.

William G. Laitner,

Superintendent.

[FR Doc. 02–30488 Filed 12–2–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Museum of African American History and Culture Plan for Action Presidential Commission; Meeting

AGENCY: National Park Service.

ACTION: Notice of meeting.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix, that the National Museum of African American History and Culture Plan for Action Presidential Commission will meet December 3 and 4, 2002, at The Washington Court Hotel, 525 New Jersey Avenue, NW., Washington, DC. On December 3, the Commission will convene at 7:30 a.m., EST, and adjourn at 5:15 p.m., EST. December 4, the Commission will convene at 7:30 a.m., EST and adjourn at 1:30 p.m., EST.

December 3, the Commission will receive and discuss reports from its Executive Committee and Committees on Mission Role and Vision; Site and Building; Public Relations and Legislation; Fundraising, Finance and Budget; and Governance and Organization.

December 4, the Commission will be briefed regarding information gathering town hall meetings held to date, the White House interim report analysis, and the historical retrospective of the 1929 National Memorial Commission.

The Commission meeting is open to the public. Space and facilities to accommodate the public are limited and attendees will be accommodated on a first-come basis.

Due to an unintentional misrouting of this notice during processing within the National Park Service, the notice could not be published at least 15 days prior

to the meeting dates. The National Park Service regrets this error, but is compelled to hold the meeting as scheduled because of the significant sacrifice re-scheduling would require of Commission members who have adjusted their schedules to accommodate the proposed meeting dates, and the high level of anticipation by all parties who will be affected by the outcome of the Commission's actions.

Assistance to Individuals with Disabilities at the Public Meeting

The meeting site is accessible to individuals with disabilities. If you plan to attend and will need an auxiliary aid or service to participate in the meeting (*e.g.*, interpreting service, assistive listening device, or materials in an alternative format), notify the contact person listed in this notice at least two weeks (2 weeks) before the scheduled meeting date. Attempts will be made to meet any request(s) we receive after that date, however we may not be able to make the requested auxiliary aid or service available because of insufficient time to arrange for it.

Anyone may file with the Commission a written statement concerning the establishment of a National Museum for African American History and Culture. The Commission may also permit attendees to address the assembled Commission, but may restrict the length of the presentations, as necessary to allow the Commission to complete its agenda within the allotted time.

Anyone who wishes further information concerning the meeting, or who wishes to Staff to the Commission, National Museum of African American History and submit a written statement, may contact George S. McDonald, Project Manager, Culture, National Park Service, 1849 C Street, NW., Washington, DC 20240, telephone (202) 208–4227.

Draft minutes of the meeting will be available for public inspection approximately 12 weeks after the meeting, in room 2012, Main Interior Building, 1849 C Street, NW., Washington, DC.

Dated: November 20, 2002.

George S. McDonald,

Project Manager, Staff to the National Museum of African American History and Culture Plan for Action Presidential Commission.

[FR Doc. 02–30491 Filed 12–2–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Immigration and Naturalization Service, DOJ.

ACTION: 30-day notice of information collection under review: INS case status service online (File No. OMB–33).

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The INS published a notice in the **Federal Register** on August 13, 2002 at 67 FR 52746. The notice allowed for a 60-day public review and comment period on a proposed new information collection. The INS received one comment regarding assisting the INS in realizing its case management objectives relative to the proposed Case Status Service Online system. The INS has reviewed the comment and maintains the efficacy of the current system.

The purpose of this notice is to allow an additional 30 days for public comment to satisfy the requirements of the Paperwork Reduction Act. Comments are encouraged and will be accepted until January 2, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, 725–17th Street, NW., Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* New information collection.

(2) *Title of the Form/Collection:* INS Case Status Service Online.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* No Agency Form Number (File No. OMB–33); National Customer Service Center, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals are Households. The INS proposes to permit the requestor to look up status by entering on a Web site the receipt number of the submitted action.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,000,000 responses at 4.5 minutes (.075 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 75,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Ste. 1600, Washington, DC 20530.

Dated: November 25, 2002.

Stephen R. Tarragon,

Acting Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–30492 Filed 12–2–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

November 25, 2002.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1955 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Marlene Howze at (202) 693–4158 or Email *Howze_Marlene@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ESA, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395–7316, within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Employment Standards Administration (ESA).

Title: Application for Federal Certificate of Age,

OMB Number: 1215–0083.

Affected Public: Business or other for-profit; individuals or households; not-for profit institutions; farms; and State, local or tribal government.

Frequency: On occasion.

Number of Respondents: 10.

Number of Annual Responses: 10.

Estimated Time Per Response: 10 minutes.

Total Burden Hours: 2.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: Section 3(1) of the Fair Labor Standards Act (FLSA) provides that an employer may protect against unwitting employment of oppressive child labor by obtaining a certificate of age certifying that a youth meets the FLSA minimum age requirements. Section 11(c) of the FLSA requires that all employers covered by the Act make, keep and preserve records of wages, hours and other conditions and practices of employment with respect to their employees. Form WH–14 is an application for a Federal Certificate of Age. Without the information provided with the application, there would be insufficient proof of age to issue a certificate.

Ira L. Mills,

Department Clearance Officer.

[FR Doc. 02–30594 Filed 12–2–02; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Employment and Training Administration

Solicitation for Grant Applications (SGA) Senior Community Service Employment Program Grants for PY 2003—Amendment

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice; amendments to the SGA.

SUMMARY: The Employment and Training Administration published a document in the November 8, 2002 **Federal Register** (67 FR 68178), concerning the availability of grant funds for the national grants portion of the Senior Community Service Employment Program (SCSEP). The document is being amended to reflect several technical changes as well as provide some clarifications.

The following amendments apply to this SGA:

FOR FURTHER INFORMATION CONTACT: Questions should be addressed to Lorraine Saunders, Division of Federal Assistance, phone (202) 693–3301 or Fax (202) 693–2879. (These are not toll free numbers). All inquiries should include the new SGA number (DFA–03–101), a contact name, fax number, and phone number.

I. G. Submission of Proposals

Electronic Applications. Due to the erratic mail delivery in the Washington, DC area, in addition to using the U.S. Postal Service or overnight delivery services, applicants have the option of submitting their applications via e-mail to *SCSEPSolicitation@doleta.gov.* E-mailed applications must be followed up with a hard copy of the SF–424 with original signature. Applications should follow the instructions in the original publication.

II. A. Eligible Applicants

(1) General National Grant Funds

Applications for general SCSEP national grant funds will be accepted from nonprofit organizations, including community- and faith-based organizations; Federal public agencies; and tribal organizations that can administer an effective program in accordance with section 502(b)(1) of the OAA, and which have a familiarity with the areas and populations to be served and have the capacity to administer multi-State programs.

Any eligible entity may apply for one or more locations within a State or among several States. An application that is for positions solely in one State will not be rejected for that reason, as long as it meets the other requirements of this SGA. Being ''capable'' of administering multi-State programs allows the Department to negotiate with successful applicants to ensure that contiguous locations that did not receive a proposal are served as described in the SGA. It also ensures that participants in locations that did not receive a proposal do not experience a disruption in services.

It is not the Department's intent to open the national grants portion of funds to the States, State agencies, or local governments. State grantees will continue to receive funds through the distribution of funding under the legislation.

III. A. Program Components

The Department also intends to hold informational conferences for prospective applicants for all interested entities that want to learn more about the program and the competition process. Locations and dates for these conferences are as follows:

Washington, DC—December 4, 2002
St. Louis, Missouri—December 10, 2002
San Francisco, California—December 12, 2002

As details become available, additional information on conferences may be obtained from the SCSEP Web site at *http://wdsc.doleta.gov/seniors.*

Signed at Washington, DC, this 26th day of November, 2002.

R. Lance Grubb,

Director, Office of Grants and Contracts Management.

[FR Doc. 02–30480 Filed 12–2–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Lykens Coal Company (B & H)

[Docket No. M–2002–090–C]

Lykens Coal Company, 140 Deerlane, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.1400 (Hoisting equipment; general) to its (I.D. No. 36–08830) located in Schuylkill County, Pennsylvania. The petitioner proposes to use a slope conveyance (gunboat) for transporting persons without installing safety catches or other no less effective devices. The petitioner would instead use increased rope strength and secondary safety rope connections in place of such devices. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

2. Perry County Coal Corporation

[Docket No. M–2002–091–C]

Perry County Coal Corporation, 1845 S. KY Hwy 15, Hazard, Kentucky 41702 has filed a petition to modify the application of 30 CFR 75.350 (Air courses and belt haulage entries) to its E4–1 Mine (I.D. No. 15–18565) located in Perry County, Kentucky. The petitioner proposes to use belt air to ventilate active working places. The petitioner proposes to install a carbon monoxide monitoring system as an early warning fire detection system in all belt entries used to course intake air to a working place. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

3. Mountain Side Coal Company

[Docket No. M–2002–092–C]

Mountain Side Coal Company, RD 3 Box 142D, Sunbury, Pennsylvania 17801 has filed a petition to modify the application of 30 CFR 49.2 (Availability of mine rescue teams) to its Mountain Side Mine (I.D. No. 36–09108) located in Northumberland County, Pennsylvania. The petitioner requests a modification of the standard to permit the reduction of two mine rescue teams with five members and one alternate each, to two mine rescue teams of three members with one alternate for either team. The petitioner asserts that application of the existing standard would result in a diminution of safety to the miners and members of the rescue team and that the proposed alternative method would provide at least the same measure of protection as the existing standard. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

4. Mountain Side Coal Company

[Docket No. M–2002–093–C]

Mountain Side Coal Company, RD 3, Box 142D, Sunbury, Pennsylvania 17801 has filed a petition to modify the application of 30 CFR 75.335 (Construction of seals) to its Mountain Side Mine (I.D. No. 36–09108) located in Northumberland County, Pennsylvania. The petitioner proposes to use wooden materials of moderate size and weight due to the difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings; to accept a design criteria in the 10 psi range; and to permit the water trap to be installed in the gangway seal and sampling tube in the monkey seal for seals installed in pairs. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

5. Mountain Side Coal Company

[Docket No. M–2002–094–C]

Mountain Side Coal Company, RD 3, Box 142D, Sunbury, Pennsylvania 17801 has filed a petition to modify the application of 30 CFR 75.1100 (Quantity and location of firefighting equipment) to its Mountain Side Mine (I.D. No. 36–09108) located in Northumberland County, Pennsylvania. The petitioner requests a modification of the standard to permit use of only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage equipped with three (3) ten quart pails is not practical. The petitioner proposes to use two (2) portable fire extinguishers near the slope bottom and an additional portable fire extinguisher within 500 feet of the working face for equivalent fire protection for the Mountain Side Mine. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

6. Mountain Side Coal Company

[Docket No. M–2002–095–C]

Mountain Side Coal Company, RD 3, Box 142D, Sunbury, Pennsylvania 17801 has filed a petition to modify the application of 30 CFR 75.1200(d) & (i) (Mine map) to its Mountain Side Mine (I.D. No. 36–09108) located in Northumberland County, Pennsylvania. The petitioner proposes to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 foot intervals of advance from the intake slope; and to limit the required mapping of the mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100-foot limit through rock tunnels. The petitioner asserts that due to the steep pitch encountered in mining anthracite coal veins, contours provide no useful information and their presence would make portions of the map illegible. The petitioner further asserts that use of cross-sections in lieu of contour lines has been practiced since the late 1800's thereby providing critical information relative to the spacing between veins and proximity to other mine workings which fluctuate considerably. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

7. Mountain Side Coal Company

[Docket No. M–2002–096–C]

Mountain Side Coal Company, RD 3, Box 142D, Sunbury, Pennsylvania 17801 has filed a petition to modify the application of 30 CFR 75.1202 and 75.1202–1(a) (Temporary notations, revisions, and supplements) to its Mountain Side Mine (I.D. No. 36–09108) located in Northumberland County, Pennsylvania. The petitioner proposes to revise and supplement mine maps annually instead of every 6 months as required, and to update maps daily by hand notations. The petitioner also proposes to conduct surveys prior to commencing retreat mining and whenever either a drilling program

under 30 CFR 75.388 or plan for mining into inaccessible areas under 30 CFR 75.389 is required. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

8. Consolidation Coal Company

[Docket No. M–2002–097–C]

Consolidation Coal Company, Consol Energy, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.364(b)(2) (Weekly examination) to its Robinson Run No. 95 Mine (I.D. No. 46–01318) located in Marion County, Pennsylvania. The petitioner proposes to establish check points 3W–1 and 3W–2 to measure the quality and quantity of air at the inlet of the air course area where roof conditions are deteriorating. The petitioner states that due to the deteriorating conditions in the affected area, traveling the area in its entirety would be unsafe. The petitioner further states that the check points and all approaches to the check points would be maintained in safe condition at all times, and a certified person will conduct tests for methane and the quantity of air at each check point on a weekly basis and place his/her initials, date, and time in a record book that would be kept on the surface and made available for inspection by interested persons. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

9. Mountain Side Coal Company

[Docket No. M–2002–098–C]

Mountain Side Coal Company, RD 3, Box 142D, Sunbury, Pennsylvania 17801 has filed a petition to modify the application of 30 CFR 75.1400 (Hoisting equipment; general) to its Mountain Side Mine (I.D. No. 36–09108) located in Northumberland County, Pennsylvania. The petitioner proposes to use a slope conveyance (gunboat) for transporting persons without installing safety catches or other no less effective devices. The petitioner would instead use increased rope strength and secondary safety rope connections in place of such devices. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

10. The New Coal Company, Inc.

[Docket No. M–2002–099–C]

The New Coal Company, Inc., P.O. Box 369, Harlan, Kentucky 40831 has filed a petition to modify the application of 30 CFR 77.1607(cc) (Loading and hauling equipment; operation) to its Dayhoit Tipple Mine (I.D. No. 15–10391) located in Harlan County, Kentucky. The petitioner proposes to install locked gates instead of emergency stop devices or cords at ungarded conveyors with walkways to eliminate any entrance to these conveyors. The petitioner states that only the supervisor will have a key to unlock the gates, that access to the conveyors will be for repairs only, and the conveyors will be shut off and the power locked out before the gates are unlocked. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

11. Highland Mining Company

[Docket No. M–2002–100–C]

Highland Mining Company, 1970 Barrett Court, P.O. Box 1990, Henderson, Kentucky 42419–1990 has filed a petition to modify the application of 30 CFR 75.503 (Permissible electric face equipment; maintenance) and 30 CFR 18.41(f) (Plug and receptacle-type connectors) to its Highland 11 Mine (I.D. No. 15–18480) located in Union County, Kentucky. The petitioner proposes to use a spring-loaded locking device on battery plug connectors on mobile battery-powered equipment to prevent the threaded ring securing the battery plugs to the battery receptacles from unintentional loosening, and attach locking device brackets to the battery receptacles to prevent the loss of the brackets. The petitioner will install a warning tag that states ''Do Not Disengage Under Load,'' on all battery plug connectors and provide instructions on the safe practices and provisions to all persons who operate or maintain the battery-powered machines. The petitioner further states that the training plan for the mine will be revised to specify initial and refresher training for use of the spring-loaded devices. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

12. Oxbow Mining, LLC

[Docket No. M–2002–101–C]

Oxbow Mining, LLC, P.O. Box 535, 3737 Highway 133, Somerset, Colorado 81434 has filed a petition to modify the application of 30 CFR 75.1909(b)(6) (Nonpermissible diesel-powered equipment; design and performance requirements) to its Elk Creek Mine (I.D. No. 05–04674) located in Gunnison County, Colorado. The petitioner proposes an alternate method in lieu of front wheel brakes on the Getman Roadbuilder, S/N 6718, diesel grader used at the Elk Creek Mine. The petitioner proposes to operate its diesel grader at a maximum speed of 10 miles per hour or less, to train all grader operators to lower the moldboard (grader blade) for additional stopping capability in emergencies, and on how to recognize appropriate levels of speed for different road conditions and slopes. The petitioner states that its alternate method would not be implemented until all grader operators have been trained, and the diesel grader would not be put into service until MSHA has inspected the equipment for compliance. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

13. Lafarge Corporation

[Docket No. M–2002–005–M]

Lafarge Corporation, 2200 Courtney & Atherton Road, Sugar Creek, Missouri 64050 has filed a petition to modify the application of 30 CFR 56.12016 (Work on electrically-powered equipment) to its Sugar Creek Cement Plant (I.D. No. 23–00158) located in Jackson County, Missouri. The petitioner requests a waiver from the existing standard so that neither signatures nor warning notices would be required at the Lafarge Mine. The petitioner proposes to provide each employee with specifically designated locks for lockout that would be engraved with the employee's name. The employee will have the only key and the locks will be identified by color. The petitioner states that unlike a tag or sign, the engraved name would not be accidentally removed or become unreadable. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

14. Lafarge Corporation

[Docket No. M–2002–006–M]

Lafarge Corporation, 2200 Courtney & Atherton Road, Sugar Creek, Missouri 64050 has filed a petition to modify the application of 30 CFR 56.12017 (Work on power circuits) to its Sugar Creek Cement Plant (I.D. No. 23–00158) located in Jackson County, Missouri. The petitioner requests a waiver from the existing standard so that warning signs would not be required at the Lafarge Mine. The petitioner proposes to provide each employee with specifically designated locks for lockout that would be engraved with the employee's name. The employee will have the only key

and the locks will be identified by color. The petitioner states that unlike a tag or sign, the engraved name would not be accidentally removed or become unreadable. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

15. Lafarge Corporation

[Docket No. M–2002–007–M]

Lafarge Corporation, 2200 Courtney & Atherton Road, Sugar Creek, Missouri 64050 has filed a petition to modify the application of 30 CFR 57.12016 (Work on electrically-powered equipment) to its Sugar Creek Underground Limestone Mine (I.D. No. 23–02171) located in Jackson County, Missouri. The petitioner requests a waiver from the existing standard so that neither signatures nor warning notices would be required at the Lafarge Mine. The petitioner proposes to provide each employee with specifically designated locks for lockout that would be engraved with the employee's name. The employee will have the only key and the locks will be identified by color. The petitioner states that unlike a tag or sign, the engraved name would not be accidentally removed or become unreadable. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

16. Lafarge Corporation

[Docket No. M–2002–008–M]

Lafarge Corporation, 2200 Courtney & Atherton Road, Sugar Creek, Missouri 64050 has filed a petition to modify the application of 30 CFR 57.12017 (Work on power circuits) to its Sugar Creek Underground Limestone Mine (I.D. No. 23–02171) located in Jackson County, Missouri. The petitioner requests a waiver from the existing standard so that warning signs would not be required at the Lafarge Mine. The petitioner proposes to provide each employee with specifically designated locks for lockout that would be engraved with the employee's name. The employee will have the only key and the locks will be identified by color. The petitioner states that unlike a tag or sign, the engraved name would not be accidentally removed or become unreadable. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to *comments@msha.gov,* or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 1100 Wilson Boulevard, Room 2352, Arlington, Virginia 22209. All comments must be postmarked or received in that office on or before January 2, 2003. Copies of these petitions are available for inspection at that address.

Dated at Arlington, Virginia this 26th day of November 2002.

Marvin W. Nichols, Jr.,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 02–30493 Filed 12–2–02; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR 1218–0New1 (2003)]

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Construction Project Survey

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Occupational Safety and Health Administration (OSHA) is soliciting comments concerning a proposed new information collection request entitled Construction Project Survey. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before February 3, 2003. The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Suggest ways to minimize the burden of collection of information on those who are to respond, such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Comments are to be submitted to the Docket Office, Docket No. ICR 1218–0New1 (2003), U.S. Department of Labor, Room N–2625, 200 Constitution Ave., NW., Washington, DC 20210, telephone (202) 693–2350. Written comments limited to 10 pages or less in length may be transmitted by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Dave Schmidt, Office of Statistics, Occupational Safety and Health Administration, U.S. Department of Labor, room N3644, 200 Constitution Avenue, NW., Washington, DC 20210, telephone: (202) 693–1886. Copies of the referenced information collection request are available for inspection and copying in the Docket Office and will be mailed to persons who request copies by telephoning Dave Schmidt at (202) 693–1886 or Todd Owen at (202) 693–2444. For electronic copies of the OSHA Data Initiative information collection request, contact OSHA's Web page on the Internet at *http://www.osha-slc.gov/OCIS/Info_coll.html.*

SUPPLEMENTARY INFORMATION:

I. Background

OSHA proposes to collect occupational injury and illness data from general contractors at selected construction projects. The agency will collect this information from up to 2,500 employers. The collection of data will span the lifetime of the construction project. Participation in this data collection will be on a voluntary basis. OSHA will ask the general contractors to provide the average employment, hours worked, and general information pertaining to the construction project and detailed information pertaining to each work-related injury and illness that occurs at the construction project.

OSHA will compile the data, generate injury and illness rates by project type, and develop profiles of the relative hazards of various construction types. The agency will use the aggregate rates and profiles mainly to guide its future outreach and enforcement efforts towards the project types with the most significant hazards identified by the data. This collection will provide OSHA with data on illnesses and injuries that are associated with distinct types of construction activity, with the various phases of construction, and with the methods, materials, and hazards that are common to those types of work. With this data, OSHA will obtain a measure of injuries and illnesses that affect all employees—regardless of employer—on a common construction project. OSHA could then target its resources to projects with a greater potential for illness and injuries by weighting the selection of types of projects by their relatives degree of hazardousness.

II. Current Actions

This notice requests public comment pertaining to OMB approval of the paperwork requirements for the Construction Project Survey.

Type of Review: New collection.

Agency: Occupational Safety and Health Administration.

Title: Construction Project Survey.

OMB Number: 1218–XXXX.

Agency Number: ICR 1218–0New1 (2003).

Affected Public: Business or other for-profit.

Cite/Reference/Form/etc: Construction Project Survey Form.

Total Respondents: 2,500.

Frequency: Recordkeeping.

Average Time per Response: 3 hours.

Estimated Total Burden Hours: 7,500 hours.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: November 26, 2002.

John L. Henshaw,

Assistant Secretary.

[FR Doc. 02–30581 Filed 12–2–02; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL SCIENCE FOUNDATION

Emergency Clearance; Public Information Collection Requirements Submitted to the Office of Management and Budget; Notice

AGENCY: National Science Foundation.

ACTION: Emergency clearance: public information collection requirements submitted to the Office of Management and Budget (OMB).

SUMMARY: The National Science Foundation (NSF) is announcing plans to request emergency approval of this collection. In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), we are providing an opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting that OMB approve clearance of this collection for no longer than six months.

DATES: Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted below, comments on these information collection and record keeping requirements must be received by the designees referenced below by December 26, 2002

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 295, Arlington, VA 22230, or by e-mail to *splimpto@nsf.gov,* and Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503. Attn: Stuart Shapiro, NSF Desk Officer.

COMMENTS: Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

We are, however, requesting an emergency review of the information collection referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR part 1320. When we have received approval, we will begin the process for regular approval.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230; telephone (703) 292–7556; or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: *Title:* Survey of Research and Development Expenditures at Universities and Colleges: Fiscal Year 2002.

OMB Approval Number: OMB 3145–0100.

Expiration Date: April 30, 2002.

Use of the Information: This survey is conducted as an annual census of about 610 academic institutions and their 16 Federally-funded research and development centers. NSF's Division of Science Resources Statistics designs, supports, directs and administers periodic surveys and other data collections, including R&D surveys. Recently, coverage of (the Survey of Research and Development Expenditures at Universities and Colleges, *http://www.nsf.gov/sbe/srs/rdexp/start.htm*) was expanded to collect information on R&D about each of the Nation's 36 Federally-funded R&D centers, whether administered by universities (16), industrial firms (4), or nonprofit organizations (16). (As directed under the Federal Acquisition Regulations recorded in the **Federal Register** ''35.017–6 Master list of FFRDCs, [t]he National Science Foundation (NSF) maintains a list of FFRDCs. Primary sponsors will provide information on each FFRDC, including sponsoring agreements, mission statements, funding data, and type of R&D being performed, to the NSF upon its request for such information.'' The Division of Science Resources Statistics (SRS) maintains the Master FFRDC List, and thus fulfills this responsibility of NSF's as well. * * *

The academic institutions account for over 95 percent of the Nation's academic R&D funds. This survey has

provided continuity of statistics since 1954 on R&D expenditures by source of funds and by science & engineering (S&E) field, with separate data requested on current fund expenditures for research equipment by S&E field. Statistics from the survey are published in NSF's annual publication series Academic Science and Engineering R&D Expenditures and are available electronically on the World Wide Web.

The survey will be submitted electronically primarily to the administrators at the Institutional Research Offices. To minimize burden and provide for security, each institution is provided with their institutional code and password. Files are pre-loaded with the institution's previous year's data, instructions, help menus, and a complete program for editing and trend checking. A link is provided to print a complete pdf survey form. Respondents are encouraged to submit their response electronically via the web. Approximately 95% responded via the web and only 15 used other means to submit their data (telephone, paper, email) to this voluntary survey in FY 2001. A total response rate of 95.6% was obtained. Burden estimates are as follows:

Years	Doc-torate-granting burden hours	Masters-granting burden hours	Bachelors degree or below burden hours
FY 1999	29.3	13.0	7.4
FY 2000	28.7	12.0	10.4
FY 2001	30.2	11.9	9.0

Dated: November 26, 2002.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 02–30526 Filed 12–2–02; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND PLACE: 9:30 a.m., Tuesday, December 10, 2002.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza SW., Washington, DC 20594.

STATUS: The One Item is Open to the Public.

MATTER TO BE CONSIDERED:

7263B Aviation Accident Report—Loss of control and impact with Pacific Ocean, Alaska Airlines flight 261, McDonnell Douglas MD–83, N963AS, about 2.7 miles north of Anacapa Island, California, January 31, 2000.

News Media Contact: Telephone: (202) 314–6100. Individuals requesting specific accommodations should contact Ms. Carolyn Dargan at (202) 314–6305 by Friday, December 6, 2002.

FOR MORE INFORMATION CONTACT: Vicky D'Onofrio, (202) 314–6410.

Dated: November 29, 2002.

Vicky D'Onofrio,

Federal Register Liaison Officer.

[FR Doc. 02–30775 Filed 11–29–02; 2:30 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

DATE: Weeks of December 2, 9, 16, 23, 30, 2002, January 6, 2003.

PLACE: Commissioner's Conference Room, 11555 Rockville Pike, Rockville, Maryland.

MATTERS TO BE CONSIDERED:

Week of December 2, 2002

Wednesday, December 4, 2002

8:45 a.m.

Discussion of security issues (closed-Ex. 1)

10 a.m.

Briefing on decommissioning bankruptcy issues (closed-Ex. 4&9)

Week of December 9, 2002—Tenative

There are no meetings scheduled for the week of December 9, 2002.

Week of December 16, 2002—Tenative

Tuesday, December 17, 2002

9:30 a.m.

Briefing on policy options and recommendations for revising the NRC's process for handling discrimination issues (public meeting) (contact: Ho Nieh, 301–415–1721)

This meeting will be webcast live at the Web address—*www.nrc.gov.*

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.

Week of December 30, 2002—Tentative

There are no meetings scheduled for the week of December 30, 2002.

Week of January 6, 2003—Tentative

There are no meetings scheduled for the week of January 6, 2003.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meeting call (recording)—(301) 415–1292. Contact persons 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 the 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 27, 2002.

R. Michelle Schroll,

Acting Technical Coordinator, Office of the Secretary.

[FR Doc. 02–30703 Filed 11–29–02; 8:45 am]

BILLING CODE 7590–01–M

POSTAL RATE COMMISSION

[Order No. 1353]

Petition Seeking a Proceeding

AGENCY: Postal Rate Commission.

ACTION: Notice and order on petition seeking a proceeding.

SUMMARY: A petition has been filed seeking review of the jurisdictional status of numerous services offered by the Postal Service, such as First Class Phone Cards and Returns@ease. The petition also seeks, for services deemed non-jurisdictional, development of accounting and reporting rules. Although formal action on the petition has been deferred pending completion of a related Postal Service assessment, the Commission is soliciting comments from the public.

DATES: Submit comments by January 30, 2003.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system, which may be accessed at *http://www.prc.gov.* See

SUPPLEMENTARY INFORMATION for further filing information.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820.

SUPPLEMENTARY INFORMATION: On October 15, 2002, Consumer Action (CA), a nonprofit membership-based organization based in San Francisco, California, filed a petition requesting the Commission to initiate proceedings concerning fourteen (14) services (or products) offered by the Postal Service to the public.[1] In support of its petition, CA incorporates by reference a letter it co-authored with the Office of the Consumer Advocate (OCA) that provides the petitioner's legal argument and the substantive and procedural relief requested.[2] In their joint letter, CA and OCA request the Commission to institute a proceeding: (1) To review and determine whether the enumerated services are subject to the Commission's rate and classification jurisdiction under §§ 3622 and 3623 of the Postal Reorganization Act; and (2) if some services are not subject to the Commission's jurisdiction, to establish new accounting and reporting rules to ensure a complete separation of ''non-jurisdictional (domestic)'' costs and revenues from those of jurisdictional services.[3]

Reasons for Deferring Formal Action

During the Commission's consideration of the petition, the Chairman received a letter from the Chairman of the Board of Governors noting, inter alia, that the petition had been filed, that the Board viewed its assertions very seriously, and that the Postal Service currently is conducting an evaluation of what is characterized as its ''non-postal service offerings.''[4] Chairman Rider expressed the hope that, prior to addressing the request for a formal proceeding, the Commission would afford the Postal Service an opportunity to comment on the issues and further that it first be able to complete its internal review.[5] It is anticipated that the review will be completed by early January 2003.[6]

The petition and all related correspondence are available on the Commission's Web site, *http://www.prc.gov.* On the Commission's home page, this material can be accessed by clicking on ''Contents'' and then either on ''Docketed Cases & Matters,'' or on ''Pending Cases & Matters.'' It can be found under ''Other Matters,'' where it is listed separately.

Taking into consideration both the representations in Chairman Rider's letter and the lack of any statutorily imposed deadlines, the Commission finds it appropriate to accede to the request to defer action on the petition pending completion of the Postal Service's internal review. The brief deferral should not prejudice the petitioner. Moreover, the scope of the issues raised may be significantly clarified by the results of the Postal Service's review, which, it is indicated, will ''bear substantially on the representations in the petition.''[7]

Comments

In the interim, interested persons may review the petition and advise the Commission on the most appropriate way to proceed. Comments are due by no later than January 30, 2003.

Ordering Paragraphs

It is ordered:

1. Notice is hereby given of the petition of Consumer Action requesting that the Commission institute proceedings to (1) review the jurisdictional status of 14 specified services and (2) establish rules to require a full accounting of the costs and revenues of non-jurisdictional services, filed October 15, 2002.

2. Comments from interested persons concerning how the Commission should proceed with the petition are due no later than January 30, 2003.

3. The Secretary shall arrange for publication of this notice in the **Federal Register**.

Additional Note on Filing Procedure

The comment period on the joint petition coincides with a formal transition from rules of practice based on traditional hard copy filing, with an electronic filing option, to mandatory use of the Commission's Filing Online system, which can be accessed via *http://www.prc.gov.* See Order No. 1349 in Docket No. RM2002–1 (67 FR 67552), recently-adopted 39 CFR § 3001.9. A User's Guide to the new filing system is also available on the Commission's Web site. The effective date of the switch to mandatory electronic filing is January 7, 2003. Prior to that date, those wishing to comment on the petition may file either hard copy or electronic submissions; on or after January 7, 2003, they should submit comments electronically.

By the Commission.

Issued November 21, 2002.

Steven W. Williams,

Secretary.

[FR Doc. 02–30539 Filed 12–2–02; 8:45 am]

BILLING CODE 7710–FW–P

[1] Petition of Consumer Action Requesting that the Commission Institute Proceedings to (1) Review the Jurisdictional Status of Fourteen Specified Services and (2) Establish Rules to Require a Full Accounting of the Costs and Revenues of Non-Jurisdictional Services, October 15, 2002 (Petition).

[2] Id. at 3. The joint letter is attached to the petition.

[3] See Joint Letter at 4; see also Petition at 1. The fourteen services identified are: Liberty Cash, Sure Money, Online Payment Services, including eBillPay, Pay@Delivery, and USPS Send Money, ePayments, NetPost CardStore, NetPost Certified Mail, Electronic Postmark, Unisite Antenna Program, Returns@Ease, Mall Package Shipment Program, First Class Phone Cards, and Retail Merchandise. CA and OCA also reserve the right to supplement the list should other such services come to light.

[4] Letter to the Honorable George A. Omas from the Honorable Robert F. Rider, Chairman of the Board of Governors, November 14, 2002, at 1 (Rider Letter). This letter and Chairman Omas's reply are posted on the Commission's Web site.

[5] Rider Letter at 2.

[6] Ibid.

[7] Id. at 1.

POSTAL SERVICE

Postage Evidencing Product Submission Procedures; Correction

AGENCY: Postal Service.

ACTION: Final notice of procedures; correction.

SUMMARY: The Postal Service is correcting an error in the printing of the final product submission procedures published in the **Federal Register** November 5, 2002 (Vol. 67, No. 214, pages 67425–67430).

DATES: The procedures were effective November 5, 2002.

FOR FURTHER INFORMATION CONTACT: Wayne Wilkerson, manager, Postage Technology Management, by fax at 703–292–4050.

SUPPLEMENTARY INFORMATION: When the notice of the final Product Submission Procedures was published on November 5, 2002, several lines were inadvertently omitted from the table of Required Documentation in section 4.2 on pages 67428 to 67429. We are reprinting the final procedures here in full for reader convenience.

Product Submission Procedures for Postage Meters (Postage Evidencing Systems)

1. General Information

1.1 Independent Testing Laboratory

To receive authorization from the Postal Service to manufacture, produce, or distribute a postage meter (postage evidencing system) under 39 CFR part 501, Authorization to Manufacture and Distribute Postage Meters, the provider must obtain approval under these product submission procedures. These

procedures also apply to providers requesting approval to manufacture, produce, or distribute a product under proposed 39 CFR part 502, Authority to Produce and Distribute Postage-Evidencing Systems that Generate Information-Based Indicia (IBI) (65 FR 58689).

The provider must select an independent testing laboratory accredited by the National Institutes of Standards and Technology (NIST) under the National Voluntary Laboratory Accreditation Program (NVLAP) to conduct the detailed product review and testing required by these procedures. When the product contains a postal security device (PSD) or cryptographic module, the laboratory must be an NVLAP-accredited cryptographic module testing laboratory.

Technical documentation (section 4) and production systems (section 5) must be provided to the selected test laboratory in sufficient detail to support testing. The testing laboratory will submit an executive summary containing the information referenced in the Required Documentation table set forth in paragraph 4.2 and the results of the product evaluation directly to the Postal Service. All supporting documentation, products, PSDs and cryptographic modules, and other materials used or generated during testing will be maintained by the testing laboratory for the life of the test. At the time of product approval, the manager, Postage Technology Management (PTM), will determine the ongoing disposition of all supporting documentation, products, PSDs and cryptographic modules, and other materials used or generated during testing.

During the product's life cycle, the provider may choose to use a different laboratory. In that event, all materials used or generated during testing and product evaluation must be transferred to the new laboratory.

Upon completion of the testing, the Postal Service may require that any or all of the following categories of information be forwarded directly from the accredited laboratory to the manager, PTM:

(a) A copy of all information that the provider gives to the laboratory, including a summary of all information transmitted orally.

(b) A copy of all instructions from the provider to the testing laboratory with respect to what is and what is not to be tested.

(c) Copies of all proprietary and nonproprietary reports and recommendations generated during the test process.

(d) Written full disclosure identifying any contribution by the test laboratory to the design, development, or ongoing maintenance of the system.

1.2 Product Submission Procedures

To submit a postage meter (postage evidencing system) for Postal Service approval, the provider will complete the following steps:

(a) Submit a letter of intent (section 2).

(b) Complete and sign the nondisclosure agreements (section 3).

(c) Submit the required documentation (section 4).

(d) Submit the postage evidencing system for evaluation (section 5).

(e) Enable the Postal Service to review the provider's system infrastructure (section 6).

(f) Place the product into limited distribution for field testing (section 7), after completing any additional security testing that the Postal Service requires.

1.3 Additional Security Testing

The Postal Service may choose to use resources under direct contract to the Postal Service to support the product review for additional security testing. The activities of these resources are independent of the testing laboratory selected by the provider and must be covered by nondisclosure agreements (section 3).

1.4 Product Approval Process

When the field testing (section 7) is completed successfully, the Postal Service performs an administrative review of the test and evaluation results and, when appropriate, grants authorization to distribute the product, as described in section 8.

At each stage of the product submission process, the manager, PTM, reserves the right to terminate testing if a review shows that the system as proposed will adversely impact Postal Service processes. The provider may resubmit the product after the problems have been resolved.

The provider can avoid unnecessary delays in the review and evaluation process by testing the product thoroughly prior to submitting it to the independent testing laboratory and to the Postal Service. If the Postal Service determines that there are significant deficiencies in the product or in the required supporting materials, then the Postal Service will return the submission to the provider without reviewing it further.

2. Letter of Intent

The provider must submit a letter of intent to Manager, Postage Technology Management (PTM), United States Postal Service, 1735 N. Lynn Street, Room 5011, Arlington, VA 22209–6050. The manager, PTM, will assign a point of contact to coordinate the submission and review process. The letter of intent must be dated and must include the following:

(a) Identification (name, mailing address, e-mail address, and telephone number) of all parties involved in the proposed product, including the provider, those responsible for the product's assembly, product management, hardware/firmware/software development and testing, and any other party involved (or expected to be involved) with the design or construction of the product, including all suppliers of product components which could affect the security of Postal Service revenues.

(b) Provider's business qualifications, including proof of financial viability and proof of the provider's ability to be responsive and responsible.

(c) System concept narrative, including the provider's infrastructure that will support the product.

(d) Target Postal Service market segment the proposed system is envisioned to serve.

When there is a significant change to any aspect of the product described in the letter of intent, or of the parties involved in developing or producing the product, prior to submission of the concept of operations (section 4), the provider must revise the letter of intent and resubmit it.

3. Nondisclosure Agreements

When the Postal Service uses resources under direct contract to the Postal Service to support the product review, the provider must establish a nondisclosure agreement with these resources. These nondisclosure agreements may require extension to third-party suppliers or others identified in the letter of intent (section 2). Providers are encouraged to share copies of nondisclosure agreements provided by the Postal Service with all parties identified in the letter of intent, to ensure that these parties will execute the agreement if needed to support Postal Service review of the product. Failure to sign nondisclosure agreements, provided by the Postal Service to support review activities, might adversely affect a product submission. Questions regarding this process should be directed to the manager, PTM.

4. Technical Documentation

4.1 Introduction

The provider must submit the materials listed in the Required Documentation table. If the provider considers that a given requirement is not applicable to the product, the provider should note this in the document submission. The table is not meant to be an exhaustive list of all possible areas that need to be documented to support the evaluation of a postage meter (postage evidencing system). Ongoing advances and changes in technology and new approaches to providing postage evidencing can add other components that must be considered. The provider should submit any additional information that it considers necessary or desirable to describe the product fully. The independent testing laboratory may determine the level of detail that must be submitted to meet its test and evaluation requirements. The laboratory or the Postal Service may request additional information if needed for a complete evaluation.

Documentation must be submitted to the independent laboratory and the Postal Service as indicated in the Required Documentation table. The laboratory will prepare an executive summary and submit it to the Postal Service when required. Documentation must be in English and must be formatted for standard letter size (8.5″ × 11″) paper, except for engineering drawings, which must be folded to letter size. Where appropriate, documentation must be marked as ''Confidential.'' The document recipient will determine the number of paper copies and the format of electronic copies of each document at the time of submission based on current technology and review requirements.

The provider should schedule a meeting with PTM staff shortly after or simultaneously with the submission of technical data and the concept of operations to permit full discussion and understanding of the technical concepts being presented for evaluation. The manager, PTM, will indicate Postal Service agreement or concerns relevant to the concept, as appropriate. However, no Postal Service communication or acknowledgement of receipt of documentation or other submission is meant to imply acceptance or approval of the concept of operation, of any documentation, or of the product. Approval of the product is granted only after the product prototype has been developed and testing has been successfully completed in accordance with all requirements of these procedures.

4.2 Required Documentation

The following table details the documents that the provider must prepare. Providers are responsible for submitting any additional documentation the Postal Service may require during the product submission process. The table shows which documents must be submitted directly to the Postal Service and which must be submitted to the independent testing laboratory.

REQUIRED DOCUMENTATION

Document/section	Submit to test laboratory?	Postal Service requirement
Concept of Operations (CONOPS)		
System overview, including: • Concept overview and business model. • Postal security device (PSD) implementation, features, and components, including the digital signature algorithm. • System life cycle overview. • Adherence to industry standards, such as FIPS PUB 140–1 or 140–2 (after May 25, 2002), as required by Postal Service	Yes	Provider submits in full. Executive summary prepared by laboratory.
System design details, including: • PSD features and functions. • All aspects of key management. • Client (host) system features and functions. • Other components required for system use including, but not limited to, the proposed indicia design and label stock.	Yes	Executive summary prepared by laboratory. Laboratory report on indicium compliance with Postal Service requirements as given in the performance criteria.
Indicium Specification for Human Readable Data	No	Provider submits in full.
System life cycle, including: • Manufacturing • Postal Service certification of the system. • Production. • Distribution. • Meter licensing. • Initialization. • System authorization and installation. • Postage value download or resetting process. • System and support system audits. • Inspections. • Procedures for system withdrawal and replacement, including procedures for system malfunctions. • Procedures to destroy scrapped systems.	Yes	Provider submits in full. Executive summary prepared by laboratory.

REQUIRED DOCUMENTATION—Continued

Document/section	Submit to test laboratory?	Postal Service requirement
Finance overview, including: • Customer account management (payment methods, statements, and refunds). • Individual product finance account management (resetting or postage value download, refunds). • Daily account reconciliation (provider reconciliation, Postal Service detailed transaction reporting). • Periodic summaries (monthly reconciliation, other reporting as required by the Postal Service).	Yes	Provider submits in full. Executive summary prepared by laboratory.
Interfaces, including: • Communications and message interfaces with the Postal Service infrastructure for resetting or postage value downloads, refunds, inspections, product audits, and lost or stolen product procedures. • Communications and message interfaces with Postal Service financial functions for resetting or postage value downloads, daily account reconciliation, and refunds. • Communications and message interfaces with customer infrastructure for cryptographic key management, product audits, and inspections. • Message error detection and handling.	Yes	Provider submits in full. Executive summary prepared by laboratory.
Configuration management and detailed change control procedures for all components, including, but not limited to: • Software. • Hardware and firmware. • Indicia. • Provider infrastructure. • Postal rate change procedures. • Interfaces.	Yes	Executive summary prepared by laboratory.
Physical security	Yes	Executive summary prepared by laboratory.
Personnel/site security	Yes	Executive summary prepared by laboratory.
Update the identification of all parties involved in the proposed product as originally submitted in accordance with the letter of intent.	No	Provider submits in full.
Softeware and Documentation		
Detailed design	Yes	Executive summary prepared by laboratory.
Executable code	Yes	On request.
Source code	Yes	On request.
Operations manuals	Yes	Executive summary prepared by laboratory.
Communications interfaces	Yes	Executive summary prepared by laboratory.
Maintenance manuals	Yes	Executive summary prepared by laboratory.
Schematics	Yes	Executive summary prepared by laboratory.
Product initialization procedures	Yes	Executive summary prepared by laboratory.
Finite state machine models/diagrams	Yes	Executive summary prepared by laboratory.
Block diagrams	Yes	Executive summary prepared by laboratory.
Details of security features	Yes	Executive summary prepared by laboratory.
Description of cryptographic operations, as required by FIPS PUB 140–1 or 140–2 (after May 25, 2002), Appendix A.	Yes	Executive summary prepared by laboratory.
Test Plan		
Postal Service requirements	Yes	Executive summary prepared by laboratory.
FIPS PUB 140–1 or 140–2 (after May 25, 2002) requirements	Yes	Executive summary prepared by laboratory.
Physical security of provider's Internet server, administrative site, and firewall	Yes	Executive summary prepared by laboratory.
Security for remote administrative access and configuration control	Yes	Executive summary prepared by laboratory.
Secure distribution or transmission of software and cryptographic keys	Yes	Executive summary prepared by laboratory.
Test plan for system infrastructure: • Test parameters. • Infrastructure systems. • Interfaces. • Reporting requirements.	Yes	Executive summary prepared by laboratory.
Test plan for limited-distribution field tests: • Test parameters • System quantities • Geographic location • Test participants • Test duration • Test milestones • Systems recall plan	Yes	Executive summary prepared by laboratory.

REQUIRED DOCUMENTATION—Continued

Document/section	Submit to test laboratory?	Postal Service requirement
Provider Infrastructure Plan		
Public key infrastructure	Yes	Executive summary prepared by laboratory.
Procedures for enforcement of all provider-related, customer-related, and Postal Service-related processes, procedures, and interfaces discussed in CONOPS or required by Postal Service regulations..	Yes	Executive summary prepared by laboratory.

5. Product Submission and Testing

5.1 General Submission Requirements

The provider must submit complete production systems to the independent testing laboratory for evaluation. The laboratory will determine how many systems are needed for a complete evaluation. The provider must also provide any equipment and consumables required to use the submitted systems in the manner described in the CONOPS. The provider must also submit complete production systems, supporting equipment, and consumables directly to the Postal Service, if requested. The Postal Service may test these for compliance with Postal Service regulations and processes under section 6, System Infrastructure Testing.

5.2 Submission Requirements for Products Containing a Postal Security Device or Cryptographic Module

The NVLAP-accredited cryptographic modules testing (CMT) laboratory must evaluate all PSDs and cryptographic modules for FIPS PUB 140–1 or 140–2 certification, or equivalent, as authorized by the Postal Service. After May 25, 2002, FIPS PUB 140–2 certification will be required. The Postal Service requires that the PSD or cryptographic module receive FIPS PUB 140–1 or 140–2 certification as it is implemented. That is, the PSD or cryptographic module and the installed application must be considered as a whole in determining whether or not it receives FIPS certification. The FIPS certification of the PSD or cryptographic module is dependent on the application. Since any certification could be in question once any noncertified or untested software is installed, the PSD or cryptographic module must be certified as it will be implemented, and the accredited CMT lab must reevaluate any changes that would risk the certification.

Upon completing FIPS PUB 140–1 or 140–2 certification, or equivalent, the CMT laboratory must forward the following documentation directly to the manager, PTM:

(a) A copy of the letter of recommendation for certification of the PSD or cryptographic module that the laboratory submitted to NIST.

(b) A copy of the certificate, if any, issued by NIST for the PSD or cryptographic module.

6. System Infrastructure Testing and Provider System Security Testing

To achieve Postal Service approval of a postage evidencing system, the provider must demonstrate that the system satisfies all applicable Postal Service regulations and reporting requirements and that it is compatible with Postal Service mail processing functions and all other functions with which the product or its users interface. The tests must involve all entities in the proposed architecture, including the postage evidencing system, the provider infrastructure, the financial institution, and Postal Service infrastructure systems and interfaces. The tests may be conducted in a laboratory environment in accordance with the test plan for system infrastructure testing. Test and approval of system infrastructure functions must be completed before the postage evidencing system can be field tested under section 7. The functions to be tested include, but are not limited to, the following:

(a) Meter licensing, including license application, license update, and license revocation.

(b) System status activity reporting.

(c) System distribution and initialization, including system authorization, system initialization, customer authorization, and system maintenance.

(d) Total system population inventory, including leased and unleased systems; new system stock; and system installation, withdrawal, and replacement.

(e) Irregularity reporting.

(f) Lost and stolen reporting.

(g) Financial transactions, including cash management, individual system financial accounting, account reconciliation, and refund management.

(h) Financial transaction reporting, including daily summary reports, daily transaction reporting, and monthly summary reports.

(i) System initialization.

(j) Cryptographic key changes and public key management.

(k) Postal rate table changes.

(l) Print quality assurance.

(m) Device authorization.

(n) Postage evidencing system examination and inspection, including physical and remote inspections.

In addition to testing the system infrastructure, the Postal Service must be assured that the provider's support systems and infrastructure are secure and not vulnerable to security breaches. This will require site reviews of provider manufacturing, distribution, and other support facilities, and reviews of network security and system access controls.

7. Limited-Distribution Field Test

To achieve Postal Service approval of a postage evidencing system, the provider must demonstrate that the system satisfies all applicable Postal Service processing and interface requirements in a real-world environment. This is achieved by placing a limited number of systems in distribution for field testing. The Postal Service will determine the number of systems to be tested. The test will be conducted in accordance with the Postal Service-approved test plan for limited-distribution field testing. The purpose of the limited-distribution field test is to demonstrate the product's utility, security, audit and control, functionality, and compatibility with other systems, including mail entry, acceptance, and processing when in use. The field test will employ available communications and will interface with current operational systems to exercise all system functions.

The manager, PTM, will review the executive summary of the provider-proposed test plan for limited-distribution field testing. The review will be based on, but not limited to, the assessed revenue risk of the system, system impact on Postal Service operations, and requirements for Postal Service resources. Approval may be

based in whole or in part on the anticipated mail volume, mail characteristics, and mail origination and destination patterns of the proposed system. For systems designed for use by an individual meter user, product users engaged in field testing must be approved by the Postal Service before they are allowed to participate in the test. These participants must sign a nondisclosure/confidentiality agreement when reporting system security, audit and control issues, deficiencies, or failures to the provider and the Postal Service. This requirement does not apply to users of systems designed for public use.

8. Postage Evidencing System Approval

Postal Service approval of the postage meter (postage evidencing system) is based on the results of an administrative review of the materials and test results generated during the product submission and approval process. In preparation for the administrative review, the provider must update all documentation submitted in compliance with these procedures to ensure accuracy. When approval is granted, the Postal Service will prepare a product approval letter detailing the conditions under which the specific product may be manufactured, distributed, and used. The provider must submit the following materials for the Postal Service administrative review:

(a) Materials prepared for the Postal Service by the independent testing laboratory.

(b) The final certificate of evaluation from the NVLAP laboratory, where required.

(c) The results of system infrastructure testing.

(d) The results of field testing of a limited number of systems.

(e) The results of any other Postal Service testing of the system.

(f) The results of provider site security reviews.

9. Intellectual Property

Providers submitting postage evidencing systems to the Postal Service for approval are responsible for obtaining all intellectual property licenses that may be required to distribute their product in commerce and to allow the Postal Service to process mail bearing the indicia produced by the product.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 02–30649 Filed 12–2–02; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 12f–1, SEC File No. 270–139, OMB Control No. 3235–0128

Rule 12f–3, SEC File No. 270–141, OMB Control No. 3235–0249

Rule 24b–1, SEC File No. 270–205, OMB Control No. 3235–0194

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

• Applications for permission to reinstate unlisted trading privileges

Rule 12f–1, originally adopted in 1934 pursuant to Sections 12(f) and 23(a) of the Securities Exchange Act of 1934 (the ''Act'') and as modified in 1995, sets forth the information which an exchange must include in an application to reinstate its ability to extend unlisted trading privileges to any security for which such unlisted trading privileges have been suspended by the Commission, pursuant to Section 12(f)(2)(A) of the Act. An application must provide the name of the issuer, the title of the security, the name of each national securities exchange, if any, on which the security is listed or admitted to unlisted trading privileges, whether transaction information concerning the security is reported in the consolidated transaction reporting system contemplated by Rule 11Aa3–1 under the Act, and any other pertinent information. Rule 12f–1 further requires a national securities exchange seeking to reinstate its ability to extend unlisted trading privileges to a security to indicate that it has provided a copy of such application to the issuer of the security, as well as to any other national securities exchange on which the security is listed or admitted to unlisted trading privileges.

The information required by Rule 12f–1 enables the Commission to make the necessary findings under the Act prior to granting applications to reinstate unlisted trading privileges. This information is also made available to members of the public who may wish to comment upon the applications. Without the rule, the Commission would be unable to fulfill these statutory responsibilities.

There are currently eight national securities exchanges subject to Rule 12f–1. The burden of complying with Rule 12f–1 arises when a potential respondent seeks to reinstate its ability to extend unlisted trading privileges to any security for which unlisted trading privileges have been suspended by the Commission, pursuant to Section 12(f)(2)(A) of the Act. The staff estimates that each application would require approximately one hour to complete. Thus each potential respondent would incur on average one burden hour in complying with the rule.

The Commission staff estimates that there could be as many as eight responses annually and that each respondent's related cost of compliance with Rule 12f–1 would be $53.55, or, the cost of one hour of professional work needed to complete the application. The total annual related reporting cost for all potential respondents, therefore, is $428.40 (8 responses × $53.55/response).

• Termination or Suspension of Unlisted Trading Privileges

Rule 12f–3, which was originally adopted in 1934 pursuant to Sections 12(f) and 23(a) of the Act, as modified in 1995, prescribes the information which must be included in applications for and notices of termination or suspension of unlisted trading privileges for a security as contemplated in Section 12(f)(4) of the Act. An application must provide, among other things, the name of the applicant; a brief statement of the applicant's interest in the question of termination or suspension of such unlisted trading privileges; the title of the security; the name of the issuer; certain information regarding the size of the class of security and its recent trading history; and a statement indicating that the applicant has provided a copy of such application to the exchange from which the suspension or termination of unlisted trading privileges are sought, and to any other exchange on which the security is listed or admitted to unlisted trading privileges.

The information required to be included in applications submitted pursuant to Rule 12f–3, is intended to provide the Commission with sufficient information to make the necessary findings under the Act to terminate or suspend by order the unlisted trading privileges granted a security on a national securities exchange. Without the rule, the Commission would be

unable to fulfill these statutory responsibilities.

The burden of complying with Rule 12f–3 arises when a potential respondent, having a demonstrable bona fide interest in the question of termination or suspension of the unlisted trading privileges of a security, determines to seek such termination or suspension. The staff estimates that each such application to terminate or suspend unlisted trading privileges requires approximately one hour to complete. Thus each potential respondent would incur on average one burden hour in complying with the rule.

The Commission staff estimates that there could be as many as ten responses annually and that each respondent's related cost of compliance with Rule 12f–3 would be $53.55, or, the cost of one hour of professional work needed to complete the application. The total annual related reporting cost for all potential respondents, therefore, is $535.50 (10 responses × $53.55/response).

• Rule 24b–1: Documents To Be Kept Public By Exchanges

Rule 24b–1 requires a national securities exchange to keep and make available for public inspection a copy of its registration statement and exhibits filed with the Commission, along with any amendments thereto. Implementing the requirements of Section 24(a), the rule requires that upon Commission action granting an exchange's application for registration or exemption from registration as a national securities exchange, the exchange must make available for public inspection at its offices during reasonable business hours a copy of the registration statement and exhibits filed with the Commission (along with any amendments thereto). However, the rule exempts those portions of this information to which the exchange has filed with the Commission an objection to disclosure and when the Commission has not overruled the objection. While the rule does not specify a retention period, the exchanges generally maintain this information for five years.

There are nine national securities exchanges that spend approximately one half hour each complying with this rule, for an aggregate total compliance burden of four hours per year. The staff estimates that the average cost per respondent is $62.58 per year, calculated as the costs of copying ($13.41) plus storage ($49.17), resulting in a total cost of compliance for the respondents of $563.22.

Written 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 Commission's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549.

Dated: November 22, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30529 Filed 12–2–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Existing Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 31a–1, SEC File No. 270–173, OMB Control No. 3235–0178

Rule 18f–3, SEC File No. 270–385, OMB Control No. 3235–0441

Rule 498, SEC File No. 270–435, OMB Control No. 3235–0488

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 [44 U.S.C. 3501–3520], the Securities and Exchange Commission (''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget (''OMB'') for extension.

Rule 31a–1 [17 CFR 270.31a–1] under the Investment Company Act of 1940 (the ''Act'') is entitled ''Records to be maintained by registered investment companies, certain majority-owned subsidiaries thereof, and other persons having transactions with registered investment companies.'' Rule 31a–1 requires registered investment companies (''funds''), and every underwriter, broker, dealer, or investment adviser that is a majority-owned subsidiary of a fund, to maintain and keep current accounts, books, and other documents which constitute the record forming the basis for financial statements required to be filed pursuant to section 30 of the Act [15 U.S.C. 80a–30] and of the auditor's certificates relating thereto. The rule lists specific records to be maintained by funds. The rule also requires certain underwriters, brokers, dealers, depositors, and investment advisers to maintain the records that they are required to maintain under federal securities laws.

There are approximately 4,500 investment companies registered with the Commission, all of which are required to comply with rule 31a–1. For purposes of determining the burden imposed by rule 31a–1, the Commission staff estimates that each registered investment company is divided into approximately four series, on average, and that each series is required to comply with the recordkeeping requirements of rule 31a–1. Based on conversations with fund representatives, it is estimated that rule 31a–1 imposes an average burden of approximately 1,400 hours annually per series for a total of 5,600 annual hours per investment company. The estimated total annual burden for all 4,500 investment companies subject to the rule therefore is approximately 25,200,000 hours. Based on conversations with fund representatives, however, the Commission staff estimates that even absent the requirements of rule 31a–1, most of the records created pursuant to the rule are the type that generally would be created as a matter of normal business custom and to prepare financial statements.

Section 18(f)(1)[1] of the Act[2] prohibits registered open-end management investment companies from issuing any senior security. Rule 18f–3 under the Act[3] exempts from section 18(f)(1) a fund that issues multiple classes of shares representing interests in the same portfolio of securities (a ''multiple class fund'') if the fund satisfies the conditions of the rule. In general, each class must differ in its arrangement for shareholder services or distribution or both, and must pay the related expenses of that different arrangement.

The rule includes one requirement for the collection of information. A multiple class fund must prepare and fund directors must approve a written plan setting forth the separate arrangement and expense allocation of

[1] 15 U.S.C. 80a–18(f)(1).

[2] 15 U.S.C. 80a.

[3] 17 CFR 270.18f–3.

each class, and any related conversion features or exchange privileges (''rule 18f–3 plan'').[4] Approval of the plan must occur before the fund issues any shares of multiple classes, and whenever the fund materially amends the plan. In approving the plan, a majority of the fund board, including a majority of the fund's independent directors, must determine that the plan is in the best interests of each class and the fund as a whole.

The requirement that the fund prepare and directors approve a written rule 18f–3 plan is intended to ensure that the fund compiles information relevant to the fairness of the separate arrangement and expense allocation for each class, and that directors review and approve the information. Without a blueprint that highlights material differences among classes, directors might not perceive potential conflicts of interests when they determine whether the plan is in the best interests of each class and the fund. In addition, the plan may be useful to Commission staff in reviewing the fund's compliance with the rule.

There are approximately 516 multiple class funds.[5] Based on a review of typical rule 18f–3 plans, the Commission's staff estimates that the 516 funds together make an average of 258 responses each year to prepare and approve a written rule 18f–3 plan, requiring approximately 18.5 hours per response, and a total of 4,773 burden hours per year in the aggregate.[6] Preparation of the rule 18f–3 plan may require 11 hours of the services of an attorney or accountant, at a cost of approximately $130 per hour for professional time, and approval of the plan may require 1.5 hours of the attention of each of 5 directors, at a cost of approximately $500 per hour per director. The staff therefore estimates that the aggregate annual cost of complying with the paperwork requirements of the rule is approximately $1,336,440 ((11 hours × 1 professional × 258 responses x $130) + (1.5 hours × 5 directors × 258 responses × $500)).

[4] Rule 18f–3(d).

[5] This estimate is based on data from Form N–SAR, the semi-annual report that funds file with the Commission.

[6] The estimate reflects the assumption that each multiple class fund prepares and approves a rule 18f–3 plan every two years when issuing a new class or amending a plan (or that 258 of all 516 funds prepare and approve a plan each year). The estimate assumes that the time required to prepare a plan is 11 hours per plan (or 2,838 hours for 258 funds annually), and the time required to approve a plan is an additional 1.5 hours per director per plan (or 1,935 hours for 258 funds annually (assuming five directors per fund)).

The estimated annual burden of 4,773 hours represents an increase of 3,260.5 hours over the prior estimate of 1,512.5 hours. The increase in burden hours is attributable to more accurate estimates of the burden hours that reflect additional time spent by professionals and time spent by directors. The estimated number of multiple class funds has decreased, however, from 550 to 516.

Rule 498 of the Securities Act of 1933 [17 C.F.R. 230.498] permits open-end management investment companies (or a series of an investment company organized as a series company, which offers one or more series of shares representing interests in separate investment portfolios) to provide investors with a ''profile'' that contains a summary of key information about a fund, including the fund's investment objectives, strategies, risks and performance, and fees, in a standardized format. The profile provides investors the option of buying fund shares based on the information in the profile or reviewing the fund's prospectus before making an investment decision. Investors purchasing shares based on a profile receive the fund's prospectus prior to or with confirmation of their investment in the fund.

Consistent with the filing requirement of a fund's prospectus, a profile must be filed with the Commission thirty days before first use. Such a filing allows the Commission to review the profile for compliance with rule 498. Compliance with the rule's standardized format assists investors in evaluating and comparing funds.

It is estimated that approximately 16 initial profiles and 316 updated profiles are filed with the Commission annually. The Commission estimates that each profile contains on average 1.25 portfolios, resulting in 20 portfolios filed annually on initial profiles and 395 portfolios filed annually on updated profiles. The number of burden hours for preparing and filing an initial profile per portfolio is 25. The number of burden hours for preparing and filing an updated profile per portfolio is 10. The total burden hours for preparing and filing initial and updated profiles under rule 498 is 4,450, representing a decrease of 2,660 hours from the prior estimate of 7,110. The reduction in burden hours is attributable to the lower number of profiles actually prepared and filed as compared to the previous estimates.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study. 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.

Written comments are requested on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burden[s] of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: November 21, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30530 Filed 12–2–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–31265]

Issuer Delisting; Notice of Application of PlanetCAD, Inc. To Withdraw Its Common Stock, $.01 Par Value, From Listing and Registration on the American Stock Exchange LLC

November 26, 2002.

PlanetCAD, Inc., a Delaware corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.01 par value (''Security''), from listing and registration on the American Stock Exchange LLC (''Amex'' or ''Exchange'').

The Issuer stated in its application that it has met the requirements of Amex Rule l8 by complying with all applicable laws in effect in the state of Delaware, in which it is incorporated,

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Board of Directors (''Board'') of the Issuer unanimously approved a resolution on November 1, 2002 to withdraw the Issuer's Security from listing on the Amex and to list the Security on the OTC Bulletin Board. In making its decision to delist the Issuer's Security from the Exchange, the Board considered the Issuer's merged with Avatech Solutions, Inc. on November 19, 2002. The Issuer stated in its application that trading in the Security began on the OTC Bulletin Board at the opening of business on November 21, 2002.

The Issuer's application relates solely to the Security's withdrawal from listing on the Amex and from registration under section 12(b) of the Act [3] and shall not affect its obligation to be registered under section 12(g) of the Act.[4] Any interested person may, on or before December 20, 2002, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 02–30566 Filed 12–2–02; 8:45 am]

BILLING CODE 8010–01–P

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–25833; File No. 812–12862]

Integrity Life Insurance Company, *et al.*

November 26, 2002.

AGENCY: Securities and Exchange Commission (the ''Commission'').

ACTION: Notice of an application for an order of approval pursuant to Section 26(c) of the Investment Company Act of 1940, as amended (the ''Act'').

Applicants: Integrity Life Insurance Company (''Integrity''), Separate Account I of Integrity Life Insurance Company (''Integrity Separate Account I''), Separate Account II of Integrity Life Insurance Company (''Integrity Separate Account II''), National Integrity Life Insurance Company (''National Integrity''), Separate Account I of National Integrity Life Insurance Company (''National Integrity Separate Account I''), and Separate Account II of National Integrity Life Insurance Company (National Integrity Separate Account II'') (collectively, the ''Applicants'').

Summary of Application: Applicants seek an order approving the proposed substitution of shares of the Franklin Income Securities Portfolio for shares of the Janus Aspen Balanced Portfolio, shares of the Franklin Growth and Income Securities Portfolio for shares of the Janus Aspen Capital Appreciation and Janus Aspen Core Equity Portfolios, shares of the Franklin Mutual Shares Portfolio for shares of the Janus Aspen Strategic Value Portfolio, and shares of the Fidelity VIP Money Market Portfolio for shares of the Janus Aspen Money Market Portfolio (the ''Substitution'').

Filing Date: The application was filed on July 25, 2002 and amended on November 22, 2002.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on December 20, 2002, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, P.O. Box 740074, Louisville, Kentucky, 40202–3319.

FOR FURTHER INFORMATION CONTACT: Alison Toledo, Senior Counsel, or Lorna MacLeod, Branch Chief, at (202) 942–0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the Commission, 450 Fifth Street, NW., Washington, DC 20549–0102 (202–942–8090).

Applicants' Representations

1. Integrity is a stock life insurance company organized under the laws of Ohio. Integrity is a subsidiary of Western and Southern Life Insurance Company, a mutual life insurance company originally organized under the laws of Ohio in 1888.

2. Integrity Separate Account I was established under Ohio law in 1986. Integrity Separate Account I is registered under the Act as a unit investment trust and is used to fund variable annuity contracts issued by Integrity. Three variable annuity contracts funded by Integrity Separate Account I are affected by this application.

3. Integrity Separate Account II was established under Ohio law in 1992. Integrity Separate Account II is registered under the Act as a unit investment trust and is used to fund variable annuity contracts issued by Integrity. One variable annuity contract funded by Integrity Life Separate Account II is affected by this application.

4. National Integrity is a stock life insurance company organized under the laws of New York. National Integrity is a direct subsidiary of Integrity and an indirect subsidiary of Western and Southern Life Insurance Company.

5. National Integrity Separate Account I was established under New York law in 1986. National Integrity Separate Account I is registered under the Act as a unit investment trust and is used to fund variable annuity contracts issued by National Integrity. Three variable annuity contracts funded by National Integrity Separate Account I are affected by this application.

6. National Integrity Separate Account II was established under New York law in 1992. National Integrity Separate Account II is registered under the Act as a unit investment trust and is used to fund variable annuity contracts issued by National Integrity. One variable annuity contract funded by National Integrity Separate Account II is affected by this application (all eight variable annuities contracts affected by this application are hereinafter collectively referred to as the ''Contracts'').

7. Purchase payments under the Contracts are allocated to one or more subaccounts of the Separate Accounts. Income, gains and losses, whether or not realized, from assets allocated to the Separate Accounts are, as provided in the Contracts, credited to or charged against the Separate Accounts without

regard to other income, gains or losses of Integrity and National Integrity, as applicable. The assets maintained in the Separate Accounts will not be charged with any liabilities arising out of any other business conducted by Integrity or National Integrity, as applicable. Nevertheless, all obligations arising under the Contracts, including the commitment to make annuity payments or death benefit payments, are general corporate obligations of Integrity and National Integrity. Accordingly, all of the assets of each of Integrity and National Integrity are available to meet its obligations under its Contracts.

8. Each of the Contracts permits allocations of accumulation value to available subaccounts that invest in specific investment portfolios of underlying mutual funds. Each Contract offers between 56 and 63 portfolios. All of the Contracts offer the five portfolios of the Janus Aspen Series that are the subject of the Substitution (the ''Replaced Portfolios''). The Fidelity VIP Money Market Portfolio, which is proposed as the Replacement Portfolio for the Janus Money Market Portfolio, is also available under all of the Contracts. Before the date of the Substitution, three portfolios of the Franklin Templeton Variable Insurance Products Trust (together with the Fidelity VIP Money Market Portfolio, the ''Replacement Portfolios''), which are proposed as the Replacement Portfolios for four of the Replaced Portfolios, will be added to the Contracts as investment options. In addition, included in the Contracts are several alternative fixed interest rate options that are available to contract owners.

9. Each of the Contracts permits transfers of accumulation value from one subaccount to another subaccount at any time prior to annuitization, subject to certain restrictions and charges described below. No sales charge applies to such a transfer of accumulation value among subaccounts.

10. The Contracts permit up to twelve free transfers during any contract year. A fee of $20 may be imposed on transfers in excess of twelve transfers in a contract year. Transfers must be at least $250, or, if less, the entire amount in the subaccount from which value is to be transferred. A variety of automatically scheduled transfers are permitted without charge and are not counted against the twelve free transfers in a contract year.

11. Each of the Contracts reserves the right, upon notice to contract owners and compliance with applicable law, to add, combine or remove subaccounts, or to withdraw assets from one subaccount and put them into another subaccount, and this reserved right is disclosed in each Contract's prospectus.

12. On an ongoing basis, Integrity and National Integrity review the performance of the portfolios underlying the Contracts. During the past several years, the Replaced Portfolios have not maintained the level of performance that was the basis for their inclusion in the Contracts. These unfavorable performance records have occurred on an absolute basis, as well as relative to comparable portfolios with other investment advisers. This performance record may be attributable to certain changes that were occurring at the investment adviser to the Replaced Portfolios.

13. The poor performance results realized by the Replaced Portfolios have led to a significant decrease in Applicants' assets under management advised by Janus Capital Corporation. Since a peak of $279 million in August 2000, Applicants' assets under management in the non-money market Replaced Portfolios have decreased to $158 million as of June 30, 2002, a decline of 43%. Moreover, the Replaced Portfolios have also had net outflows for at least the past year, a situation mirrored at the Janus retail fund level. Investors withdrew $4.7 billion from the Janus retail funds during the second quarter of 2002.

14. Due to the poor performance of the Replaced Portfolios in recent years, Applicants propose the following substitutions of shares:

Replaced portfolio	Replacement portfolio
Janus Aspen Balanced Portfolio	Franklin Income Securities Portfolio.
Janus Aspen Capital Appreciation Portfolio	Franklin Growth and Income Securities Portfolio.
Janus Aspen Core Equity Portfolio	Franklin Growth and Income Securities Portfolio.
Janus Aspen Strategic Value Portfolio	Franklin Mutual Shares Portfolio.
Janus Aspen Money Market Portfolio	Fidelity VIP Money Market Portfolio.

15. In each case, shares of each class of the Replaced Portfolios will be substituted by shares of the corresponding class of the Replacement Portfolios. Therefore, service class shares of the Replaced Portfolios will be substituted by the equivalent class of shares of the Replacement Portfolios (i.e., Class 2 shares of the portfolios of the Franklin Templeton Variable Insurance Products Trust and Service Class shares of the Fidelity VIP Money Market Portfolio). In addition, in the case of three of the Replacement Portfolios whose institutional class shares are also offered under prior versions of the Contracts funded by Integrity Separate Account II and National Integrity Separate Account II, shares of the corresponding class of shares of the Replacement Portfolios will be used to replace the institutional shares of the relevant Replaced Portfolio (*i.e.*, Class 1 shares of the portfolios of the Franklin Templeton Variable Insurance Products Trust and Initial Class shares of the Fidelity VIP Money Market Portfolio).

16. Janus Capital Corporation serves as the investment adviser to each of the Replaced Portfolios. Franklin Templeton Investments serves as the investment adviser to each of the portfolios of the Franklin Templeton Variable Insurance Products Trust. Fidelity Management and Research Company serves as the investment adviser to the Fidelity VIP Money Market Portfolio. None of the Applicants are affiliated with any of the investment advisers to the Replaced or Replacement Portfolios.

17. The 2001 expenses for each of the Replaced and Replacement Portfolios are shown below in Chart A. Historical performance as of June 30, 2002 is included in Chart B.

18. The Janus Aspen Balanced Portfolio seeks long-term capital growth, consistent with capital preservation and balanced by current income. It is a diversified portfolio that pursues its objective by normally investing 40–60% of its assets in securities selected primarily for their growth potential and 40–60% of its assets in securities selected primarily for their income potential. The portfolio normally invests at least 25% of its assets in fixed-income securities.

19. The Franklin Income Securities Portfolio seeks to maximize income while maintaining prospects for capital appreciation. Under normal market conditions, the portfolio will invest in both debt and equity securities. The

portfolio seeks income by investing in corporate, foreign, and U.S. Treasury bonds. In its search for income producing growth opportunities the portfolio invests in common stocks with attractive dividend yields of companies from a variety of industries such as electric utilities, oil, gas, real estate and consumer goods.

20. The Janus Aspen Capital Appreciation Portfolio seeks long-term growth of capital. It is a non-diversified portfolio that pursues its objective by investing primarily in common stocks selected for their growth potential. The portfolio may invest in companies of any size, from larger, well-established companies to smaller, emerging growth companies.

21. The Janus Aspen Core Equity Portfolio seeks current income and long-term growth of capital. It normally emphasizes investments in common stocks, and growth potential is a significant investment consideration. The portfolio tries to provide a lower level of volatility than the S&P 500 Index. Normally, it invests at least 80% of its net assets in equity securities selected for growth potential. Eligible securities include domestic and foreign common stocks, preferred stocks, securities convertible into common stocks or preferred stock such as convertible preferred stocks, bonds, debentures, and other securities with equity characteristics.

22. The Franklin Growth and Income Securities Portfolio seeks capital appreciation with a secondary goal to provide current income. Under normal market conditions, the portfolio will invest at least 65% of its total assets in a broadly diversified portfolio of equity securities that the portfolio's manager considers to be financially strong, but undervalued by the market. The portfolio may invest in real estate investment trusts but does not intend to invest more than 15% of its assets in these trusts.

23. The Janus Aspen Strategic Value Portfolio seeks long-term growth of capital. It is a non-diversified portfolio that pursues its objective by investing primarily in common stocks with the potential for long-term growth of capital using a ''value'' approach. The ''value'' approach the portfolio manager uses emphasizes investments in companies believed to be undervalued relative to their intrinsic worth.

24. The Franklin Mutual Shares Securities Portfolio seeks capital appreciation with a secondary goal of income. Under normal market conditions the portfolio will invest at least 65% of its total assets in equity securities of companies that the manager believes are available at market prices less than their value based on certain recognized objective criteria. The portfolio currently intends to invest up to approximately 25% of its total assets in foreign investments.

25. The Janus Aspen Money Market Portfolio seeks maximum current income to the extent consistent with stability of capital. The portfolio will invest in high-quality, short-term money market instruments that present minimal credit risk. The portfolio may invest only in U.S. dollar denominated instruments.

26. The Fidelity VIP Money Market Portfolio seeks to earn a high level of current income while preserving capital and providing liquidity. It invests only in high-quality, U.S. dollar denominated money market securities of domestic and foreign issuers, such as certificates of deposit, obligations of governments and their agencies, and commercial paper and notes.

CHART A.—2001 PORTFOLIO EXPENSES

[In percent]

Portfolio	Mgmt. fee	12b-1 fee	Other expenses	Total annual operating expenses	Mgmt. fee reduction	Net total annual expenses
Service Class Shares to Class 2 or Service Class Shares:						
Janus Balanced	.65	.25	.01	.91		
Franklin Income Securities	.49	.25	.04	.78		
Janus Capital Appreciation	.65	.25	.01	.91		
Janus Core Equity	.65	.25	.40	1.30		
Franklin Growth and Income	.48	.25	.03	.76		
Janus Strategic Value	.65	.25	.70	1.60	(.10)	1.50
Franklin Mutual Shares	.60	.25	.19	1.04		
Janus Money Market	.25	.25	.09	.59		
Fidelity Money Market	.18	.25	.12	.55		
Institutional Class Shares to Initial Class or Class 1 Shares:*						
Janus Balanced	.65	.00	.01	.66		
Franklin Income Securities	.49	.00	.04	.53		
Janus Capital Appreciation	.65	.00	.01	.66		
Franklin Growth and Income	.48	.00	.03	.51		
Janus Money Market	.25	.00	.09	.34		
Fidelity Money Market	.18	.00	.10	.28		

*Applicable only to older Contracts offered by certain registration statements.

CHART B.—PORTFOLIO PERFORMANCE AS OF JUNE 30, 2002

[In percent]

Portfolio	YTD	1 year	3 year	5 year	10 year
Service Class Shares to Class 2 or Service Class Shares:					
Janus Balanced	−3.34	−4.68	0.69	10.72	N/A
Franklin Income Securities	−0.52	−2.04	4.87	5.52	8.09
Janus Capital Appreciation	−7.05	−15.90	−8.04	10.72	N/A
Janus Core Equity	−7.12	−12.63	−4.29	12.16	N/A

CHART B.—PORTFOLIO PERFORMANCE AS OF JUNE 30, 2002—Continued

[In percent]

Portfolio	YTD	1 year	3 year	5 year	10 year
Franklin Growth and Income	−4.09	−6.06	1.11	6.39	10.86
Janus Strategic Value	−9.59	−15.22	N/A	N/A	N/A
Franklin Mutual Shares	−3.89	−7.83	4.98	7.69	N/A
Janus Money Market	—	2.55	4.69	4.87	N/A
Fidelity Money Market	—	2.46	4.69	4.96	N/A
Institutional Class Shares to Initial Class or Class 1 Shares:*					
Janus Balanced	−3.19	−4.44	0.67	10.79	N/A
Franklin Income Securities	−0.46	−1.90	5.12	5.70	8.17
Janus Capital Appreciation	−6.90	−15.69	−7.45	11.16	N/A
Franklin Growth and Income	−4.02	−5.87	1.32	6.55	10.95

*Applicable only to older Contracts offered by certain registration statements.

27. The Substitution will take place at the portfolios' relative net asset values determined on the date of the Substitution in accordance with Section 22 of the Act and Rule 22c–1 thereunder with no change in the amount of any contract owner's cash value or death benefit or in the dollar value of his or her investment in any of the subaccounts. Accordingly, there will be no financial impact on any contract owner. The Substitution will be effected by having each of the subaccounts that invests in the Replaced Portfolios redeem its shares at the net asset value calculated on the date of the Substitution and purchase shares of the respective Replacement Portfolios at the net asset value calculated on the same date.

28. The Substitution will be described in supplements to the prospectuses for the Contracts (''Stickers'') filed with the Commission and mailed to contract owners. The Stickers will give contract owners notice of the Substitution and will describe the reasons for engaging in the Substitution. The Stickers will also inform contract owners with assets allocated to a subaccount investing in the Replaced Portfolios that no additional amount may be allocated to those subaccounts on or after the date of the Substitution. In addition, the Stickers will inform affected contract owners that they will have the opportunity to reallocate accumulation value:

- Prior to the Substitution from the subaccounts investing in the Replaced Portfolios, and
- For 30 days after the Substitution from the subaccounts investing in the Replacement Portfolios,

to subaccounts investing in other portfolios available under the respective Contracts, without the imposition of any transfer charge or limitation and without diminishing the number of free transfers that may be made in a given contract year.

29. The prospectuses for the Contracts, as supplemented by the Stickers, will reflect the Substitution. Each contract owner will be provided with a prospectus for the Replacement Portfolios before the Substitution. Within five days after the Substitution, Integrity and National Integrity will each send affected contract owners written confirmation that the Substitution has occurred. The confirmation will remind contract owners that they have 30 days from the date of the Substitution to make a transfer from the subaccounts investing in the Replacement Portfolios to subaccounts investing in other portfolios under the Contracts without paying a transfer charge or diminishing the number of available free transfers.

30. Integrity and National Integrity, as applicable, will pay all expenses and transaction costs of the Substitution, including all legal, accounting and brokerage expenses relating to the Substitution. No costs will be borne by contract owners. Affected contract owners will not incur any fees or charges as a result of the Substitution, nor will their rights or the obligations of the Applicants under the Contracts be altered in any way. The Substitution will not cause the fees and charges under the Contracts currently being paid by contract owners to be greater after the Substitution than before the Substitution. The Substitution will have no adverse tax consequences to contract owners and will in no way alter the tax benefits to contract owners.

31. Applicants believe that their request satisfies the standards for relief of Section 26(c) of the Act, as set forth below, because the affected contract owners will have:

(a) Contract values allocated to a subaccount invested in a Replacement Portfolio with an investment objective and policies substantially similar to the investment objective and policies of the Replaced Portfolio;

(b) In all cases the Replacement Portfolios have superior or equal performance for the three years ended June 30, 2002 to that of the Replaced Portfolios; and

(c) Total annual expenses that are lower than those of the Replaced Portfolio.

Applicants' Legal Analysis

1. Section 26(c) of the Act makes it unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission approves the substitution. The Commission will approve such a substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. The purpose of Section 26(c) is to protect the expectation of investors in a unit investment trust that the unit investment trust will accumulate shares of a particular issuer by preventing unscrutinized substitutions that might, in effect, force shareholders dissatisfied with the substituted security to redeem their shares, thereby possibly incurring either a loss of the sales load deducted from initial premium payments, an additional sales load upon reinvestment of the redemption proceeds, or both. Moreover, in the insurance product context, a contract owner forced to redeem may suffer adverse tax consequences. Section 26(c) affords this protection to investors by preventing a depositor or trustee of a unit investment trust that holds shares of one issuer from substituting for those shares the shares of another issuer, unless the Commission approves that substitution.

3. The purposes, terms and conditions of the Substitution are consistent with the principles and purposes of Section 26(c) and do not entail any of the abuses that Section 26(c) is designed to

prevent. Applicants have reserved the right to make such a substitution under the Contracts and this reserved right is disclosed in each Contract's prospectus.

4. Substitutions have been common where the substituted portfolio has investment objectives and policies that are similar to those of the eliminated portfolio, current expenses that are similar to or lower than those of the eliminated portfolio, and performance that is similar to or better than that of the eliminated portfolio.

5. In all cases the investment objectives and policies of the Replacement Portfolios are sufficiently similar to those of the corresponding Replaced Portfolios that contract owners will have reasonable continuity in investment expectations. Accordingly, the Replacement Portfolios are appropriate investment vehicles for those contract owners who have contract values allocated to the Replaced Portfolios.

6. In addition, the Replacement Portfolios have lower annual expenses than the Replaced Portfolios and superior or equal performance for the three years ended June 30, 2002. Integrity and National Integrity will not increase separate account fees and charges of the subaccounts that invest in the Replacement Portfolios for those contract owners who were contract owners on the date of the Substitution for a period of one year from the date of the Substitution except to the extent of any increase in premium or similar taxes charges by a state or other locality.

7. Moreover, Integrity and National Integrity will not receive, for three years from the date of the Substitution, any direct or indirect benefit from the Replacement Portfolios, their advisers or underwriters, or from affiliates of the Replacement Portfolios, their advisers or underwriters, in connection with the assets attributable to the Contracts affected by the Substitution, at a higher rate than Integrity and National Integrity received from the Replaced Portfolios, their advisers or underwriters, or from affiliates of the Replaced Portfolios, their advisers or underwriters, including without limitation Rule 12b–1 fees, shareholder service, administrative, or other service fees, revenue sharing or other arrangements. The Substitution and the selection of the Replacement Portfolios were not motivated by any financial consideration paid or to be paid to Integrity or National Integrity or their affiliates by the Replacement Portfolios, their advisers or underwriters, or their affiliates.

8. The Substitution will not result in the type of costly forced redemption that Section 26(c) was intended to guard against and, for the following reasons, is consistent with the protection of investors and the purposes fairly intended by the Act:

(a) Each of the Replacement Portfolios is an appropriate portfolio to which to move contract owners with values allocated to the Replaced Portfolios because the portfolios have substantially similar investment objectives and policies.

(b) The costs of the Substitution, including any brokerage costs, will be borne by Integrity and National Integrity and will not be borne by contract owners. No charges will be assessed to effect the Substitution.

(c) The Substitution will be at the net asset values of the respective shares without the imposition of any transfer or similar charge and with no change in the amount of any contract owner's accumulation value.

(d) The Substitution will not cause the fees and charges under the Contracts currently being paid by contract owners to be greater after the Substitution than before the Substitution and will result in contract owners' contract values being moved to a Replacement Portfolio with lower total annual expenses.

(e) All contract owners will be given notice of the Substitution prior to the Substitution and will have an opportunity for 30 days after the Substitution to reallocate accumulation value among other available subaccounts without the imposition of any transfer charge or limitation and without being counted as one of the contract owner's free transfers in a contract year.

(f) Within five days after the Substitution, Integrity and National Integrity will send to its affected contract owners written confirmation that the Substitution has occurred.

(g) The Substitution will in no way alter the insurance benefits to contract owners or the contractual obligations of Integrity and National Integrity.

(h) The Substitution will have no adverse tax consequences to contract owners and will in no way alter the tax benefits to contract owners.

Conclusion

Applicants request an order of the Commission pursuant to Section 26(c) of the Act approving the Substitution. Section 26(c), in pertinent part, provides that the Commission shall issue an order approving a substitution of securities if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. For the reasons and upon the facts set forth above, the requested order meets the standards set forth in Section 26(c) and should, therefore, be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30531 Filed 12–2–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 46921 / November 26, 2002]

Securities Exchange Act of 1934; Order Extending Broker-Dealer Exemption From Sending Financial Information to Customers

In the Matter of Securities Industry Association, 1401 Eye Street, NW., Washington, DC 20005–2225.

The Securities and Exchange Commission (''Commission'') is extending its Temporary Order, which was originally issued on December 10, 1999[1] and then extended on December 20, 2001,[2] under Section 17(e) of the Securities Exchange Act of 1934 (''Exchange Act''), exempting broker-dealers from Exchange Act Section 17(e)(1)(B) and Rule 17a–5(c). These sections require a broker-dealer to send each of its customers semi-annually its balance sheet with appropriate footnotes prepared in accordance with generally accepted accounting principles (''GAAP'') and a footnote disclosing the firm's net capital and required net capital. To take advantage of the exemption, a broker-dealer must semi-annually send the net capital footnote to its customers, must send its balance sheet and appropriate footnotes to customers upon request via a toll-free number, and must place its balance sheet and appropriate footnotes on its website.

The Commission's Temporary Order and extension established a pilot program which expires on December 31, 2002. During the pilot program, a broker-dealer taking advantage of the exemption was required, among other things, to report to the Commission the number of times its balance sheet was viewed on its website and the number of requests for paper copies received via its toll-free number. During the December 31, 2001 to December 31, 2002 extension of the pilot program, a broker-dealer was also required to report to the Commission any written customer

[1] Exchange Act Release No. 42222.

[2] Exchange Act Release No. 45179.

complaints it received regarding the exemption.

The Commission has determined, on the basis of information reported by broker-dealers taking advantage of the exemption, which indicates that customers are using the exemption to access broker-dealers' financial information and that broker-dealers taking advantage of the exemption have received no written customer complaints regarding the exemption, that extending the exemption for six months is consistent with the public interest and the protection of investors. The Commission has today proposed a rule amendment for comment which, if adopted, would make the relief permanent (Exchange Act Release No. 46920; File No. S7–48–02).

A broker-dealer exempted under this Order must comply with each of the following requirements:

(1) The broker-dealer semi-annually sends its customers, at the times it otherwise would have sent its customers its balance sheet in accordance with Rule 17a–5(c), a statement which includes:

(a) The amount of the broker-dealer's net capital and its required net capital in accordance with Rule 15c3–1;

(b) To the extent required under Rule 17a–5(c)(2)(ii), a description of the effect on the broker-dealer's net capital and required net capital of subsidiaries consolidated pursuant to Appendix C of Rule 15c3–1 (jointly the ''Net Capital Disclosure''); and

(c) Any statements otherwise required by Rule 17a–5(c)(2)(iii) and (iv).[3]

(2) The above statement is given prominence in the materials sent to its customers and includes an appropriate caption stating that customers may obtain the broker-dealer's balance sheet (in the case of the annual balance sheet, audited and with the auditor's certification) at no cost, by accessing the broker-dealer's website or calling the broker-dealer's stated toll-free number. The statement must provide the specific Internet Uniform Resource Locator (URL) at which the broker-dealer's balance sheet is located.

(3) The broker-dealer publishes a balance sheet prepared in accordance with GAAP, including footnotes and the Net Capital Disclosure, accessible through each of the following Internet locations:

(a) The broker-dealer's website home page, containing a hyperlink providing a direct link to the broker-dealer's balance sheet;

(b) Each page at which a customer can log-on to the broker-dealer's website, containing a hyperlink providing a direct link to the broker-dealer's balance sheet; and

(c) If the websites for two or more broker-dealers can be accessed from the same home page, a hyperlink directing the Internet user to the home page of each broker-dealer. Upon reaching the broker-dealer's home page, the home page contains a hyperlink providing a direct link to the particular broker-dealer's balance sheet.

Each of the above hyperlinks is placed on the broker-dealer's website, in either textual or button format, as a separate, prominent link, in a manner that is clearly visible.[4]

(4) The broker-dealer maintains a toll-free number that customers can call to request a paper or electronic copy of its balance sheet.

(5) If a customer requests a paper or electronic copy of the broker-dealer's balance sheet, the firm sends it promptly at no cost to the customer.

(6) If the broker-dealer's net capital falls below the early warning levels of Rule 17a–11 and the broker-dealer fails to cure the relevant deficiency within 24 hours, or if the broker-dealer's auditors determine that a material inadequacy exists with regard to any of the financial disclosures contained in the audited financial statements or in the broker-dealer's internal controls, the firm returns to sending its balance sheet as required under Rule 17a–5(c), including footnotes, by the next date that financial disclosures are required, until the deficiency or material inadequacy is cured.

(7) The broker-dealer submits to the Commission, addressed to Division of Market Regulation, United States Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–1001, no later than 60 days after each distribution of its published statement containing the Net Capital Disclosure:

(a) A report on the number of requests that the broker-dealer has received for copies of its balance sheet via its toll-free number and the number of times its balance sheet has been viewed on its website. The report contains the number of requests received in the month following its website publishing of its recent balance sheet and, except in the case of the first website publishing, in the preceding six months; and

(b) Written investor complaints regarding the exemption received by the broker-dealer in the preceding six months.

Accordingly,

It is ordered, under Exchange Act Section 17(e)(l)(C) and Rule 17a–5(l)(3), that the exemption from Exchange Act Section 17(e)(1)(B) and Rule 17a–5(c) granted in Exchange Act Release No. 42222 and extended in Exchange Act Release No. 45179 is extended to June 30, 2003.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30665 Filed 12–2–02; 8:45 am]

BILLING CODE 8010–01–P

[3] A broker-dealer may comply with this requirement by: (a) Delivering the statements to its customers in paper copy form or (b) transmitting the statements to its customers electronically.

[4] This Order exempts certain firms from the delivery requirement under Rule 17a–5(c), in part, based on the protections afforded by the Commission's financial responsibility rules. The condition that a broker-dealer makes its balance sheet available on its website is not an alternative method of delivering this information to customers under Rule 17a–5(c).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46857; File No. SR–Amex–2001–06]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving a Proposed Rule Change and Amendment Nos. 1, 2 and 3 Thereto Relating to Relief and Temporary Specialists

November 21, 2002.

On February 14, 2001, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''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 require specialists units consisting of fewer than three members to arrange for the registration of one or more relief specialists,[3] and to revise the Exchange's rules regarding the appointment of temporary specialists. The Exchange also proposed allowing specialist units with less than three persons six months (or such longer time as the Chief Executive Officer of the Exchange may determine is appropriate) from the date of approval of the proposed rule change to obtain Exchange approval of their relief specialist arrangements. The Exchange

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange identified that specialists units with more than three persons may also arrange for relief specialists pursuant to this proposed rule. Telephone conversation among William Floyd-Jones, Assistant General Counsel, Amex, Terri Evans, Assistant Director, and Lisa N. Jones, Attorney, Division, Commission, dated May 30, 2002.

submitted Amendment Nos. 1,[4] 2,[5] and 3[6] to the proposed rule change, respectively. The proposed rule change, as amended, was published in the **Federal Register** on October 22, 2002.[7] The Commission received no comments on the proposed rule change. This order approves the proposed rule change, as amended.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[8] In particular, the Commission finds that the proposal, as amended, is consistent with Section 6(b)(5) of the Act,[9] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

Specifically, the Commission believes requiring specialists units consisting of fewer than three members to arrange for the registration of one or more relief specialists, approved by the Exchange's Committee on Floor Members Performance, helps to ensure that there is no interruption of service when the Exchange is open for business. Similarly, the Commission believes that it is appropriate for a temporary specialist to be appointed by the Exchange in the event of an emergency or other unusual situations in which the regular or relief specialist would be unable to adequately manage the volume or business in a particular stock or stocks to ensure adequate staffing on the Exchange floor. The Commission notes that relief specialists and temporary specialists, to the extent that no regular or relief specialist is present, will be subject to the same responsibilities for the maintenance and stabilization of the market as regular registered specialists. Further, the Commission notes that these arrangements are similar to arrangements already allowed by the New York Stock Exchange, Inc.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–AMEX–2001–06), as amended, is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30535 Filed 12–2–02; 8:45 am]

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[4] *See* letter from William Floyd-Jones, Jr., Assistant General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated August 17, 2001 (''Amendment No. 1'') (replacing the original filing in its entirety).

[5] *See* letter from William Floyd-Jones, Jr., Assistant General Counsel, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated September 30, 2002 (''Amendment No. 2'') (replacing the original filing in its entirety).

[6] *See* letter from William Floyd-Jones, Jr., Assistant General Counsel, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated October 7, 2002 (''Amendment No. 3'') (replacing the original filing in its entirety).

[7] *See* Securities Exchange Act Release No. 46655 (October 11, 2002), 67 FR 64940.

[8] In approving this proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46872; File No. SR–CSE–2002–04]

Self-Regulatory Organizations; Cincinnati Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to the Introduction of Order Delivery and Automated Response

November 21, 2002.

I. Introduction

On April 22, 2002, the Cincinnati Stock Exchange, Inc. (''CSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''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 related to the introduction of order delivery and automated response. The proposed rule change was published for comment in the **Federal Register** on May 10, 2002.[3] On September 13, 2002, the CSE filed Amendment No. 1 to the proposed rule change[4] and on September 17, 2002, filed Amendment No. 2 to the proposed rule change.[5] The proposed rule change, as amended by Amendment Nos. 1 and 2, was republished in its entirety for comment in the **Federal Register** on October 11, 2002.[6] No comments were received on the proposal. This order approves the proposed rule change, as amended.

II. Description of the Proposal

The Exchange proposes to amend its rules to increase the flexibility of CSE execution systems to accommodate member needs. Specifically, CSE proposes to modify CSE's execution functionality within the CSE System from a process of automatically matching and executing like-priced displayed orders and quotes to an optional process of delivering orders to quoting CSE members and requiring automated responses from such members back to the CSE System. CSE is proposing this modification to facilitate a diverse membership base while promoting a fair and orderly market. CSE members that operate as electronic communications networks (''ECNs'')[7] or alternative trading systems (''ATSs'') subject to SEC Regulation ATS,[8] as well as members that act as Designated Dealers or specialists on CSE will have the option of selecting the type of centralized execution system that best fits their business model.

Currently, CSE's NSTS functions solely in an automatic execution mode. In an automatic execution system like NSTS, a Designated Dealer's quotation is held in NSTS, and NSTS executes any like-priced contra-side order against the dealer's quotation. NSTS then informs the Designated Dealer and the contra-side CSE member that the quotation and the order have been executed by delivering execution messages to both parties.

With the advent of ECN/ATS trading on CSE, members have expressed concern that CSE's automatic execution system exposes them to significant multiple execution liability. Given the speed with which ECN/ATSs operate, it is likely that displayed quotations will be subject to internal matches at the same time as another CSE member attempts to execute against the same displayed quotations. When faced with a similar dilemma, the Nasdaq Stock

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 45873 (May 3, 2002), 67 FR 31856.

[4] *See* letter from Jennifer M. Lamie, CSE, to Katherine England, Assistant Director, Division of Market Regulation (''Division''), Commission (September 12, 2002). In Amendment No. 1, the CSE deleted proposed rule language in Paragraph 11.9(i)(2)(a) regarding price/time and agency/principal priorities, which was inadvertently included in the original proposal.

[5] *See* letter from Jennifer M. Lamie, CSE, to Katherine England, Assistant Director, Division, Commission (September 16, 2002). In Amendment No. 2, the CSE expanded the proposed order delivery and automated response alternative to all securities traded through the Exchange's National Securities Trading System (''NSTS'' or ''System''), rather than simply Nasdaq National Market Securities. In addition, Amendment No. 2 made certain non-substantive grammatical changes.

[6] *See* Securities Exchange Act Release No. 46599 (October 4, 2002), 67 FR 63484.

[7] ECNs are defined in SEC Rule 11Ac1–1(a)(8), 17 CFR 240.11Ac1–1(a)(8), as any electronic system that widely disseminates to third parties orders entered therein by an exchange market maker or OTC market maker, and permits such orders to be executed against in whole or in part.

[8] 17 CFR 242.300–303.

Market, Inc. permitted ECN/ATSs to remain on SelectNet (an order delivery system) for inbound executions against the ECN/ATSs' displayed quotations rather than requiring them to migrate to the automatic execution methodology of the Nasdaq National Market Execution System (''NNMS'').[9] Nasdaq even amended its Intermarket Trading System (''ITS'') / Computer Assisted Execution System (''CAES'') (together, ''ITS/CAES'') definitions and functionality to permit ECN/ATSs to operate in an order delivery format when interacting with inbound commitments from ITS. Similarly, CSE now proposes to permit members to select order delivery and automated response for order interaction with displayed quotations within the CSE System or to continue interacting through CSE's automatic execution facility.

In an order delivery and automated response system, a member's quotation or displayed order will be held in the CSE System, and when a contra-side order is received in the CSE System, CSE will immediately forward the order message to the quoting member, who will be obligated by rule to respond instantaneously to the order message. Moreover, the quoting member must have a demonstrated capability to respond instantaneously to the order message. On receipt of the order message delivered by CSE, the quoting member will automatically determine whether its quote is still active. If so, the member will automatically deliver to the CSE System matched orders representing its quote and the contra-side for execution. If the member's quote is in the process of changing due to a prior internal match at the displayed price, consistent with the Firm Quote Rule,[10] the member will reject the inbound order and send it back to the CSE System. The CSE System will then automatically send a cancellation message to the member submitting the order. The entire duration of the order delivery and automated response process likely will be less than one second.

CSE will require that members demonstrate the capacity to accept inbound orders and to automatically respond to the CSE System before they will be permitted use of this functionality. Moreover, CSE Rule 11.9(i)(2) provides that the CSE System will offer order delivery and automated response subject to the requirement that members demonstrate the capability to respond in an automated manner. Therefore, by rule and through demonstrated capacity verified by CSE examiners before operation, the CSE will reduce the risk of multiple execution liability, while ensuring that members comply with their obligations under the Firm Quote Rule.

III. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the provisions of section 6(b) of the Act,[11] in general, and section 6(b)(5) of the Act,[12] in particular, which requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposal furthers the purpose of this section by reducing the risk of dual liability to CSE members. By reducing the risk of dual liability, the proposal may encourage CSE members, such as ECNs, to display larger sized quotations thereby adding liquidity and transparency to the market. Moreover, the Commission approved a similar approach to reducing the risk of dual liability in the Nasdaq market and believes that CSE's proposal should similarly benefit all market participants in the Nasdaq and listed markets. The Commission believes that the proposal's requirement that CSE members demonstrate the ability to process inbound orders and respond appropriately within one second should facilitate the efficient functioning of the order delivery and automated response execution option. The Commission believes that encouraging greater participation in the national market system by market participants, including ECNs, furthers the Congressional goal of developing a comprehensive national market system.

It is important to note that, upon approval of the instant proposal, a CSE member (or other market participant routing an order to the CSE via ITS) may attempt to execute a trade at a price quoted on the CSE by an ECN. In such a case, a CSE member (or ITS user) submitting an order to the CSE's NSTS may not receive an execution at the price originally quoted by the ECN on the CSE, because the ECN may have adjusted its quoted price while the order was in transit from the CSE to the ECN. CSE represents that this transit time is less than one second, and, for firm quote rule[13] compliance purposes, the Commission believes this time to be *de minimis*. Moreover, the Commission believes it is significant that this one-second transit time is generally less than the internal transmission time of order routing systems in place in other markets.

CSE has committed to examine regularly for patterns of adjustments in ECNs' quoted prices that lead to the rejection of orders. Specifically, the CSE will analyze those rejections that occur after an order arrives at the CSE and before the order arrives at the ECN. Should any such patterns be detected, CSE will scrutinize them for violations of the Firm Quote Rule and take appropriate action. The CSE has also committed to reporting the results of its examination of ECN order rejection patterns to the Commission.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[14] that the proposed rule change (SR–CSE–2002–04), as amended, is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

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[9] *See* Securities Exchange Act Release No. 42344 (January 14, 2000), 65 FR 3987 (January 25, 2000) in which Nasdaq designated SelectNet as the link to ECNs pursuant to the SEC's Order Handling Rules. *See* Securities Exchange Act Release No. 38156 (January 10, 1997), 62 FR 2415 (January 16, 1997).

[10] 17 CFR 240.11Ac1–1.

[11] 15 U.S.C. 78f(b). In approving this proposal, the Commission has considered the proposed rule change's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(5).

[13] SEC Rule 11Ac1–1, 17 CFR 240.11Ac1–1 (''Firm Quote Rule'').

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46893; File No. SR–NASD–2002–167]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Amendments to NASD Rule 7010(k)—Fees for the Trade Reporting and Compliance Engine (TRACE)

November 22, 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 November 15, 2002, the National Association of Securities Dealers, Inc. (''NASD''), 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 NASD. NASD has designated the proposed rule change as ''establishing or changing a due, fee, or other charge'' under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. In addition, the NASD is changing references in the text of the rule from ''the Association'' to ''NASD.'' This change is effective immediately pursuant to Section 19(b)(3)(A)(iii) of the Act,[5] as it is concerned solely with the administration of the self-regulatory organization. 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

NASD is proposing to amend NASD Rule 7010(k) to reduce certain fees that are currently in effect for the Trade Reporting and Compliance Engine (TRACE). Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

Rule 7010(k) Trade Reporting and Compliance Engine (TRACE)

(Rule 7010(k) shall expire on December 28, 2002, unless amended, extended, or permanently adopted by NASD pursuant to SEC approval at or before such date).

The following charges shall be paid by participants for the use of the Trade Reporting and Compliance Engine (''TRACE''):

System fees	Transaction reporting fees	Market data fees
Web Browser Access: $85/month for 1 user ID; $75/month for 2–9 user IDs; $70/month for 2–10+ user IDs. *If less than 25 trades per month, in October, November, or December 2002—$25/month per user ID.*	Trades up to and including $200,000 par value—$0.50/trade; Trades between $201,000 and $999,999 par value—$0.0025 times the number of bonds traded/trade; Trades of $1,000,000 par value or more—$2.50/trade.	BTDS Professional Display—$60/month per terminal.
CTCI—$25/month/line	Cancel/Correct—$3/trade: *For October 2002—$1.50/trade. For November 2002—$2.25/trade.*	BTDS Internal Usage Authorization—$500/month per organization.
Third Party—$25/month	''As of'' Trade Late—$3/trade: *For October 2002—$1.50/trade. For November 2002—$2.25/trade.*	BTDS External Usage Authorization— $1,000/month per organization. Daily List Fax—$15/month per fax number/addressee.

(1) System Related Fees. There are three methods by which a member may report corporate bond transactions that are reportable to *NASD* [the Association] pursuant to the Rule 6200 Series. A member may choose among the following methods to report data to *NASD* [the Association]: (a) a TRACE web browser (either over the Internet or a secure private data network (''PDN'')); (b) a Computer-to-Computer Interface (''CTCI'') (either one dedicated solely to TRACE or a multi-purpose line); or (c) a third-party reporting intermediary. Fees will be charged based on the reporting methodology selected by the member.

(A) Web Browser Access. The charge to be paid by a member that elects to report TRACE data to *NASD* [the Association] via a TRACE web browser shall be as follows: for the first user ID registered, a charge of $85 per month; for the next two through nine user IDs registered, a charge of $75 per month, per such additional user ID; and for ten or more user IDs registered, a charge of $70 per month, per user ID from two to ten or more. *If a member reports less than 25 trades per month to the TRACE system in October, November, or December 2002, the charge to be paid by a member for the TRACE web browser shall be $25, per such month, per user ID.* In addition, a member that elects to report TRACE data to the Association via a web browser over a secure PDN rather than over the Internet shall pay an additional administrative charge of $100 per month, per line.[6]

(B) Computer-to-Computer Interface Access. No change.

(C) Third Party Access '' Indirect Reporting. No change.

(2) Transaction Reporting Fees. For each transaction in corporate bonds that is reportable to *NASD* [the Association] pursuant to the Rule 6200 Series, the following charges shall be assessed against the member responsible for reporting the transaction:

(A) Trade Reporting Fee. No change.

(B) Cancel or Correct Trade Fee. A member shall be charged a Cancel or Correct Trade Fee of $3.00 per canceled or corrected transaction. To provide firms with time to adjust to the new reporting system, the Cancel or Correct Trade Fee will not be charged until the later of October 1, 2002 or 90 days after the effective date of TRACE. *For the month of October 2002, the Cancel or Correct Trade Fee shall be $1.50 per canceled or corrected transaction. For the month of November 2002, the Cancel or Correct Trade Fee shall be $2.25 per canceled or corrected transaction.*

(C) ''As of'' Trade Late Fee. A member shall be charged an ''As of'' Trade Late Fee of $3.00 per transaction for those transactions that are not timely reported ''As of'' as required by these rules. To provide firms with time to adjust to the new reporting system, the ''As of'' Trade Late Fee will not be charged until the later of October 1, 2002 or 90 days after the effective date of TRACE. *For the month of October 2002, the ''As of'' Trade Late Fee shall be $1.50 per such transaction. For the month of November 2002, the ''As of'' Trade Late Fee shall be $2.25 per such transaction.*

(D) Browse and Query Fee. No change.

(3) Market Data Fees. No change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR § 240.19b–4(f)(2).

[5] 15 U.S.C. 78s(b)(3)(A)(iii).

[6] Charges that may be imposed by third parties, such as network providers, are not included in these fees.

(4) Daily List Fax Service. 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, 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. 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 1, 2002, TRACE became effective. On June 28, 2002, the Commission approved proposed NASD fees relating to the operation of the TRACE system (Rule 7010(k)) on a pilot basis for a six-month period expiring on December 28, 2002.[7] As part of that rule filing (Amendment No. 3 to SR–NASD–2002–63), NASD committed to review and reassess the proposed TRACE fees as soon as practicable and within six months after the effective date of TRACE, based on such factors as actual volume, usage, costs, and revenues.

Based on an initial review of the TRACE fees, and concerns raised by member firms, NASD is proposing to reduce the Web Browser Access Fee for low volume participants, and phase in the implementation of the Cancel or Correct Fee and the ''As of'' Trade Late Fee during the fourth quarter of 2002. NASD is proposing to make the proposed rule change effective as of October 1, 2002.

Following the effective date of TRACE, a large number of small member firms have reported to NASD staff that the Web Browser Access Fee is too burdensome for firms that handle a small volume of corporate bond transactions per month. In addition, the current fees (approved by the SEC on a pilot basis for a six-month period) included a fee holiday for the first 90 days after the effective date of TRACE for Cancel or Correct Fees and ''As of'' Trade Late Fees to permit firms to adjust to the new TRACE rules.[8] Following operation of the TRACE system, NASD staff reviewed the financial impact of these three fees on members. This review indicates that full implementation of these fees on October 1, 2002, at the currently approved rate, will result in a significant increase in the fees paid by many firms.

As a result, NASD is proposing the rule change described herein. NASD believes that the proposed rule change will alleviate some of the immediate burden on small firms resulting from TRACE reporting requirements and grant all firms additional time to adjust to the Cancel or Correct Fee and the ''As of'' Trade Late Fee. In addition, NASD is in the process of reassessing the entire TRACE fee structure and expects to submit additional proposed amendments to TRACE fees to the SEC prior to the expiration of the pilot program.

Proposed Amendments to Reduce Web Browser Fee for Period of October 1, 2002 to December 31, 2002

Many small member firms have registered to report TRACE transactions through the web browser to satisfy their TRACE reporting obligations because the alternative reporting methods available under the TRACE rules (through a service bureau, clearing firm or a direct computer-to-computer interface) are not cost-effective for them. Following the effective date of TRACE, small member firms have raised concerns regarding the burden of paying the Web Browser Access Fee. Small member firms have reported to NASD staff that the small number of TRACE transactions that they handle and, therefore, are required to report on a monthly basis are not in line with the $85 per month cost for one web browser.

The current Web Browser Access Fee for each registered member is: $85 per month for the first user ID; $75 per month for the second through ninth user ID; and $70 per month for the second through ten or more user ID, if the member registers ten or more user IDs. The web browser permits the reporting of transactions into the TRACE system, and, through the use of a query feature, allows members access to TRACE transactions and real time TRACE market data. At this point in time, NASD does not have the capability to separate the real time market data access feature from the web browser, although NASD expects this capability will be available in early 2003. When such capability does become available, NASD expects it will adjust the Web Browser Access Fee to allow members to choose whether or not they would like to receive the real time TRACE data access through the web browser.

After carefully reviewing the data collected from the first three months of operation of the TRACE system, in particular data on the monthly reporting volume of small firms, NASD is proposing that the Web Browser Access Fee be amended for the period commencing October 1, 2002 and ending December 31, 2002 as follows: all registered members that report less than 25 trades per month will be charged $25 for such month, per user ID. All members registered to report TRACE transaction data through the web browser will continue to have access to the real time market data feature included in the web browser during this time period.

Proposed Amendments to Phase In Cancel, and/or Correct Fee and ''As of'' Late Fee for October and November 2002

To achieve the goal of market transparency mandated by the SEC, members must report TRACE transaction data accurately. NASD has included Cancel or Correct Fees and ''As of'' Trade Late Fees in the overall TRACE fee structure to provide incentives to members to enter trade data correctly, and on time, into the TRACE system. Cancel or Correct, and ''As of'' transactions (collectively, referred to as ''corrective transactions'') are used by participants to modify and correct original trade entries. While NASD believes that a certain level of corrective transactions will always be necessary, NASD believes it is very important that trades be entered into the system correctly the first time to ensure that data disseminated through the TRACE system is accurate and to allow investors to rely on the data stream they receive. In addition, a large volume of corrective transactions on a regular basis will increase NASD's technology costs over time.

In NASD's original rule filing for TRACE fees, NASD had delayed the effectiveness of the Cancel or Correct Fee and the ''As of'' Late Fee to October 1, 2002 (effectively granting a 90-day fee holiday) to allow firms time to adjust to the new TRACE system. The current charge for the Cancel or Correct Fee and the ''As of'' Late Fee is $3.00 for each such reported trade. Based on NASD review of the data collected on such corrective transactions to date, NASD is proposing to reduce the Cancel or

[7] The Commission approved Rule 7010(k) relating to TRACE fees on June 28, 2002 on a six-month pilot basis. See Securities Exchange Act Release No. 46145 (June 28, 2002), 67 FR 44911 (July 5, 2002) (File No. SR–NASD–2002–63).

[8] See Securities Exchange Act Release No. 43873 (January 23, 2001), 66 FR 8131 (January 29, 2001) (File No. SR–NASD–1999–65).

Correct Fee and the ''As of'' Late Fee charge assessed to each member for the month of October 2002 from $3.00 per trade to $1.50 per trade (a 50% discount), and to reduce the Cancel or Correct Fee and the ''As of'' Late Fee for the month of November 2002 from $3.00 per trade to $2.25 per trade (a 25% discount).

The proposed rule change is based on an analysis by NASD of the economic impact of the current fees versus the proposed amended fees on TRACE participants. NASD had initially anticipated that the number of corrective transactions entered into the TRACE system over time would decline as participants grew more familiar with the new system and improved their reporting accuracy. However, a review by NASD of the unbilled July, August and September 2002 activity in these corrective transactions does not evidence the anticipated decline in these transactions. Moreover, certain firms have experienced a disproportionately high volume of corrective transactions largely because of reporting and system coding errors by participants. As a result, NASD believes that phasing-in the full fee structure for corrective transactions will allow firms greater time to learn to effectively use the new TRACE system and focus on methods to reduce corrective transactions, while still establishing an incentive for firms to report TRACE transactions correctly and on time.

NASD will continue to review and reassess the impact of the overall TRACE fee structure over time to ensure that the fees are reasonable and equitable for participants in the TRACE system.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,[9] which requires, among other things, that 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 which NASD operates or controls. NASD proposes to reduce the Web Browser Access Fee, the Cancel or Correct Fee, and the ''As of'' Trade Late Fee during the periods described for the TRACE system to allow member firms more time to adjust to the new reporting system and focus on methods to decrease the likelihood of incurring such charges over time. NASD believes that such proposed rule change will more equitably allocate fees to NASD members during the early stages of implementing TRACE.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, 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 is effective pursuant to Section 19(b)(3)(A)(ii) of the Act[10] and Rule 19b–4(f)(2) thereunder,[11] because the proposal is ''establishing or changing a due, fee, or other charge.'' The rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(2) thereunder, and is operational as of October 1, 2002.

At any time within 60 days of this filing, the Commission may summarily abrogate this proposal 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 NASD. All submissions should refer to file number SR–NASD–2002–167 and should be submitted by December 24, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30532 Filed 12–2–02; 8:45 am]

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[9] 15 U.S.C. 78o–3(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46901; File No. SR–NASD–2002–85]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Issuer Disclosure of Material Information

November 25, 2002.

I. Introduction

On June 26, 2002, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission''), 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 modify Nasdaq's rules pertaining to issuer disclosure of material information. The proposed rule change was published for notice and comment in the **Federal Register** on August 7, 2002.[3]

The Commission received one comment on the proposed rule change.[4] On October 16, 2002, Nasdaq filed a letter in response to comments on the proposal.[5] This order approves the proposed rule change.

II. Summary of Comments

The PR Newswire Letter

In its comment letter, PR Newswire (''Commenter'') submits that the filing of a Form 8–K via EDGAR, without more, does not achieve the goal of providing

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Securities Exchange Act Release No. 46288 (July 31, 2002), 67 FR 51306.

[4] See August 26, 2002 letter from Charles H. Morin, Chief Executive Officer, PR Newswire, to Margaret H. McFarland, Deputy Secretary, Commission (''PR Newswire Letter'').

[5] See October 15, 2002 letter from John D. Nachmann, Senior Attorney, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission (''Nasdaq Response Letter'').

investors with timely access to material corporate information.[6] According to the Commenter, when an issuer files a Form 8–K with the Commission, investors will receive the information only if investors (1) know when to anticipate the disclosure; (2) know where to find the information; and (3) have access to the Commission's Web site or a site carrying EDGAR content.[7] The Commenter believes that allowing only the filing of a Form 8–K in satisfaction of disclosure requirements would reduce the possible dissemination of information to the investing public.[8]

The Commenter suggests that requiring the filing of a Form 8-K in tandem with a news release distributed by a commercial newswire service and posted on an issuer's Web site will ''fully address the desired goals.''[9] Additionally, the Commenter believes that the scope of dissemination of such a press release should ''correspond to dissemination that the issuer normally effects with respect to its results of operations.''[10] The Commenter suggests that disclosure through a press release should require dissemination of the entire text of the press release, to avoid providing limited and selective disclosure, in contrast to the information obtained by those who obtain the complete press release.[11]

Nasdaq's Response Letter

Nasdaq believes that the filing of a Form 8–K provides ''effective, broad and non-exclusionary public disclosure,'' and that requiring the issuance of a press release in tandem with filing a Form 8–K would place a burden on issuers while providing ''no significant benefit to investors.''[12] Nasdaq states that filings made with the Commission via EDGAR are available on ''most major financial news Web sites and Web portals,'' and lists a number of Web sites that have direct links to issuers' filings.[13] In addition to obtaining this information via the Internet, Nasdaq notes that filing of a Form 8–K may result in media coverage, and that under Nasdaq rules, issuers must provide notification of material news announcements, including those made by filing a Form 8–K, to Nasdaq's Market Watch Department before disseminating them to the public. The Market Watch Department evaluates such information for materiality, and implements trading halts for dissemination of news, if appropriate.[14]

Nasdaq maintains that the proposal is ''designed to harmonize its disclosure rules with Regulation FD'' to enable issuers to reap the benefits of using ''current technologies as part of a comprehensive disclosure strategy,'' and to address concerns that self-regulatory organization rules override the flexibility provided by Regulation FD.[15]

III. Discussion and Commission Findings

The Commission has reviewed carefully the proposed rule change, the comment letter, and Nasdaq's response to comments, and 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 association[16] and, in particular, the requirements of section 15A(b)(6) of the Act. Section 15A(b)(6) requires rules that are designed to prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest. The Commission finds that aligning Nasdaq's disclosure rules with Regulation FD should minimize confusion among issuers, while simultaneously allowing issuers to use current technologies to disseminate material information to the public in a broad, inclusive manner. The Commission makes no finding as to whether requiring issuers to provide a news release to be distributed by a commercial newswire service and posted on the issuer's web site, in addition to filing a Form 8–K, will result in expanding the reach of disclosure to the investing public. The Commission is satisfied that the proposal conforms to the requirements for disclosure as delineated in Regulation FD, and as such, finds it is consistent with the requirements of the Act, in general, and specifically, with section 15A(b)(6).

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[17] that the proposed rule change (SR–NASD–2002–85) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

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[6] PR Newswire Letter at p.3.

[7] *Id.*

[8] *Id.* at p.4.

[9] *Id.*

[10] *Id.* at 5.

[11] *Id.*

[12] Nasdaq Response Letter at p.2.

[13] *Id.*

[14] *Id.*

[15] *Id.* at p.3.

[16] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46903; File No. SR–NSCC–2002–06]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to the Imposition of Fines

November 25, 2002.

I. Introduction

On July 26, 2002, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change File No. SR–NSCC–2002–06 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and on August 21, 2002, amended the proposed rule change. Notice of the proposal was published in the **Federal Register** on August 27, 2002.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description

NSCC's rule change amends Addendum P of its Rules and Procedures to clarify existing fines and to impose new fines upon its members. The rule change specifically sets forth actions or inactions which will result in NSCC imposing fines.[3]

NSCC's Rule 48 allows NSCC to impose fines upon its members for any error, delay, or other conduct that is determined to be detrimental to the operations of NSCC. Historically, NSCC has imposed fines upon members for failures to settle in a timely manner end of day settlement balances, for late settlement acknowledgements, and for late payments of clearing fund deposits.

NSCC's Rule 15 permits NSCC to request that members furnish to NSCC such adequate assurances of their financial responsibility and operational capability as NSCC may at any time deem necessary. Pursuant to this rule

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 46385 (August 20, 2002), 67 FR 55051.

[3] Exhibit 1 to this order sets forth NSCC's revised fine schedule.

and in furtherance of NSCC's responsibility, NSCC periodically requests that its members provide financial and operational information about their business. While many members comply with these requests, some do not. The lack of this information could create risk for NSCC. To address this concern, NSCC will fine members who fail to timely respond to requests for such information.

In connection with imposing fines for failure to timely provide requested financial and operational information, NSCC is establishing a list of information items, such as financial statements and disaster recovery procedures, that its members must submit on an ongoing basis so that its members will know exactly what information must be provided and that failure to provide the information will result in a fine being imposed. NSCC will begin assessing fines from the approval of this rule change. For a period of one year from that date, members that fail to timely provide information will be issued one warning letter prior to the imposition of a fine. At the conclusion of the one-year period, NSCC will discontinue the warning letters prior to fining.[4]

Under NSCC's Rules and Procedures, members have an affirmative duty to notify NSCC on an ongoing basis of changes in certain internal conditions that may cause NSCC to reevaluate the member's continued participation. Addendum T. NSCC will fine members that fail to meet these notification requirements. No reminder or warning letter will be sent in this context.[5]

Members will continue to have the ability to contest fines, as currently provided for within NSCC's Rules and Procedures. Fines imposed against settling members will be collected through a miscellaneous charge in the member's monthly statement of charges. Fines imposed against settling bank members may be collected through an adjustment to the settling bank's end-of-day settlement balance, through a separate fed wire payment, or through a check made payable to NSCC. Alternatively, if the settling bank maintains additional memberships with NSCC, the fine may be collected through a settling account under its additional membership.

In conjunction with the above, NSCC is making a technical correction to Rule 48, Disciplinary Proceedings. In Release No. 34–36866, the Commission approved an NSCC rule change to accommodate same-day funds settlement (''SDFS'').[6] That rule change, in part, created Addendum P that set SDFS Failure to Settle fines in the range of $100 to $10,000. At that time, Section 1 of Rule 48 should have been modified to change the maximum fine for any single offense from $5,000 to $10,000, and a reference to settling bank only members should also have been included. Accordingly, those changes are now being made.

NSCC believes that the proposed rule change is consistent with Section 17A of the Act and the rules and regulations thereunder because it ensures that NSCC is able to safeguard securities and funds in NSCC's possession.

III. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[7] The Commission finds that the proposed rule change allowing NSCC to fine members that fail to timely provide requested financial and operational information or who fail to notify NSCC of changes in conditions that may cause NSCC to reevaluate the member's continued participation should improve NSCC's ability to monitor its members. Accordingly, the Commission believes the proposed rule change is consistent with NSCC's obligation to assure the safeguarding of securities and funds that are in its custody or control or for which it is responsible.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder applicable.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NSCC–2002–06) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

Exhibit 1: Text of NSCC'S Revised Rules and Procedures

Addendum P

Fine Schedule

(1) SDFS Failure-to-Settle and Late Acknowledgment Fines

Net debit	First occasion	Second occasion	Third occasion	Fourth occasion
$0–100,000	$100	$200	$500	$1,000
$100,000–900,000	300	600	1,500	3,000
$900,000–1,700,000	600	1,200	3,000	6,000
$1,700,000–2,500,000	900	1,800	4,500	9,000
$2,500,000–up	1,000	2,000	5,000	10,000

Notes: (a) In addition to the fine, interest is charged to the Member, or the Settling Bank Only Member, that failed to settle for the cost of borrowing to complete settlement.

(b) The number of occasions will be determined over a moving three-month period. A Member, or a Settling Bank Only Member, that exceeds four failure-to-settle occasions in a three-month period will be subject to further fees and/or other actions at the Corporation's discretion after consultation between the Member, or the Settling Bank Only Member, and the Corporation.

(c) If the Corporation determines that it had significantly affected a Member's, or a Settling Bank Only Member's, ability to settle (because of a Corporation system delay, for example), the Corporation may determine to waive failure-to-settle fines for that occurrence.

(2) Failure to notify and supply required data as provided for under these Rules & Procedures (other than as provided in items one, three and four of this addendum): Each single offense, $5,000.00 fine.

[4] Addendum P, 4.

[5] Addendum P, 2.

[6] Securities Exchange Act Release No. 36866 (February 27, 1996), 61 FR 7288 [File No. NSCC–96–03] (order modifying NSCC's Rules and Procedures to accommodate same-day funds settlement).

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 17 CFR 200.30–3(a)(12).

(3) Late Satisfaction of Clearing Fund Deficiency Call [1]

Amount	First occasion	Second occasion	Third occasion	Fourth occasion (or greater)
Up to $100 M	(*)	$100	$200	$500
$100 M to $900 M	(*)	300	600	1,500
$900 M to $1.7 MM	(*)	600	1,200	3,000
$1.7 MM to $2.5 MM	(*)	900	1,800	4,500
Greater than $2.5 MM	(*)	1,000	2,000	5,000

*First occasions result in a warning letter issued to the Member.

(4) Requests for information [2]

Request for information (failure to timely provide)	First occasion	Second occasion	Third occasion	Fourth occasion
Financial Statements:				
Audited Financial Statements for Member or Parent	(*)	$300	$600	$1,500
Monthly and/or Quarterly Regulatory Filings	(*)	300	600	1,500
Monthly and/or Quarterly Financial Statements	(*)	300	600	1,500
Proforma Financial Statements	(*)	300	600	1,500
Any Financial Computations, Consolidating Worksheets or Internal Statements, Upon Special Request	(*)	300	600	1,500
Risk Questionnaires/Profiles:				
Questionnaires	(*)	150	300	750
Profiles	(*)	150	300	750
Risk Management Policies and Procedures	(*)	150	300	750
Disaster Recovery Procedures	(*)	150	300	750

*First occasions result in a warning letter issued to the Member. Warning Letters for first occasion violations will be discontinued one year after implementation of this schedule, at which time each violation will be subject to imposition of a fine.

[FR Doc. 02–30533 Filed 12–2–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46875; File No. SR–Phlx–2002–70]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., To Amend Schedule of Dues, Fees and Charges Relating to Floor Brokerage Assessments

November 21, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 29, 2002, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Phlx under Section 19(b)(3)(A)(ii) of the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend its schedule of dues, fees and charges by: (1) Suspending the current equity floor brokerage assessment fee of 5 percent of net floor brokerage income through December 31, 2003; and (2) adopting a monthly fee of $250 for each member who derives his/her primary income from equity floor brokerage business.[4] For purposes of the $250 monthly fee, ''primary income'' means that the member derives at least 80 percent of gross income generated from Phlx floor-based activities from his/her floor brokerage business conducted on the Exchange.[5]

The Phlx intends to suspend the floor brokerage assessment fee of 5 percent for transactions settling on or after November 1, 2002, and implement the $250 monthly fee beginning November 2002.

The text of the proposed rule change is available at the Phlx and at the Commission. A copy of the Exchange's Summary of Equity Charges is attached to the proposed rule change filed with the Commission as Exhibit 2.

[1] 1 The number of occasions is determined over a moving three-month period beginning with the first occasion.

[2] Fines to be levied for offenses within a moving twelve-month period beginning with the first occasion.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] This fee will be eligible for the monthly credit of up to $1,000 to be applied against certain fees, dues and charges and other amounts owed to the Phlx by certain members. *See* Securities Exchange Act Release No. 44292 (May 11, 2001), 66 FR 27715 (May 18, 2001)(SR–Phlx–2001–49).

[5] For purposes of this proposed rule change, floor brokerage business conducted on the Exchange includes orders that are received on the Phlx, even if those orders are executed on an exchange other than the Phlx.

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 purpose of the proposed rule change is to attract business to the Exchange. Specifically, the Phlx believes that waiving the 5 percent assessment through December 31, 2003 and implementing a modest monthly fee of $250 should encourage floor brokers to send additional order flow to the Exchange and enhance the competitiveness of the Exchange. The Exchange will reassess the waiver of the 5 percent assessment as appropriate,[6] and will file any modification to it with the Commission pursuant to Section 19(b)(3)(A)(ii) of the Act.[7]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[8] in general, and furthers the objectives of Section 6(b)(4)[9] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among Exchange members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

[6] Absent any modification, the 5 percent assessment will recommence on January 1, 2004.

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[10] and subparagraph (f)(2) of Rule 19b–4 thereunder,[11] because it involves a due, fee, or other charge. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR–Phlx–2002–70, and should be submitted by December 24, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30534 Filed 12–2–02; 8:45 am]

BILLING CODE 8010–01–P

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b-4(f)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46886; File No. SR–Phlx–2002–39]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 1 and 2 to the Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Providing Automatic Executions for Eligible Orders at the Exchange's Disseminated Size, Subject to a Minimum and Maximum Eligible Size Range

November 22, 2002.

I. Introduction

On July 3, 2002, the Philadelphia Stock Exchange, Inc. (''Phlx'') filed with the Securities and Exchange Commission (''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 provide automatic executions for eligible orders at the Exchange's disseminated size, subject to a minimum and maximum eligible size range to be determined by the specialist, on an issue-by-issue basis. Notice of the proposed rule change was published for comment in the **Federal Register** on August 15, 2002.[3] The Commission received no comments on the proposal. On August 26, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.[4] On November 20, 2002, the Exchange filed Amendment No. 2 to the proposed rule change.[5] The Commission

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 46323 (August 8, 2002), 67 FR 53374.

[4] *See* letter from Richard S. Rudolph, Director and Counsel, Phlx, to Sonia Patton, Special Counsel, Division of Market Regulation (''Division''), Commission, dated August 23, 2002 (''Amendment No. 1''). In Amendment No. 1, the Phlx (i) requested accelerated approval of the proposed rule change; (ii) explained how its current pilot, regarding the disengagement of its automatic execution system (''AUTO–X'') once the AUTO–X guarantee for a particular option has been exhausted within a fifteen second time frame, will interact with this proposal; (iii) stated that, although AUTO–X guarantees sizes are subject to approval by the Phlx's Options Committee, that the Committee has delegated this responsibility to two Phlx Floor Officials; and (iv) discussed how the proposed rule will work when the disseminated size is greater than the maximum guaranteed AUTO–X size and how options contracts will be allocated.

[5] *See* letter from Richard S. Rudolph, Director and Counsel, Phlx, to Nancy Sanow, Assistant Director, Division, Commission, dated November 20, 2002 (''Amendment No. 2''). In Amendment No. 2, the Phlx amended the proposed rule text to reflect a change to Exchange Rule 1080(c) that was made to

Continued

is approving the proposed rule change, and is publishing notice of, and granting accelerated approval to, Amendment Nos. 1 and 2 to the proposed rule change.

II. Description of the Proposal

The Exchange proposes to codify a change in its AUTOM and Auto-Quote [6] systems that would permit the automatic execution of eligible orders [7] at the Phlx's disseminated size, as defined in Exchange Rule 1082(a)(ii).[8] Currently, the Exchange automatically executes eligible orders at a size equal to the AUTO–X guarantee for a given option, regardless of the Exchange's disseminated size. The proposed rule change would allow the Exchange to provide automatic executions for eligible orders at a size equal to the Exchange's disseminated size, subject to minimum and maximum guaranteed AUTO–X sizes (which the Exchange represents cannot exceed the Exchange's floor-wide allowable maximum guaranteed AUTO–X size for an option, which currently is 250 contracts),[9] to be determined by the specialist and subject to the approval of the Options Committee.[10]

The proposed amendments to Phlx Rule 1080(c) would include the following provisions:

1. If the Exchange's disseminated size is greater than the minimum guaranteed AUTO–X size, and less than the maximum guaranteed AUTO–X size, inbound eligible orders would be automatically executed up to the Exchange's disseminated size. Remaining contracts would be executed manually by the specialist or placed on the limit order book.

Example 1:

Minimum Guaranteed AUTO–X Size=10
Maximum Guaranteed AUTO–X Size=50
Disseminated Size=35
Inbound Order Size=90

In this example, the Exchange would automatically execute 35 contracts (the disseminated size). The specialist would be required to execute the remaining 55 contracts manually or, in the case of a limit order, to place the remaining 55 contracts on the limit order book, if the automatic execution has exhausted the size at that price.

2. If the Exchange's disseminated size is less than the minimum guaranteed AUTO–X size for that option, inbound eligible orders delivered via AUTOM would be automatically executed up to such minimum guaranteed AUTO–X size. Remaining contracts would be executed manually by the specialist or placed on the limit order book.

Example 2:

Minimum Guaranteed AUTO–X Size=10
Maximum Guaranteed AUTO–X Size=50
Disseminated Size=6
Inbound Order Size=20

In this example, the Exchange would automatically execute 10 contracts (the minimum guaranteed AUTO–X size) even though its disseminated size is for 6 contracts. The specialist would be required to execute the remaining 10 contracts manually at that price or the next best price or, in the case of a limit order, to place the remaining 10 contracts on the limit order book, if the automatic execution has exhausted the size at that price.

3. If the Exchange's disseminated size is greater than the maximum guaranteed AUTO–X size, inbound eligible orders would be automatically executed up to such maximum guaranteed AUTO–X size. Remaining contracts would be executed manually by the specialist at the disseminated price.

Example 3:

Minimum Guaranteed AUTO–X Size=10
Maximum Guaranteed AUTO–X Size=50
Disseminated Size=100
Inbound Order Size=90

In this example, the Exchange would automatically execute 50 contracts (the maximum guaranteed AUTO–X size). The specialist would be required to execute the remaining 40 contracts manually at that same price because the Exchange's rules concerning firm quotations [11] require the Exchange to be firm at that price up to the disseminated size of 100 contracts.

The Exchange represents that the proposed rule change would provide that the minimum and maximum guaranteed AUTO–X sizes for a given option is to be determined on an issue-by-issue basis by the specialist and subject to the approval of the Options Committee.[12] In determining whether to approve the minimum and maximum guaranteed AUTO–X size for each option, the Options Committee may consider, without limitation, the number of series and open interest in the option; the volatility of the option; the liquidity of the option; historical and projected volume of trading in the option; and the projected share of total trading in the option that is likely to occur at the Exchange, as well as other relevant factors.

The Exchange also proposes to delete references to public customer orders from the description of AUTO–X set forth in Exchange Rule 1080(c) in order to reflect that, in certain issues, orders for the proprietary account(s) of broker-dealers may be eligible for automatic execution via AUTO–X.[13] Minimum and maximum sizes could be for a

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the rule subsequent to the filing of the proposed rule change on July 3, 2002. Amendment No. 2 reflects the fact that the allowable AUTO–X guarantee for options on the Nasdaq-100 Index Tracking Stock (''QQQ'') is now a maximum of 2000 contracts for the first two near term expiration months and 1000 contracts for all other expiration months.

[6] Auto-Quote is the Exchange's electronic options pricing system, which enables specialists to automatically monitor and instantly update quotations. *See* Exchange Rule 1080, Commentary .01(a).

[7] AUTO–X eligible orders are orders that do not otherwise bypass AUTO–X for manual handling by the specialist in accordance with Exchange Rule 1080(c)(iv).

[8] *See* Securities Exchange Act Release No. 46325 (August 8, 2002), 67 FR 53376 (August 15, 2002) (notice of filing and order granting accelerated approval File No. SR–Phlx–2002–15).

[9] In Amendment No. 2, the Exchange noted that the QQQ options are permitted to have an AUTO–X guaranteed size of up to 2000 contracts for the first two near term expiration months and 1000 contracts for all other expiration months. *See* Securities Exchange Act Release Nos. 46307 (August 2, 2002), 67 FR 52508 (August 12, 2002) (notice of filing and immediate effectiveness of File No. SR–Phlx–2002–43, increasing the AUTO–X guarantee for QQQ options up to 1000 contracts); 34531 (September 23, 2002) (notice of filing and immediate effectiveness of File No. SR–Phlx–2002–47, increasing the AUTO–X guarantee for QQQ options up to 2000 contracts for the first two near term expiration months and to 1000 contracts for all other expiration months). Thus, under the proposed rule change, automatic executions for eligible orders in QQQ options up to the Exchange's disseminated size could be set at a maximum of 2000 contracts for the first two near term expiration months and 1000 contracts for all other expiration months.

[10] The Exchange represented that the Options Committee may, in its discretion, increase the size of orders in one or more classes of multiply-traded equity options eligible for AUTO–X to the extent necessary to match the size of orders in the same options eligible for entry into the automated execution system of any other options exchange, provided that the effectiveness of any such increase shall be conditioned upon its having been filed with the Commission pursuant to Section 19(b)(3)(A) of the Act. *See* Exchange Rule 1080(c). In Amendment No. 1, the Exchange noted that, because it would be cumbersome and impractical for the Options Committee to meet and vote to approve a change to the guaranteed AUTO–X size for an option each time a specialist determines to make such a change, the Options Committee has delegated its authority to approve such changes to two Exchange Floor Officials, who would indicate their approval by signing the appropriate form and submitting the form to Market Surveillance.

[11] *See* Exchange Rule 1082, Firm Quotations.

[12] The Exchange has stated that the maximum guaranteed AUTO–X size for a given option generally would not be changed intra-day. Telephone call between Sonia Patton, Division, Commission, and Richard Rudolph, Director and Counsel, Phlx (August 5, 2002).

[13] *See* Securities Exchange Act Release No. 45758 (April 15, 2002), 67 FR 19610 (April 22, 2002) (File No. SR–Phlx–2001–40).

different number of contracts for broker-dealer orders than for customer orders.[14] In addition, the Exchange represents that contracts that are automatically executed would be allocated automatically on the Exchange's ''Wheel.''[15] The Exchange notes that contracts executed manually would be allocated by the specialist in the same manner as all orders received via AUTOM that are manually executed by the specialist in accordance with Phlx rules.[16]

III. Discussion

The Commission has carefully reviewed the proposed rule change, as amended, and finds that it is consistent with the Act and the rules and regulations promulgated thereunder applicable to a national securities exchange and, in particular, with the requirements of section 6(b).[17] Specifically, the Commission finds that approval of the proposed rule change is consistent with section 6(b)(5)[18] in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

The Commission believes that the proposed rule change, as amended, should enable the Phlx to codify the merger of its new Auto-Quote system with its current AUTO–X system, and should provide for a more orderly system for the automatic execution of eligible orders through AUTO–X. The Commission notes that this proposed rule change will enable the Phlx to automatically execute eligible orders at the Exchange's disseminated size, subject to a minimum and a maximum AUTO–X guarantee size that would be set by the specialist on an issue-by-issue basis, subject to the Phlx Options Committee's approval. In addition, the Commission believes that providing automatic executions at the Exchange's disseminated size should enhance the ability of investors to ascertain the actual number of contracts available for automatic execution of eligible orders. Accordingly, the proposed rule change should result in more transparency for investors and the marketplace.

The Commission also notes that the Exchange is eliminating the reference to public customers orders from Exchange Rule 1080(c) because, for certain issues, broker-dealer orders may be eligible for automatic execution. The Commission further notes that the Exchange has represented that, because public customers and broker-dealers may have different AUTO–X guarantee sizes, the Exchange will make sure that the larger of the two sizes will constitute the AUTO–X guarantee for purposes of the pilot.[19] This is based on the fact that, as a business practice, the Exchange represents that it wants to provide automatic executions for the largest size possible.[20]

In addition, the Commission finds good cause for approving Amendment Nos. 1 and 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission finds that Amendment No. 1 provides clarification as to how the proposed rule change will operate in relation to Phlx's current pilot in which AUTO–X is disengaged for thirty seconds once the AUTO–X guarantee is exhausted within a fifteen-second period. In addition, Amendment No. 1 provides a more detailed description as to how orders will be allocated and executed, and clarifies that the Options Committee will delegate its authority to approve the minimum and maximum AUTO–X guarantee size for a particular option to two Phlx Floor Officials. Amendment No. 2 amends the proposed rule text to reflect changes to Exchange Rule 1080(c) that have been made to the rule since this original 19b–4 proposal was filed on July 3, 2002. The Commission, therefore, finds good cause to approve Amendment Nos. 1 and 2 to the proposed rule change on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the Amendment Nos. 1 and 2 to the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–2002–39 and should be submitted by December 24, 2002.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[21] that the proposed rule change (SR–Phlx–2002–39) is hereby approved, and that Amendment Nos. 1 and 2 to the proposed rule change is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30536 Filed 12–2–02; 8:45 am]

BILLING CODE 8010–01–P

[14] Currently, the Exchange is operating an AUTO–X pilot program that disengages AUTO–X in an option for 30 seconds when the number of contracts executed automatically for the option meets the AUTO–X guarantee within a 15 second time frame. *See* Securities Exchange Act Release No. 45862 (May 1, 2002), 67 FR 30990 (May 8, 2002). The Exchange has stated that this pilot will continue to operate and that if there is a different size for customers and broker-dealers, the larger of the two sizes will constitute the AUTO–X guarantee for purposes of the pilot. This is based on the fact that, as a business practice, the Exchange wants to provide automatic executions for the largest size possible. Telephone call between Sonia Patton, Division, Commission, and Richard Rudolph, Director and Counsel, Phlx (August 5, 2002). *See also* Amendment No. 1, *supra* note 4.

[15] *See* Phlx Rule 1080(g) and Option Floor Procedure Advice (''OFPA'') F–24.

[16] In a separate rule proposal, the Exchange has proposed amendments to OFPA F–2, OFPA F–12, and Exchange Rule 1014(g) regarding who is responsible for allocating a trade executed on its floor. *See* File No. SR–Phlx–2001–28. In another separate proposal, the Exchange proposed amendments to OFPA B–6 and Exchange Rule 1014(g) regarding the method for allocating trades executed on its floor. *See* File No. SR–2001–39.

[17] 15 U.S.C. 78f(b). 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).

[18] 15 U.S.C. 78f(b)(5).

[19] For a brief description of the pilot, *see supra* note 14.

[20] *See supra* note 14.

[21] 15 U.S.C. 78s(b)(2).

[22] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

Office of the Coordinator for Counterterrorism

[Public Notice 4213]

Designation of Foreign Terrorist Organizations

Pursuant to section 219 of the Immigration and Nationality Act (''INA''), as added by the Antiterrorism and Effective Death Penalty Act of 1996, Public Law 104–132, § 302, 110 Stat. 1214, 1248 (1996), and amended by the

Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Public Law 104–208, 110 Stat. 3009 (1996), and by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, Public Law 107–56 (2001), the Deputy Secretary of State hereby amends, effective December 3, 2002, the 2001 redesignation of the Kurdistan Workers' Party (PKK and other aliases) as a ''foreign terrorist organization'' to add the following names as aliases of the PKK:

Kurdistan Freedom and Democracy Congress
Freedom and Democracy Congress of Kurdistan
KADEK

Dated: November 26, 2002.

William P. Pope,

Acting Coordinator for Counterterrorism, Department of State.

[FR Doc. 02–30544 Filed 12–2–02; 5:00 pm]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice 4194]

Notice of Meetings: United States International Telecommunication Advisory Committee Information Meeting on the World Summit on the Information Society and the U.S. Preparatory Process

The Department of State announces meetings of the U.S. International Telecommunication Advisory Committee (ITAC). The purpose of the Committee is to advise the Department on matters related to telecommunication and information policy matters in preparation for international meetings pertaining to telecommunication and information issues.

The ITAC will meet to discuss the matters related to the World Summit on the Information Society (WSIS) which will take place in December 2003, including U.S. preparations for the WSIS. The meeting will take place on December 17, 2002, from 10 a.m. to 12 p.m. at the Historic National Academy of Science Building. The National Academy of Sciences is located at 2100 C St. NW., Washington, DC.

Members of the public are welcome to participate and may join in the discussions, subject to the discretion of the Chair. People intending to attend a meeting at the Department of State should send the following data by fax to (202) 647–7407 or e-mail to *worsleydm@state.gov* not later than 24 hours before the meeting: (1) name of the meeting, (2) your name, and (3) organizational affiliation. A valid photo ID must be presented to gain entrance to the National Academy of Sciences Building. Directions to the meeting location may be obtained by calling the ITAC Secretariat at 202 647–2592 or e-mail to *worsleydm@state.gov.*

Dated: November 26, 2002.

Sally Shipman,

Telecommunication Policy Advisor, Department of State.

[FR Doc. 02–30596 Filed 12–2–02; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2002–13929]

Recreational Boating Safety Projects, Programs and Activities Funded Under Provisions of the Transportation Equity Act for the 21st Century; Accounting of

AGENCY: Coast Guard, DOT.

ACTION: Notice.

SUMMARY: Subsection (c) of Section 7405 of the Transportation Equity Act for the 21st Century makes $5,000,000 available each of five fiscal years to the Secretary of Transportation for personnel and activities directly related to coordinating and carrying out the national recreational boating safety program. The Act requires that the Secretary publish annually in the **Federal Register** a detailed accounting of the projects, programs, and activities under this subsection.

ADDRESSES: You may obtain a copy of this notice by calling the U.S. Coast Guard Infoline at 1–800–368–5647. This notice is available on the Internet at *http://dms.dot.gov* and at *http://www.uscgboating.org.*

FOR FURTHER INFORMATION CONTACT: Captain Scott Evans, USCG, Chief, Office of Boating Safety, telephone 202–267–1077, fax 202–267–4285, or Mr. Jeffrey N. Hoedt, Chief, Program Management Division, telephone 202–267–0950, fax 202–267–4285.

SUPPLEMENTARY INFORMATION: The Transportation Equity Act for the 21st Century became law on June 9, 1998. The Act requires that of the $5 million made available to carry out the national recreational boating safety program, each year, $2,000,000 shall be available only to ensure compliance with Chapter 43 of title 46, U.S. Code—Recreational Vessels. The responsibility to administer these funds is delegated to the Commandant of the United States Coast Guard. The statute directs that no funds available to the Secretary under this subsection may be used to replace funding traditionally provided through general appropriations, nor for any purposes except those purposes authorized; namely, for personnel and activities directly related to coordinating and carrying out the national recreational boating safety program. Amounts made available each fiscal year, 1999–2003, shall remain available until expended. Use of these funds requires compliance with standard Federal contracting rules with associated lead and processing times resulting in a lag time between available funds and spending. The following activities have been initiated using fiscal year 1999–2002 funds transferred to the Coast Guard from the Aquatic Resources (Wallop-Breaux) Trust Fund. The total amount of fiscal year 1999, 2000, 2001 and 2002 funding committed, obligated and/or expended for each activity is shown.

Factory Visit Program: An initial contract was awarded to establish a national recreational boat factory visit program using contractor personnel. The contract included the development of a plan of action and an eighteen-month pilot program to validate the elements of the plan and the concept of the program. The pilot program commenced in the summer of 2000. ''Compliance associates'' (inspectors) were trained and formal factory visits were initiated in January 2001. The factory visit program currently allows contractor personnel, acting on behalf of the Coast Guard, to visit approximately 2,000 recreational boat manufacturers each year to inspect for compliance with the Federal regulations, communicate with the manufacturers as to why they need to comply with the Federal regulations, and educate them, as necessary, on how to comply with the Federal regulations. ($4,484,665)

Boat Compliance Testing: Funding is providing for expansion of the boat compliance testing program whereby new manually propelled and outboard recreational boats are purchased in the open market and tested for compliance with the Federal flotation standards. The expanded program includes inboard/sterndrive boats and used boats. ($401,381)

Associated Equipment Compliance Testing: A contract was awarded to buy recreational boat ''associated equipment,'' *e.g.*, starters, alternators, fuel pumps, bilge pumps, etc., and test this equipment for compliance with Federal safety regulations. This new

initiative complements the boat compliance testing program. ($346,446)

Compliance Associated Travel: Travel by employees of the Office of Boating Safety is being performed to carry out additional compliance actions and to gather background and planning information for new compliance initiatives. ($98,395)

New Boat Manufacturer Outreach Package: A contract was awarded to design and develop a comprehensive and user-friendly outreach package for distribution to new recreational boat manufacturers. Included are a brochure and video that outline the many facets of the recreational boat manufacturing business, including, Federal regulations, voluntary standards, self-certification, financial aspects, insurance concerns, liability issues, points of contact and the steps necessary to become a new recreational boat manufacturer. The package also includes plain language guidelines that help clarify Federal requirements. The new outreach package is aimed at increasing the level of new recreational boat manufacturer compliance with applicable Federal regulations. ($357,582)

National Boating Survey: A contract has been awarded for a comprehensive major national recreational boating survey scheduled to be conducted during the fall of 2002. The purpose of this project is to obtain up-to-date statistical estimates of recreational boats, boating households, boaters, boating exposures, practices and activities for the 2002 boating season. This data will be extrapolated to produce national, regional and state estimates of boat use as well as the characteristics of boat operators, passengers, boats and the operating environment ($1,591,666).

Boating Accident Report Database (BARD): A contract has been awarded to enhance the capability of all States and the Coast Guard for the successful electronic exchange, management, and reporting of recreational boating accident report data using the BARD software application. This contract provides for software module development, software module testing, applicable rework, implementation, maintenance, and technical support for the user community in the 50 States, five Territories, and the District of Columbia. ($2,267,320)

State Incident Notification: The Coast Guard Search and Rescue Management Information System (SARMIS) software has been modified to electronically notify the relevant State boating law administrators regarding any fatal recreational boating incident cases to which the Coast Guard responds. The intent of this notification is to ensure that these cases are captured in the accident report data submitted by the State boating law administrators to the Boating Accident Report Database (BARD). ($12,678)

Articulated Mannequins/Computer Simulation Model: The objective of this contracted program is to improve the safety of recreational boaters by fostering developmental technology for improved personal flotation devices (PFDs). This program is furthering development of flotation mannequins and a water forces computer simulation program to promote the rapid, objective evaluation of different PFD designs on various body types that are representative of the recreational boating population. The computer simulation program will be validated through the use of a family of anthropomorphic, articulated mannequins. Under the contract to develop the articulated mannequins and computer simulation model, a male model has been built and is almost perfected. Currently, a female/child mannequin is being developed. The development of a computer simulation program will facilitate evaluation of the effectiveness of new and unique PFD designs. ($814,341)

Risk-Based Personal Flotation Device Approval Process: This ongoing effort will improve the approval process for personal flotation devices (PFDs) by developing a risk-based compliance system that is based on an objective Life Saving Index. This index will provide a formal structure and consistency to the process for accepting new approaches to designing devices for drowning prevention. The risk-based process identifies critical factors for evaluating PFD lifesaving potential and defines the minimum level of performance necessary for approval. ($398,509)

Carbon Monoxide Research: The Office of Boating Safety has entered into a Memorandum of Agreement with the Department of Health and Human Services, U.S. Public Health Service, Federal Occupational Health Program, to continue investigation into identifying and classifying additional recreational boating carbon monoxide related deaths and injuries. ($573,475)

Houseboat Manufacturers Workshop/ Conference Support: Funding provided support services for a Coast Guard-sponsored gathering of the houseboat industry to explore potential design solutions to the carbon monoxide poisonings that have occurred on recreational houseboats. ($17,030)

Hull Identification Number (HIN) Economic Analysis: The objective of this contracted effort is to provide the Coast Guard with a cost/benefit analysis on the effects of expanding the current 12-character HIN to a 17-character HIN for all newly constructed recreational boats. ($47,626)

Virtual Reality Personal Watercraft (PWC): A virtual reality PWC is being developed under contract to provide a platform to gather objective data on operator reactions to various scenarios. This information would otherwise be unobtainable or would require more costly methods and sources, due to the risk of injury to the operator as well as due to the difficulty of accurately replicating conditions for all operators. The virtual reality PWC will be used in various test scenarios to collect human factors data including the measurement of reactive movements and reaction time that will assist in making decisions or taking action to improve personal watercraft safety. The data from this effort will give greater insight into the human/machine interface related to PWC operation and will assist in the effort to attempt to reduce PWC accidents. ($407,638)

Knowledge Management System: The first phase of this three-phase contracted effort entailed the development of a comprehensive Knowledge Management plan for automating office processes in the Office of Boating Safety. The second phase, when implemented, will install document imaging software to capture and fully automate product assurance and consumer files and provide support that will ultimately enhance efficiency in supporting customers, partners and stakeholders. The third phase, if implemented, would provide quicker, more effective and efficient program oversight while providing customers with the ability to do business with the Coast Guard via web-based technology, thus enabling the Coast Guard to reduce the amount of paper transactions involved in servicing external customers. This system will assist in the electronic monitoring, storage and daily use of information and materials within the Office of Boating Safety. ($380,787)

Coast Guard Infoline/Office of Boating Safety Web Site: Funding has been provided for both technological and educational enhancements to the toll free Coast Guard Infoline and the Office of Boating Safety Web site to create a ''one-stop'' customer service center. The Infoline provides information about safety, regulations, communications, Coast Guard policy, and available material related to boating safety issues. Additionally, this effort provides a complete interactive recreational boating safety Web site that offers the public and boating safety agencies and organizations real-time information on

every aspect of recreational boating safety. One of the goals of this program is to create a ''one-stop'' customer service center for all users. ($635,243)

Federal Requirements Publication: A customer-friendly ''Federal Requirements and Safety Tips for Recreational Boats'' publication was developed based on easy-to-read, high visibility graphics, and with subject-specific safety tips that promote high retention by the reader. Both hard copy and electronic interactive versions have been created for the public. The enhanced Federal Requirements brochure is being widely distributed, and in addition, can be downloaded from the Office of Boating Safety Web site (*http://www.uscgboating.org*). ($253,000)

Emergency Radio Call Procedures Decal: An emergency radio call procedures decal was produced and disseminated that provides the recreational boater with the proper procedures to use in making an emergency or distress call via VHF–FM Channel 16. This decal will be distributed via the Coast Guard Auxiliary, U.S. Power Squadrons, and State boating offices, as well as U.S. Army Corps of Engineers, Tennessee Valley Authority, and the Bureau of Land Management. This item also supports the Vessel Safety Check (VSC) program provided by the Coast Guard Auxiliary, U.S. Power Squadrons and States. The VSC program is a free service provided by these organizations offering a safety check of recreational boats 65′ or less in length. ($25,810)

Aids to Navigation Booklet: A full-color booklet, ''U.S. Aids to Navigation System,'' was produced to assist recreational boaters in better understanding the use and identification of navigational aids. This booklet is now used as an educational adjunct to the safe boating classes taught by the Coast Guard Auxiliary, U.S. Power Squadrons, and many of the States. It is also distributed in conjunction with the Vessel Safety Check program. ($55,327)

''Operation BoatSmart'' Support: Funding support was provided to this initiative which coordinated Coast Guard and other boating safety organizations aims to energize recreational boating safety programs by strengthening and extending partnerships at the national, State and local levels. Through combined and coordinated efforts, the BoatSmart partners targeted those activities and behaviors that presented the greatest risk for the recreational boater. ''Operation BoatSmart'' brought together these organizations to work in tandem to promote a positive change in boater awareness and behavior, with special emphasis on inland waters where most recreational boating takes place. Special emphasis was focused on encouraging life jacket wear, boater education, and scrupulous enforcement of boating under the influence laws by appropriate authorities. ($273,586)

Recreational Boating Safety Program Marketing Support: A national marketing, awareness and education campaign in support of ''Operation BoatSmart,'' as well as America's Boating Course, Boating Under the Influence Campaign, and the Vessel Safety Check (VSC) Program has been funded. America's Boating Course is a joint boating safety education course developed by the U.S. Coast Guard Auxiliary and the U.S. Power Squadrons, supported by the Coast Guard. This course, available via CD–Rom or Internet will set the standard for recreational boating safety in our country. The Boating Under the Influence (BUI) campaign, ''It's a Different World on the Water,'' is a multi-year effort to educate the recreational boater about the hazards of boating under the influence of alcohol or drugs. The marketing plan utilizes nationally recognized cartoon characters, Popeye and Olive Oyl, to advertise the VSC program to the boating public at marinas, yacht clubs, boat storage facilities, retail outlets and other recreational outlets. ($98,956)

Recreational Boating Safety Outreach Program

This program provides full marketing, media, public information, and program strategy support to the RBS effort. The goal is to coordinate the RBS outreach campaigns some of which include: National Boating Under the Influence Campaign (BUI), Operation BoatSmart, PFD Wear, Vessel Safety Check Program (VSC), America's Boating Course, and other recreational boating safety issues on an as needed basis. ($746,091)

Kayak/Canoe Sponson Study

Study conducted in conjunction with the CG Research and Development Center to study the efficacy of the use of sponsons in canoes and kayaks. ($26,171)

Field Support—District Funded Projects

Seventeenth Coast Guard District Boating Safety Detachment: Funding was provided on a one-time, non-recurring basis to the Seventeenth Coast Guard District in support of a Coast Guard Boating Safety Detachment to assist in the transition of the State of Alaska's assumption of Recreational Boating Safety Program responsibilities. ($25,000)

Seventeenth Coast Guard District Boating Education and Safety (BEST)Teams: A three year effort, the BEST teams operate in the 17th District in 16 separate locations, with more than 30 team members providing educational benefits to the boaters of that district. ($100,000)

Eighth Coast Guard District Western Rivers Strike Team: Similar to the 17th District program these strike teams operate in the western rivers in the 8th District conducting safety education. ($190,000)

National Boating Registration System: As a service for States/Territories that currently have inadequate (or no) computer software program to maintain their vessel numbering system information, funding was provided to the U.S. Coast Guard Operations Systems Center (OSC) to develop a National Boating Registration System software program that can easily be adapted by any State/Territory for their own use. The software that has been provided to States/Territories at no cost includes a function to automatically generate the annual report on numbered vessels that must be submitted to the Coast Guard each year. ($25,000)

Marine Dealer Literature Display Racks: Display racks for U.S. Coast Guard and U.S. Coast Guard Auxiliary literature were purchased to improve distribution of boating safety literature. These display racks are intended to be used at retail outlets and marine dealers. ($23,725)

Personnel Support: Funding is providing for personnel to support the development of new regulations, to support new contracting activities associated with the additional funding, and to monitor and manage the contracts awarded. ($660,121)

A total of $15,337,569 of the $20,000,000 made available to the Coast Guard through annual transfers of $5 million in fiscal years 1999, 2000, 2001, and 2002 has been committed, obligated or expended as of September 30, 2002 and $245,000 is being held for a national boating survey.

Dated: November 25, 2002.

Harvey E. Johnson,

Rear Admiral, U.S. Coast Guard, Director of Operations Policy.

[FR Doc. 02–30619 Filed 12–2–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD08–02–041]

Houston/Galveston Navigation Safety Advisory Committee Meetings

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The Houston/Galveston Navigation Safety Advisory Committee (HOGANSAC) and its working groups will meet to discuss waterway improvements, aids to navigation, area projects impacting safety on the Houston Ship Channel, and various other navigation safety matters in the Galveston Bay area. All meetings will be open to the public.

DATES: The next meeting of HOGANSAC will be held on Thursday, January 30, 2003, from 9 a.m. to 12 p.m. The meeting of the Committee's working groups will be held on Thursday, January 16, 2003, at 9 a.m. to 11 a.m. The meetings may adjourn early if all business is finished. Members of the public may present written or oral statements at either meeting.

ADDRESSES: The full Committee meeting will be held at the Offices of the Houston Pilots Association, 8150 South Loop East, Houston, Texas, telephone (713) 645–9620. The working groups' meeting will be held at the Offices of the Galveston/Texas City Pilots Association, Pelican Island, Galveston, Texas, telephone (409) 740–3690.

FOR FURTHER INFORMATION CONTACT: Captain Kevin Cook, Executive Director of HOGANSAC, telephone (713) 671–5199, Commander Tom Marian, Executive Secretary of HOGANSAC, telephone (713) 671–5164, or Lieutenant Junior Grade Kelly Tobey, assistant to the Executive Secretary of HOGANSAC, telephone (713) 671–5103, e-mail *katobey@vtshouston.uscg.mil.*

SUPPLEMENTARY INFORMATION: Notice of these meetings is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agendas of the Meetings

Houston/Galveston Navigation Safety Advisory Committee (HOGANSAC). The tentative agenda includes the following:

(1) Opening remarks by the Committee Sponsor (RADM Casto or his representative), Executive Director (CAPT Cook), and Chairman (Tim Leitzell).

(2) Approval of the September 19, 2002, minutes.

(3) Old Business:

(a) Dredging projects.

(b) Electronic navigation.

(c) AtoN Knockdown Working Group.

(d) Mooring subcommittee report.

(e) Bolivar Roads anchorage areas.

(f) Recreational boating education initiative.

(g) Port Security Subcommittee report.

(h) Bridge Allision Working Group

(4) New Business:

(a) New HOGANSAC charter and members.

(b) Status of PORTS.

(c) Update on AIS implementation.

(d) State of the Waterways presentation.

Working Groups Meeting. The tentative agenda for the working groups meeting includes the following:

(1) Presentation by each working group of its accomplishments and plans for the future.

(2) Review and discuss the work completed by each working group.

Procedural

Working groups have been formed to examine the following issues: dredging and related matters, electronic navigation systems, AtoN knockdowns, impact of passing vessels on moored ships, recreational boater education, and port security. Not all working groups will provide a report at this session. Further, working group reports may not necessarily include discussions on all issues within the particular working group's area of responsibility. All meetings are open to the public. Please note that the meetings may adjourn early if all business is finished. Members of the public may make presentations, oral or written, at either meeting.

Information on Services for the Handicapped

For information on facilities or services for the handicapped or to request special assistance at the meetings, contact the Executive Director, Executive Secretary, or assistant ot the Executive Secretary.

Dated: November 18, 2002.

Roy J. Casto,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 02–30616 Filed 12–2–02; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration (FAA)

Notice of Opportunity for Public Comment on Property Release at Gwinnett County Airport, Lawrenceville, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: Under the provisions of Title 49, U.S.C. Section 47153(c), notice is being given that the FAA is considering a request from Gwinnett County to release two areas of land located at the Gwinnett County Airport from aeronautical to nonaeronautical use.

DATES: Comments must be received on or before January 2, 2003.

ADDRESSES: Comments on this notice may be mailed or delivered in triplicate to the FAA at the following address: Atlanta Airports District Office, 1701 Columbia Ave, Suite 2–260, Campus Building, College Park, GA 30337–2747.

In addition, one copy of any comments submitted to the FAA must be mailed to Mr. Matthew L. Smith, Airport Manager, of the Gwinnett County Airport at the following address: P.O. Box 1446, Lawrenceville, GA 30046–1446.

FOR FURTHER INFORMATION CONTACT: Lee Kyker, Manager of Airport Programs, Atlanta Airports District Office, 1701 Columbia Ave, Suite 2–260, Campus Building, College Park, GA 30337–2747, (404) 305–7161. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA is reviewing a request by Gwinnett County to release 2.24 acres of Gwinnett County purchased property at the Gwinnett County Airport currently shown on the approved Airport Layout Plan as aeronautical land. Gwinnett County will continue to retain the property for use by the Parks and Recreation Department. The navigation easement will continue to be in effect for the property. The parcels are located along Hosea Road.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.** In addition, any person may, upon request, inspect the request, notice and other documents germane to the request in person at the Gwinnett County Airport Manager's office.

Issued in Atlanta, Georgia, on November 15, 2002.

Scott L. Seritt,

Manager, Atlanta Airports District Office, Southern Region.

[FR Doc. 02–30612 Filed 12–2–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Policy Statement No. ANM–02–115–20]

Corded Electrical Devices Used in the Passenger Cabin

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of final policy.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of final policy that addresses potential hazards associated with the installation of corded electrical devices used in the passenger cabin.

DATES: This final policy was issued in the Transport Airplane Directorate on November 21, 2002.

FOR FURTHER INFORMATION CONTACT: Alan Sinclair, Federal Aviation Administration, Transport Airplane Directorate, Transport Standards Staff, Airframe and Cabin Safety Branch, ANM–115, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–2195; fax (415) 227–1149 e-mail: *alan.sinclair@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion of Comments: A notice of proposed policy was published in the **Federal Register** on August 30, 2002 (67 FR 55912). Four commenters responded to the request for comments.

Background

The policy provides an applicant with various certifications options, which will require little or no on-aircraft evaluation of corded devices, provided that these devices meet certain basic criteria. Examples of corded electrical deices are telephone handsets and video system controllers. This guidance supersedes the previously issued guidance in this area.

The final policy as well as the disposition of public comments received is available on the Internet at the following address; *http://www.faa.gov/certification/aircraft/anminfo/finalpaper.cfm.* If you do not have access to the Internet, you can obtain a copy of the policy by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

Dated: Issued in Renton, Washington, on November 21, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–30614 Filed 12–2–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Policy Statement No. ANM–02–115–21]

Stowage, Retention, and Breakaway of Deployable Individual Video Systems (IVS) Installed in Transport Airplane Seats

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of final policy.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of final policy that addresses the use of industry standards in the seat certification process regarding qualification of video systems mounted on seats.

DATES: This final policy was issued by the Transport Airplane Directorate on November 21, 2002.

FOR FURTHER INFORMATION CONTACT: Alan Sinclair, Federal Aviation Administration, Transport Airplane Directorate, Transport Standards Staff, Airframe and Cabin Safety Branch, ANM–115, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–2195; fax (425) 227–1149; e-mail: *alan.sinclair@faa.gov.*

SUPPLEMENTARY INFORMATION: *Discussion of Comments:* A notice of proposed policy was published in the **Federal Register** on September 4, 2002 (67 FR 56611). Four commenters responded to the request for comments.

Background

The policy further simplifies the certification process pertaining to the retention of video components on seats for which the supplier has been granted a Technical Standard Order authorization. This policy reduces the regulatory burden on industry by acknowledging the acceptability of test data generated by the seat supplier.

The final policy as well as the disposition of public comments received is available on the Internet at the following address: *http://www.faa.gov/certification/aircraft/anminfo/finalpaper.cfm.* If you do not have access to the Internet, you can obtain a copy of the policy by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

Issued in Renton, Washington, on November 21, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–30613 Filed 12–2–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Draft Environmental Impact Statement on the Proposed East-Southwest Corridor Study Project in Jacksonville, Duval County and Clay County, FL

AGENCY: Federal Transit Administration (FTA), U.S. Department of Transportation (DOT).

ACTION: Notice of intent to prepare an alternatives analysis and draft environmental impact statement (AA/DEIS).

SUMMARY: The Federal Transit Administration (FTA) as lead agency, the Florida Department of Transportation (FDOT) and the Jacksonville Transportation Authority (JTA) intend to conduct an Alternatives Analysis and prepare a Draft Environmental Impact Statement (AA/DEIS) on a proposal by the JTA to study the implementation of transportation improvements within a corridor known as the Jacksonville East/Southwest Corridor. The East/Southwest Corridor is an approximate 35-mile radial corridor connecting the Town of Orange Park in northern Clay County to the Jacksonville beach communities, through downtown Jacksonville. The analysis is necessary to identify mobility options that address the high level of travel demand and traffic congestion within the East/Southwest Corridor.

Scoping will be accomplished through correspondence with interested persons, organizations, and Federal, State and local agencies, and three public scoping meetings.

DATES: Comment Due Date: Written comments on the scope of the alternatives and impacts to be considered should be submitted by January 2, 2003 to Mr. Kevin Feldt, Senior Transportation Planner, Jacksonville Transportation Authority. Written and verbal comments may also be made at the public scoping meetings to be held on December 11 and December 12, 2002. See **ADDRESSES** below.

ADDRESSES: Written and verbal comments on the scope and related matters should be sent to Mr. Kevin

Feldt, Senior Transportation Planner, Jacksonville Transportation Authority, Post Office Drawer O, Jacksonville, Florida, 32203. Telephone: (904) 398–2216.

Three public scoping meetings will be held at the following dates and locations:

Public Scoping Meeting No. 1

Date: Wednesday, December 11, 2002.

Time: 5 p.m. to 8 p.m.

Location: J.E.B. Stuart Middle School, 4815 Westconnett Boulevard, Jacksonville, Florida 32210.

Public Scoping Meeting No. 2

Date: Thursday, December 12, 2002.

Time: 12 p.m. to 3 p.m.

Location: Jacksonville Transportation Authority, 100 North Myrtle Avenue, Jacksonville, Florida 32203.

Public Scoping Meeting No. 3

Date: Thursday, December 12, 2002.

Time: 5 p.m. to 8 p.m.

Location: FCCJ South Campus—Wilson Arts Center, 11901 Beach Boulevard, Jacksonville, Florida 32246.

Persons with special needs should contact Ms. Winova Hart, Project Coordinator, Jacksonville Transportation Authority, Post Office Drawer O, Jacksonville, Florida, 32203. Telephone: (904) 398–3882.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Feldt, Senior Transportation Planner, Jacksonville Transportation Authority, Post Office Drawer O, Jacksonville, Florida, 32203. Telephone: (904) 398–2216. You may also contact Mr. Derek R. Scott, Community Planner, FTA, 61 Forsyth Street, SW., Suite 17T50, Atlanta, GA 30303. Telephone: (404) 562–3524.

SUPPLEMENTARY INFORMATION: FTA, FDOT and JTA invite interested individuals, organizations, and Federal, State and local agencies to participate in defining the transportation improvement alternatives to be evaluated in the East/Southwest Corridor AA/DEIS Study and identify any significant social, economic, or environmental issues related to the alternatives. The scoping process will also include early agency coordination in accordance with Section 106, 36 CFR 800, the identification and evaluation of the concept and scope of the alternatives, and selection of a preferred design concept and scope of an alternative(s). Subsequently, alternatives that are consistent with the purpose of and the need for the proposed project will be addressed in the DEIS.

I. Scoping

The transportation improvements are being defined in conjunction with preparation of an Alternatives Analysis/Draft Environmental Impact Statement (AA/DEIS). The AA/DEIS will include a scoping process in accordance with the National Environmental Policy Act (NEPA) of 1969, as amended. An information packet describing the purpose of the AA/DEIS study, the corridor location, the proposed initial alternatives, and the impact areas to be evaluated, is being mailed to affected Federal, State, and local agencies. Others may request scoping materials by contacting Mr. Kevin Feldt, Senior Transportation Planner, Jacksonville Transportation Authority, Post Office Drawer O, Jacksonville, Florida, 32203. Telephone: (904) 398–2216.

The JTA will hold public scoping meetings as described above. FTA, FDOT and JTA invite interested individuals, organizations, and public agencies to attend the scoping meetings and participate in establishing the study's purpose, alternatives to be studied, time frame of the study, and the approach to the analysis. The public and agencies are invited to comment on the alternatives to be addressed, the modes and technologies to be evaluated, the alignments and termination points to be considered, the environmental, social, and economic impacts to be analyzed, and the evaluation approach to be used.

II. Description of the Study Area and Transportation Needs

The East/Southwest Corridor is an approximate 35-mile radial corridor connecting downtown Jacksonville with northern Clay County (Town of Orange Park), the Argyle/Naval Air Station (NAS), Ortega, Avondale, Riverside, Arlington, Mayport areas and the Jacksonville beach communities. The study area encompasses areas with the highest number of trips to downtown Jacksonville. The study area corridor will address 200 miles of congested roadways, representing approximately 40 percent of the urban area's congestion. It also connects the two large Naval installation employment centers to areas with the highest concentrations of minority and zero-auto households in the region by connecting to the North-Southeast Corridor. Through these connections, the proposed improvements have the potential to improve mobility and provide access to job opportunities for transportation disadvantaged populations.

In 1999, as a part of the federally required metropolitan transportation planning process, the JTA and the Florida Department of Transportation (FDOT), in cooperation with the First Coast Metropolitan Planning Organization (MPO), conducted a Transportation Alternatives Study (TAS) for the Jacksonville metropolitan area (Transportation Alternatives Study Corridors Evaluation Report, June 19, 2000). The TAS study area included all of Duval County and portions of northern Clay County and northern St. Johns County to the south.

The TAS evaluated regional travel corridors and recommended sequencing of corridors to be carried forward into more detailed study. A significant public involvement program was implemented during the preparation of the TAS, including numerous stakeholder interviews, public meetings and community workshops. The resulting recommended corridors and sequence for study included two radial corridors (the North/Southeast and the East/Southwest) and two crosstown corridors (Westside and Beaches). The two radial corridors focus on travel to and through downtown Jacksonville, which is the primary travel shed in the region today and is projected to remain so into the year 2025.

A public meeting was conducted on April 18, 2000 in Jacksonville to present the preliminary corridor recommendations and sequencing of future studies. Public comments on the recommendation were solicited from affected communities. In addition to the public hearing, the recommended corridors and sequencing were presented to the TAS Citizens Advisory Committee, the MPO Technical Coordinating Committee and Citizens Advisory Committee, the JTA Board of Directors, and the MPO Board of Directors.

The TAS findings resulted in the first sequenced corridor, the North/Southeast corridor, advancing into the AA/DEIS phase. During the course of the North-Southeast AA/DEIS, a more thorough identification of corridor facilities was performed and potential social, economic and environmental impacts have been evaluated. Additionally, corridor transportation needs will be further analyzed, alternative transportation solutions will be identified and evaluated, and decisions will be made on a proposed locally preferred alternative (LPA). The North-Southeast AA/DEIS will be completed with the LPA adopted in Spring, 2003.

It is expected that the ongoing scoping process, including the formal scoping meetings, stakeholder input, public

meetings and workshops, along with written comments, will result in the final set of alternatives to be studied in the East/Southwest Corridor DEIS. Potential variations on the alternatives, including both transit and non-transit alternatives, will be considered.

III. Alternatives

A number of transportation alternatives will be evaluated and will include:

(1) No-Build Alternative consisting of existing and planned/programmed transportation improvements identified in the Jacksonville Urban Area Transportation Study (JUATS) 2025 Cost Feasible Long Range Transportation Plan (LRTP). This alternative provides the baseline for establishing the project's environmental impacts.

(2) Transportation System Management/Traffic Demand Management (TSM/TDM) alternative. This alternative will include enhanced bus service and facilities in addition to other TSM/TDM projects. The TSM/TDM alternative is defined as low cost, operational oriented improvements designed to address the identified transportation problems in the corridor. The TSM/TDM alternative provides the baseline criteria against which all of the ''build'' alternatives are evaluated.

(3) Busway/Bus Rapid Transit (BRT) alternative.

(4) Light Rail Transit (LRT) alternative.

(5) Commuter Rail alternative.

(6) Street and highway alternative.

(7) Combinations of the above modes with various alignment alternatives, using facilities that include but are not limited to Arlington Expressway/Atlantic Boulevard (SR 10), Hart Expressway (Alt US 1)/Beach Boulevard (US 90), and J. Turner Boulevard (SR 202) in the East district, and Roosevelt Boulevard (US 17)/CSX Railroad, Blanding Boulevard (SR 21) and Interstate 295 in the Southwest district.

(8) Other alternatives to be identified as a result of the scoping process.

As part of the alternative analysis, capital, operating and maintenance costs and other financial impacts will be evaluated. After identification and screening of a set of initial alternatives, promising conceptual alternatives will be identified and will undergo an evaluation process to reduce them to a set of refined alternatives. A more detailed analysis of refined alternatives will be undertaken during the preparation of the AA/DEIS. The AA/DEIS will be presented to the public and agencies at a public hearing followed by the JTA Board action to select a proposed LPA. If a Build alternative is selected, JTA will then request the First Coast MPO Board to review and approve the LPA selection. After approval, the proposed improvements within the LPA would be adopted within the cost feasible Jacksonville 2025 LRTP.

IV. Probable Effects

FTA, FDOT and JTA will evaluate, in the DEIS, all significant social, economic and environmental impacts of the refined alternatives. Issues and impacts to be considered during the study include potential changes to the physical environment (air quality, noise, vibration, water quality, aesthetics, ecological resources, navigable waterways, *etc.*); the social environment (land use, development, neighborhoods, *etc.*); parklands, cemeteries, and historic resources.

Among the primary transportation issues to be evaluated in the DEIS are the expected increases in transit ridership, the expected increase in mobility for the transportation disadvantaged population, impacts to environmental justice groups of concern, and the proposed project's support for the region's air quality goals. Evaluation criteria will include consideration of the local goals and objectives established for the study, measures of effectiveness identified during the ongoing scoping process, and criteria established by FTA.

V. FTA Procedures

In accordance with FTA policy, all Federal laws, regulations, and executive orders affecting project development, including but not limited to the regulations of the Council on Environmental Quality and FTA implementing NEPA (40 CFR parts 1500–1508, and 23 CFR part 771), the 1990 Clean Air Act Amendments, section 404 of the Clean Water Act, Executive Order 12898 regarding environmental justice, the National Historic Preservation Act, the Endangered Species Act, and section 4(f) of the DOT Act, will be addressed to the maximum extent practicable during the NEPA process. In addition, following selection and adoption of the LPA, JTA may seek FTA Section 5309 New Starts funding for the LPA or related projects that may terminate within the project area and will therefore be subject to the FTA New Starts regulations (49 CFR part 611). This New Starts regulation requires submission of information specified by FTA to support a JTA request to initiate preliminary engineering. The alternatives analysis and subsequent preliminary engineering activities are to be executed in conjunction with the NEPA process.

Issued on: November 26, 2002.

Jerry Franklin,

Regional Administrator, Federal Transit Administration, Atlanta, Georgia.

[FR Doc. 02–30524 Filed 12–2–02; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2002–13067]

Requested Non-availability Waiver

AGENCY: Maritime Administration, Department of Transportation (''MARAD'', ''we'', ''us'' or ''our'').

ACTION: Notice of termination of consideration of requested administrative finding under the Merchant Marine Act of 1936, as amended, (Act) to allow cargo carriage by a non-qualified U.S.-flag vessel in the absence of available qualified U.S.-flag vessels.

SUMMARY: The Act (46 App. U.S.C. 1241(b)), requires that at least 50 percent of Government-sponsored cargoes (75 percent with regard to certain agricultural exports) transported on ocean-going vessels be transported on certain U.S.-flag vessels when such vessels are available at a fair and reasonable rate for U.S.-flag commercial vessels. The statute excludes from eligibility to carry such cargoes foreign built or foreign rebuilt vessels or vessels previously registered under a foreign flag, unless the vessel has been registered under the United States flag for at least three years. Implicit in the statute is that, upon a finding by MARAD that U.S.-flag privately owned commercial vessels are not available for a fair and reasonable rate for U.S.-flag vessels, a foreign-flag may be used.

The Government of Israel, Ministry of Defense (GOI-MOD) purchases jet fuel from the Defense Security Cooperative Agency (DSCA) under the Foreign Military Sales Program. The cargo is subject to the Act, which requires 50 percent U.S.-flag carriage, but longstanding U.S. Government policy set forth in the DSCA manual requires 100 percent U.S.-flag carriage. GOI-MOD has expressed a concern that qualified U.S.-flag vessels may not be available in 2004 and beyond, due to many U.S.-flag tankers being retired under the Oil Pollution Act of 1990. GOI-MOD requested that MARAD allow future use of U.S.-flag vessels which have not met the three year wait requirement to carry preference cargo only when no fully

qualified U.S.-flag vessel is available, thus meeting the U.S.-flag requirement and providing employment for U.S. citizen mariners.

We published a notice on August 13, 2002, 67 FR 52771, inviting comments in this docket on how we should respond to this innovative suggestion. The preponderance of comments urged us to delay taking any action because the requested finding would not be needed, if at all, until 2003. Other comments supported and opposed the request altogether. After review of these and other comments received, we will not take any action at this time.

ADDRESSES: Comments are not solicited, but if you so desire, you may submit comments. Comments should refer to docket number MARAD–2002–13067. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Thomas W. Harrelson, Director, Office of Cargo Preference, MAR–580 Room 8118, 400 7th St., SW., Washington, DC 20590. Telephone no. (202) 366–5515.

Dated: November 27, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–30586 Filed 12–2–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2002–13858; Notice 1]

Dorel Juvenile Group; Receipt of Application for Determination of Inconsequential Non-Compliance

Dorel Juvenile Group [Cosco] (DJG), of Columbus, Indiana, failed to comply with S5.4.1(b) of Federal Motor Vehicle Safety Standard (FMVSS) No. 213, ''Child Restraint Systems,'' which incorporates S4.2(e) of FMVSS No. 209, ''Seat Belt Assemblies,'' and has filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.'' DJG has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—''Motor Vehicle Safety'' on the basis that the noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of the application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgement concerning the merits of the application.

The following summarizes the DJG petition based upon information provided with the petition in accordance with the requirements of 49 CFR part 556, ''Exemption for Inconsequential Defect or Noncompliance.''

Summary of the Petition

On July 25, 2002, as a result of its fiscal year 2002 testing, NHTSA notified DJG, by telephone, of a potential noncompliance regarding DJG's gray harness webbing. The non-compliant webbing is identified as gray Wellington style #N2216E2–917, lots numbered 2063F, 2100F, and 2140D, used in child restraint harnesses that are manufactured by DJG (14 Models and 54,400 units). The manufactured dates for this webbing are from March 15, 2002 through August 1, 2002. DJG's original (before light exposure) harness webbing breaking strength, measured by NHTSA's FY 2002 compliance testing, was 2,780 pounds, and after light exposure it was 1,020 pounds (a ratio of light exposed/original strength of 37%). Section 4.2(e) of FMVSS No. 209 requires webbing after light exposure to have breaking strength of not less than 60% of its original breaking strength.

DJG's independent testing at Veridian showed dynamic load range between 190 pounds and 322 pounds. DJG believes that its light exposed harness webbing breaking strength at 1,020 pounds far exceeds forces in dynamic crash testing by a factor of 3.1 to 6.8 times. DJG argues that without a minimum breaking strength requirement, webbing with much lower initial breaking strength could comply with the standard at much lower breaking strength than the DJG's 1,020 pounds as long as it retains 60 percent of the original webbing strength. DJG commented that while its webbing (made of nylon fabrics) was noncompliant when exposed to carbon arc light filtered by a Corex-D filter (tested according to the standard's requirements), the webbing was compliant when exposed to carbon arc light filtered by a soda-lime glass filter (specified by the standard for use only for polyester fabrics). DJG also commented that because the standard relies on carbon arc light for resistance to light testing, the method is obsolete. Therefore, DJG filed this petition on the basis that the noncompliance is inconsequential to motor vehicle safety.

Availability of the Petition and Other Documents

The petition and other relevant information are available for public inspection in NHTSA Docket No. NHTSA–2002–13858. You may call the Docket at (202) 366–9324 or you may visit the Docket Management in Room PL–401, 400 Seventh Street, SW., Washington, DC 20590 (10 a.m. to 5 p.m., Monday through Friday). You may also view the petition and other relevant information on the Internet. To do this, do the following:

(1) Go to Docket Management System (DMS) Web page for the Department of Transportation (*http://dms.dot.gov/search*).

(2) On the next page (*http://dms.dot.gov/search/SearchFormSimple.cfm*), type the docket number ''13858.'' After typing the docket number, click on ''search.''

(3) On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments and other materials.

Comments

Interested persons are invited to submit written data, views and arguments on the petition of DJG described above. Comments should refer to the Docket Number and be submitted to: U.S Department of Transportation Docket Management, Room PL 401, 400 Seventh Street, SW., Washington, DC 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent practicable. When the application is granted or denied, the Notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: January 2, 2003.

(49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: November 26, 2002.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 02–30521 Filed 12–2–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2002–12544; Notice 2]

Mercedes-Benz, U.S.A. Inc.; Grant of Application for Decision That Noncompliance Is Inconsequential to Motor Vehicle Safety

Mercedes-Benz, U.S.A., Inc. (MBUSA), has determined that ''a limited number'' of model year 2003 Mercedes-Benz SL-Class, E-Class and CLK-Class vehicles that it produced and sold do not fully comply with 49 CFR 571.135, Federal Motor Vehicle Safety Standard (FMVSS) No. 135, ''Passenger Car Brake Systems,'' and has filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.'' MBUSA has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. chapter 301—''Motor Vehicle Safety'' on the basis that the noncompliance is inconsequential to motor vehicle safety.

Notice or receipt of the application was published in the **Federal Register** on July 8, 2002, with a 30-day comment period (67 FR 45180). NHTSA received no comments on this application.

The noncompliant vehicles were produced and sold with brake warning indicators that do not meet certain requirements mandated by FMVSS No. 135. Paragraph S5.5.5 (a) of FMVSS No. 135 requires that all vehicles be equipped with a brake warning indicator lamp. The standard enumerates specific minimum parameters applicable to the warning:

> Each visual indicator shall display a word or words in accordance with the requirements of Standard No. 101 (49 CFR 571.101) [i.e., ''Brake''] and this section, which shall be legible to the driver under all daytime and nighttime conditions when activated. Unless otherwise specified, the words shall have letters not less than 3.2 mm (1/8 inch) high and the letters and background shall be of contrasting colors, one of which is red. Words and symbols in addition to those required by Standard No. 101 and this section may be provided for purposes of safety.

The affected vehicles are equipped with ''Brake'' indicator warning lamps located in the upper right hand corner of the speedometer display. The letters in the indicator warning ''BRAKE'' were changed from all upper-case letters to mixed upper and lower-case letters. As a result, the letters ''B'' and ''k'' in the ''Brake'' indicator lamp meet the minimum height requirements of FMVSS No. 135, but the letters ''r, '' ''a,'' and ''e'' are 7/10 mm shorter than the minimum 3.2 mm requirements. MBUSA does not believe that the 7/10 mm difference is discernible by the average driver for the following reasons:

1. The ''Brake'' warning indicator is still easily recognizable due to its positioning on the dashboard, the color of the indicator, and other factors.

2. In addition to the ''Brake'' warning indicator, each of the affected Mercedes-Benz vehicles is also equipped with a dual screen message center that provides brake system information in a highly visible and audible manner.

MBUSA also cited an agency action from 1982, 47 FR 31347, in which the agency granted an application for a decision that a noncompliance by Subaru was inconsequential to vehicle safety. As with MBUSA, Subaru failed to use letters of sufficient height for the brake malfunction telltale in a number of its vehicles. MBUSA believes that the Subaru issues were essentially the same as the current MBUSA noncompliance issues and further believes the Subaru case should support the MBUSA request for a determination that the noncompliance is inconsequential to vehicle safety. Also, MBUSA believes that the noncompliance is inconsequential to motor vehicle safety, and that no corrective action is warranted.

The agency has reviewed the section of FMVSS No. 135 that discusses the requirements for character height in the brake warning indicator lamp, paragraph S5.5.5 (a), and concurs with MBUSA's decision that it is in noncompliance with that paragraph. However, the agency does not believe that the noncompliance will degrade the legibility of the brake malfunction telltale, or will have an adverse effect on vehicle safety. According to MBUSA, three of the letters in the word ''Brake'', the ''r'', ''a'', and the ''e'' are about 78% of the minimum height required for such letters, while the other two letters in the word ''Brake,'' the ''B'' and the ''k'', meet the minimum height requirement of 3.2 mm. MBUSA stated in its petition that the affected vehicles are equipped with a dual screen message center that displays brake system information in addition to the brake telltale required by FMVSS No. 135 whenever a brake system problem is detected. The messages displayed by the message center, which provide information about the specific problem the vehicle diagnostic system has detected, are illuminated along with the ''Brake'' telltale. When the vehicle detects a high priority brake system malfunction, the message center also triggers an audible signal in addition to the illumination of the ''Brake'' telltale and the specific brake malfunction message.

In consideration of the foregoing, NHTSA has decided that the petitioner has met its burden of persuasion that the noncompliance is inconsequential to motor vehicle safety. Accordingly, the application is granted and the applicant is exempted from providing the notification and remedy requirements of 49 U.S.C. 30118 and 49 U.S.C. 30120, respectively.

Authority: (49 U.S.C. 301118, 301120: delegations of authority at 49 CFR 1.50 and 501.8).

Issued on: November 26, 2002.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 02–30520 Filed 12–2–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2002–13895; Notice 1]

Michelin North America, Inc., Receipt of Application for Decision of Inconsequential Noncompliance

Michelin North America, Inc., (Michelin) has determined that approximately 750 size 215/55R16 Energy MXV4 Plus tires do not meet the labeling requirements mandated by Federal Motor Vehicle Safety Standard (FMVSS) No. 109, ''New Pneumatic Tires.''

Pursuant to 49 U.S.C. 30118(d) and 30120(h), Michelin has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.''

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

FMVSS No. 109 (S4.3(e)) requires that each tire shall have permanently molded into or onto both sidewalls the actual number of plies in the sidewall, and the actual number of plies in the tread area if different.

The noncompliance with S4.3(e) relates to the sidewall markings. Michelin's Ardmore, Oklahoma plant produced approximately 750 tires with incorrect markings during the period from March 13, 2002, through March 27, 2002. The tires were marked: ''Tread Plies: 1 Polyester + 2 Steel + 1 Polyamide, Sidewall Plies: 1 Polyester.''

The correct marking required by FMVSS No. 109 is as follows: ''Tread Plies: 2 Polyester + 2 Steel + 1 Polyamide, Sidewall Plies: 2 Polyester.

''Michelin stated that the noncompliant tires were actually constructed with more sidewall and tread plies than indicated on the sidewall marking (2 tread and sidewall plies rather than 1). Therefore, this noncompliance is particularly unlikely to have an adverse safety impact and is clearly inconsequential to motor vehicle safety. The noncompliant tires meet or exceed all performance requirements of FMVSS No. 109 and will have no impact on the operational performance or safety of vehicles on which these tires are mounted.

Interested persons are invited to submit written data, views, and arguments on the application described above. Comments should refer to the docket number and be submitted to: U.S. Department of Transportation, Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below. Comment closing date: January 2, 2003.

(49 U.S.C. 301118, 301120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: November 26, 2002.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 02–30522 Filed 12–2–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Notification of the Susceptibility to Premature Brittle-Like Cracking of Older Plastic Pipe

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice; correction.

SUMMARY: In the **Federal Register** of November 26, 2002, (67 FR 70806) the Research and Special Programs Administration (RSPA) published a notice document issuing an advisory bulletin on the susceptibility to premature brittle-like cracking of older plastic pipe (ADB–02–7). RSPA is submitting this correction notice to reflect minor wording changes and include a website address.

EFFECTIVE DATE: This correction takes effect November 26, 2002.

FOR FURTHER INFORMATION CONTACT: Gopala K. Vinjamuri, (202) 366–4503, or by email at *gopala.vinjamuri@rspa.dot.gov.*

SUPPLEMENTARY INFORMATION:

Correction

The last sentence in the first paragraph of the Supplementary Information heading under **I. Background**, reads:

Copies of this report may be obtained by calling NTSB's Public Inquiry Office at 202–314–6551.

We are revising this sentence to add NTSB's website address. The sentence is revised to read as follows:

Copies of this report may be obtained by calling NTSB's Public Inquiry Office at 202–314–6551, or on the NTSB website at *www.ntsb.gov.*

In the fourth paragraph under **SUPPLEMENTARY INFORMATION,** the first sentence reads:

The NTSB report suggests that ..... . Remove the word ''suggests'' and replace with the word ''states''.

In the fourth paragraph under Supplementary Information, the third sentence reads:

NTSB alleges that ..... . Remove the word ''alleges'' and replace with the word ''concluded''.

Under **II. Advisory Bulletin (ADB–02–7)** of the **SUPPLEMENTARY INFORMATION** heading, in the second paragraph under *Advisory.* The fourth sentence reads:

These older polyethylene pipe materials include the following:

The sentence is revised to read as follows:

These older polyethylene pipe materials include, but are not limited to:

Issued in Washington, DC on November 27, 2002.

James K. O'Steen,

Deputy Associate Administrator for Pipeline Safety.

[FR Doc. 02–30615 Filed 12–2–02; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 22, 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 January 2, 2003 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0499.

Form Number: IRS Form 5305-SEP.

Type of Review: Extension.

Title: Simplified Employee Pension-Individual Retirement Accounts Contribution Agreement.

Description: This form is used by an employer to make an agreement to provide benefits to all employees under a Simplified Employee Pension (SEP) described in section 408(k). This form is not filed with the IRS but to be retained in the employer's records as proof establishing a SEP and justifying a deduction for contributions to the SEP. The data is used to verify the deduction.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 100,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	1 hr., 40 min.
Learning about the law or the form	1 hr., 35 min.
Preparing the form	1 hr., 41 min.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 495,000 hours.

Clearance Officer: Glenn Kirkland, (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 02–30575 Filed 12–2–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 22, 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 January 2, 2003 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1425.

Regulation Project Number: PS–55–93 (Temporary and Cross-Reference NPRM).

Type of Review: Extension.

Title: Certain Elections for Intangible Property.

Description: The information is required by the IRS to aid it in the law and preventing manipulation. The information will be used to verify that a taxpayer is properly reporting its amortization and income taxes. The likely respondents are businesses or other for-profit institutions.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 100.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: Other (once, 1993 tax return).

Estimated Total Reporting Burden: 100 hours.

OMB Number: 1545–1515.

Regulation Project Number: REG–209817–96 NPRM.

Type of Review: Extension.

Title: Treatment of Obligation-Shifting Transactions.

Description: Section 1.7701(1)–2 recharacterizes certain multiple-party financing transactions. Pass-through entities engaging in these transactions must reflect the required recharacterization on their books. This collection of information is required to verify compliance with the regulation and will be used to determine whether the amount of tax has been correctly computed.

Respondents: Business or other for-profit.

Estimated Number of Recordkeepers: 100.

Estimated Burden Hours Per Recordkeeper: 5 hours.

Estimated Total Recordkeeping Burden: 500 hours.

Clearance Officer: Glenn Kirkland, (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 02–30576 Filed 12–2–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 25, 2002.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before January 2, 2003 to be assured of consideration.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0467.

Form Number: ATF F 5000.24.

Type of Review: Revision.

Title: Excise Tax Return—Alcohol and Tobacco.

Description: Businesses report their Federal excise tax liability on distilled spirits, wine, beer, tobacco products, cigarette papers and tubes on ATF F 5000.24. ATF needs this form to identify the taxpayers and to determine the amount and type of taxes due and paid.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 2,800.

Estimated Burden Hours Per Respondent/Recordkeeper: 15 minutes.

Frequency of Response: Other (semi-monthly).

Estimated Total Reporting/Recordkeeping Burden: 35,280 hours.

OMB Number: 1512–0497.

Form Number: ATF F 5000.25.

Type of Review: Revision.

Title: Excise Tax Return—Alcohol and Tobacco (Puerto Rico).

Description: Businesses in Puerto Rico report their Federal excise tax liability on distilled spirits, wine, beer, tobacco products, cigarette papers and tubes on ATF F 5000.25. ATF needs this form to identify the taxpayer and to determine the amount and type of taxes due and paid.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeeping: 30.

Estimated Burden Hours Per Respondent/Recordkeeper: 15 minutes.

Frequency of Response: Other (semi-monthly).

Estimated Total Reporting/Recordkeeping Burden: 130 hours.

OMB Number: 1512–0551.

Form Number: ATF F 5300.42.

Type of Review: Extension.

Title: Certification of Secure Gun Storage or Safety Devices.

Description: The requested information will be used to ensure that applicants for a Federal firearms license are in compliance with the requirements pertaining to the availability of secure gun storage or safety devices.

Respondents: Business or other for-profit

Estimated Number of Respondents/Recordkeepers: 31,000.

Estimated Burden Hours Per Respondent/Recordkeeper: 1 minute.

Frequency of Response: Other (non-required).

Estimated Total Reporting/Recordkeeping Burden: 600 hours.

OMB Number: 1512–0552.

Form Number: None.

Type of Review: Extension.

Title: Open Letter to Federal Firearms Licenses.

Description: The requested information will be used to determine why Federal firearms licensees have failed to enroll with the FBI. This is necessary because non-enrolled licensees that transfer a firearm to a nonlicensed individual are in violation of the GCA, as amended.

Respondents: Business or other for-profit, Federal Government.

Estimated Number of Respondents: 18,000.

Estimated Burden Hours Per Respondent: 1 minute.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1,130 hours.

Clearance Officer: Jacqueline White, (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 02–30577 Filed 12–2–02; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0156]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to report changes in a student enrollment status.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 3, 2003.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov.* Please refer to ''OMB Control No. 2900–0156'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed 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, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Notice of Change in Student Status (Under Chapter 30, 32, or 35, Title 38, U.S.C; Chapter 1606, Title 10. U.S.C. or section 901 or 903 of Pub. L. 96–342), VA Form 22–1999b.

OMB Control Number: 2900–0156.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 22–1999b is used by educational institutions to report changes in the enrollment of students in receipt of VA education benefits. The information is used to determine a student's entitlement to educational benefits or whether the benefit should be increased, decreased, or terminated. Without this information, VA might underpay or overpay benefits.

Affected Public: State, local or tribal government, business or other for-profit, and not-for-profit institutions.

Estimated Annual Burden: 24,750 hours. VA Form 22–1999b—13,750. VA Form 22–1999b Electronically Filed—11,000.

Estimated Average Burden Per Respondent: VA Form 22–1999b—5 minutes. VA Form 22–1999b Electronically Filed—4 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 9,817.

Number of Responses Annually: 330,000. VA Form 22–1999b—165,000. VA Form 22–1999b Electronically Filed—165,000.

Dated: November 22, 2002.

By direction of the Secretary.

Ernesto Castro,

Director, Records Management Service.

[FR Doc. 02–30587 Filed 12–2–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0353]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine the number of lessons completed by a student and serviced by the correspondence school.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 3, 2003.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov.* Please refer to ''OMB Control No. 2900–0353'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed 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, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Certification of Lessons Completed, VA Forms 22–6553b and 22–6553b-1.

OMB Control Number: 2900–0353.

Type of Review: Extension of a currently approved collection.

Abstract: VA Forms 22–6553b and 22–6553b-1 are used to determine the number of lessons completed by a student and serviced by the correspondence school, and if necessary to determine the date of completion or termination of correspondence training. VA pays education benefits based on the information furnished on the form. Benefits are not payable when training is interrupted, discontinued or completed. Without this information, VA would be unable to determine the proper payment or the student's training status.

Affected Public: Individuals or households, Business or other for-profit.

Estimated Annual Burden: 1,782 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: Quarterly.

Estimated Number of Respondents: 3,564.

Number of Responses Annually: 10,692

Dated: November 22, 2002.

By direction of the Secretary.

Ernesto Castro,

Director, Records Management Service.

[FR Doc. 02–30588 Filed 12–2–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0005]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 2, 2003.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0005.''

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0005'' in any correspondence.

SUPPLEMENTARY INFORMATION: *Title:* Application for Dependency and Indemnity Compensation by Parent(s), (Including Accrued Benefits and Death Compensation, When Applicable), VA Form 21–535.

OMB Control Number: 2900–0005.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–535 is used by surviving parent or parents of a deceased veteran to apply for benefits. Dependency and Indemnity Compensation may be payable when the veteran dies (a) From disease or injury incurred or aggravated in line of duty while on active duty or active duty for training, (b) from injury incurred or aggravated in line of duty while on inactive duty training, or (c) from disability compensable under laws administered by VA. VA uses the information to determine a parent's eligibility, dependency and income, as applicable, for the death benefits.

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 **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on August 14, 2002, at page 53045.

Affected Public: Individuals or households.

Estimated Annual Burden: 25,056.

Estimated Average Burden Per Respondent: 1 hour 12 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 20,880.

Dated: November 22, 2002.

By direction of the Secretary.

Ernesto Castro,

Director, Records Management Service.

[FR Doc. 02–30589 Filed 12–2–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0171]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 2, 2003.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0171.''

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0171'' in any correspondence.

SUPPLEMENTARY INFORMATION: *Title:* Application and Enrollment Certification for Individualized Tutorial Assistance (38 U.S.C. Chapters 30, 32, or 35 and 10 U.S.C. Chapter 1606), VA Form 22–1990t.

OMB Control Number: 2900–0171.

Type of Review: Extension of a currently approved collection.

Abstract: This form is used by students who are receiving VA educational assistance and who require tutoring to overcome a deficiency in one or more courses. The information submitted by the student must be certified by the tutor, and the certifying official of the educational institution that the student is attending.

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 **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on August 26, 2002, at pages 54843—54844.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,200 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 2,400.

Dated: November 22, 2002.

By direction of the Secretary.

Ernesto Castro,

Director, Records Management Service.

[FR Doc. 02–30590 Filed 12–2–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0460]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 2, 2003.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0460.'' Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0460'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Request for Verification of Employment, VA Form 26–8497.

OMB Control Number: 2900–0460.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 26–8497 is used by lenders to verify a loan applicant's income and employment information when making guaranteed and insured loans. VA, however, does not require the exclusive use of this form for verification purposes; any comprehensible form or independent verification would be acceptable, provided all information presently shown on VA Form 26–8497 is provided. The form is also used in processing direct loan cases, offers on acquired properties, and release of liability/substitution of entitlement cases when needed.

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 **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on September 13, 2002, at pages 58102–58103.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 25,000 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Total Respondents: 150,000.

Dated: November 22, 2002.

By direction of the Secretary.

Ernesto Castro,

Director, Records Management Service.

[FR Doc. 02–30591 Filed 12–2–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 2, 2003.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to ''2900-New.''

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''2900-New.''

SUPPLEMENTARY INFORMATION:

Title: Study of Health and Communications of Veterans for the War Related Illnesses and Post-Deployment Health Issues, VA Form 10–21060(NR).

Type of Review: New collection.

Abstract: The purpose of this study is to develop a plan for clinical, research, risk communication and educational activities for war-related illnesses and post-deployment health issues.

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 **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on August 12, 2002, at pages 52523—52524.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,750 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 3,500.

Dated: November 22, 2002.

By direction of the Secretary.

Ernesto Castro,

Director, Records Management Service.

[FR Doc. 02–30592 Filed 12–2–02; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Tuesday,
December 3, 2002

Part II

Department of Transportation

Research and Special Programs Administration

49 CFR Parts 171, et al.

Harmonization With the United Nations Recommendations, International Maritime Dangerous Goods Code, and International Civil Aviation Organization's Technical Instructions; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, 175, 176, 178 and 180

[Docket No. RSPA–2002–13658 (HM–215E)]

RIN 2137–AD41

Harmonization with the United Nations Recommendations, International Maritime Dangerous Goods Code, and International Civil Aviation Organization's Technical Instructions

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: RPSA is proposing to amend the Hazardous Materials Regulations (HMR) to maintain alignment with international standards by incorporating various amendments, including changes to proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, air transport quantity limitations and vessel stowage requirements. Because of recent changes to the International Maritime Dangerous Goods Code (IMDG Code), the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions), and the United Nations Recommendations on the Transport of Dangerous Goods (UN Recommendations), these revisions are necessary to facilitate the transport of hazardous materials in international commerce.

DATES: With the exception of incorporation by reference materials, comments must be received by February 3, 2003.

Comments for the incorporation by reference of publications listed in § 171.7 must be received by January 2, 2003.

ADDRESSES: Address your comments to the Dockets Management System, U.S. Department of Transportation, 400 Seventh St., SW., Room PL 401, Washington, DC 20590. Comments must identify Docket Number RSPA–2002–13658 (HM–215E). If you wish to receive confirmation of receipt of your comments, include a self-addressed, stamped postcard. You may also submit and review all comments by accessing the Dockets Management System's Web-site at *http://dms.dot.gov.* The Dockets Management System is located on the Plaza Level of the Nassif Building at the above address. You may view public dockets between the hours of 9 a.m. and 5 p.m., Monday through Friday, except on federal holidays. Comments received after the comment closing date will be filed in the docket and considered to the extent practicable. Comments should include relevant data, factual information, and justification for any requested actions.

FOR FURTHER INFORMATION CONTACT: Joan McIntyre, Office of Hazardous Materials Standards, telephone (202) 366–8553, or Shane Kelley, International Standards, telephone (202) 366–0656, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

On December 21, 1990, RSPA (''we'') published a final rule (Docket HM–181; 55 FR 52402) based on the United Nations Recommendations on the Transport of Dangerous Goods (UN Recommendations), which comprehensively revised the Hazardous Materials Regulations (HMR), 49 CFR Parts 171 to 180, for harmonization with international standards. Since publication of the 1990 final rule, we have issued four additional international harmonization final rules, (Dockets HM–215A, 59 FR 67390; HM–215B, 62 FR 24690; HM–215C, 64 FR 10742; and HM–215D, 66 FR 33316). The rules provided additional harmonization with international transportation requirements by more fully aligning the HMR with the corresponding biennial updates of the UN Recommendations, the International Maritime Dangerous Goods Code (IMDG Code) and the International Civil Aviation Organization's Technical Instructions (ICAO Technical Instructions).

The UN Recommendations are not regulations, but rather are recommendations issued by the UN Committee of Experts on the Transport of Dangerous Goods. These recommendations are amended and updated biennially by the UN Committee of Experts. They serve as the basis for National, regional, and international modal regulations; specifically, the IMDG Code issued by the International Maritime Organization (IMO), and the ICAO Technical Instructions issued by the ICAO Dangerous Goods Panel. In 49 CFR 171.12, the HMR authorize domestic transportation of hazardous materials shipments prepared in accordance with the IMDG Code if all or part of the transportation is by vessel, subject to certain conditions and limitations. In § 171.11, subject to certain conditions and limitations, the HMR authorizes the offering, acceptance and transport of hazardous materials by aircraft, and by motor vehicle either before or after being transported by aircraft, provided the shipment is in accordance with the ICAO Technical Instructions.

The continually increasing amount of hazardous materials transported in international commerce warrants the harmonization of domestic and international requirements to the greatest extent possible. Harmonization serves to facilitate international transportation and at the same time ensures the safety of people, property and the environment. While the intent of the harmonization rulemakings is to align the HMR with international standards, we review and consider each amendment on its own merit. Each amendment is considered on the basis of the overall impact on transportation safety and the economic implications associated with its adoption into the HMR. Our goal is to harmonize without sacrificing the current HMR level of safety and without imposing undue burdens on the regulated public. In our efforts to continue to align the HMR with international requirements, this notice of proposed rulemaking (NPRM) proposes changes to the HMR based on the twelfth revised edition of the UN Recommendations, Amendment 31 to the IMDG Code, and the 2003–2004 ICAO Technical Instructions, which become effective January 1, 2003. Petitions for rulemaking concerning harmonization with international standards and the facilitation of international transportation are also addressed in this NPRM and serve as the basis of certain proposed amendments. Other proposed amendments are based on feedback from the regulated industry, other DOT modal administrations and our initiative. Also included are various proposed editorial clarifications. Unless otherwise stated, the proposed revisions are for harmonization with international standards.

II. Overview of Changes in this NPRM

Proposed amendments to the HMR in this NPRM include, but are not limited to the following:

—Amendments to the Hazardous Materials Table (HMT) which would add, revise or remove certain proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, bulk packaging requirements, passenger and cargo aircraft maximum quantity

limitations and vessel stowage provisions.
—Amendments to the List of Marine Pollutants.
—Revisions and additions of special provisions. Included is the addition of a special provision for assignment to aerosol entries setting forth the criteria for classifying aerosols.
—Addition of a requirement to enter the subsidiary hazard class or subsidiary division number on shipping papers.
—Addition of a requirement to indicate types of packagings on shipping papers.
—Addition of an alternative basic description sequence on shipping papers.
—Revision of marking requirements for limited quantities.
—Addition of an air eligibility marking requirement.
—Revision of requirements in § 173.27 for packagings intended for transportation by aircraft, including revision of requirements for use of absorbent material for such packagings.
—Revision of classification of air bag modules, air bag inflators and seat-belt pretensioners from Division 2.2 to Class 9.
—Revision of the non-liquefied and liquefied compressed gases descriptions, and the addition of high pressure and low pressure liquefied gases categories.
—Revisions and additions to the Self-Reactive Materials Table.
—Revisions and additions to the Organic Peroxide Table.
—Revision of the net weight restrictions for explosives in freight containers exceeding 20 feet (6 m) in length.

III. Summary of Regulatory Changes by Section

Part 171

Section 171.7. We are proposing to update the incorporation by reference materials for the ICAO Technical Instructions, the IMDG Code and the UN Recommendations. The updated editions of these standards become effective January 1, 2003. Additionally, the International Maritime Organization (IMO) recommends authorizing a one-year transition period, with a delayed compliance date of January 1, 2004, for the use of the updated edition (Amendment 31) of the IMDG Code. We are also proposing to authorize use of either Amendment 30 or Amendment 31 of the IMDG Code until January 1, 2004.

The standards would be updated as follows:
—The ICAO Technical Instructions, 2003–2004 edition.
—The IMDG Code, Amendment 31.
—The UN Recommendations, twelfth edition.

We are also proposing to add an IMO standard titled ''International Convention for the Safety of Life at Sea,'' 1974, as amended, Chapter II–2/Regulation 19, for incorporation into proposed § 176.63 to address hatchless container ship requirements.

Because the updated editions of the international standards become effective January 1, 2003, we are proposing a 30-day comment period for these proposed amendments only. Consistent with our previous harmonization (HM–215 docket numbers) rulemakings, our intent is to publish a separate final rule authorizing the use of these standards by January 1, 2003. This action will authorize compliance with the updated standards when they become effective, and is necessary to prevent disruption of hazardous materials shipments that are being transported internationally.

Section 171.8. In the definition for ''Large packaging,'' we are proposing to add the words ''Chapter 6.6'' to let readers know the location in the UN Recommendations for the construction, testing and marking of such packagings.

Section 171.11. We are proposing to revise paragraphs (c), (d)(5) and (d)(17) to address certain limitations for the use of the ICAO Technical Instructions.

In paragraph (c), for hazardous materials being transported in accordance with the ICAO Technical Instructions, the restrictions for the use of the Instructions would be revised to include hazardous materials that are forbidden by passenger and cargo aircraft, as designated in Columns (9A) and (9B) of the § 172.101 HMT. Currently, the paragraph restricts materials that are forbidden according to § 173.21 and Column (3) of the HMT.

In paragraph (d)(5), we are proposing to remove the wording ''except for Division 2.2'' regarding shipping paper requirements for air bag inflators, air bag modules and seat-belt pretensioners. This proposal is consistent with the proposed removal of the Division 2.2 air bag inflator, air bag module and seat-belt pretensioner entry in the HMT (see § 172.101).

Paragraph (d)(17) would be revised to clarify a current requirement that in addition to organic peroxides, self-reactive substances not specifically identified by name in § 173.224(b) also must be approved by the Associate Administrator in accordance with the requirements in § 173.124(a)(2)(iii).

Section 171.12. We are proposing to revise paragraphs (b)(3), (b)(5), (b)(19), and (b)(20).

In paragraph (b)(3), we are proposing to remove certain viscous flammable liquids as an example of a material designated as a hazardous material subject to the HMR, but not subject to the IMDG Code. The IMO removed the exception in Amendment 31 to the IMDG Code.

In paragraph (b)(5), we are proposing to make an editorial revision by removing a redundant and confusing phrase.

In paragraph (b)(19), we are proposing to remove the wording ''except for Division 2.2'' regarding shipping paper requirements for air bag inflators, air bag modules and seat-belt pretensioners. This proposal is consistent with the proposed removal of the Division 2.2 air bag inflator, air bag module and seat-belt pretensioner entry in the HMT (see § 172.101).

In paragraph (b)(20), we are proposing to clarify a current requirement that in addition to organic peroxides, self-reactive substances not specifically identified by name in § 173.224(b) must also be approved by the Associate Administrator in accordance with the requirements in § 173.124(a)(2)(iii).

For the readers' information, recently adopted amendments to the International Convention for the Safety of Life at Sea (SOLAS), 1974, as amended, will change the status of the use of the IMDG Code, effective January 1, 2004, from recommended to mandatory for international transportation by vessel. This issue will be addressed under a separate rulemaking.

Section 171.12a. We are proposing to revise paragraph (b)(18) by clarifying a current requirement that in addition to organic peroxides, self-reactive substances not specifically identified by name in § 173.224(b) also must be approved by the Associate Administrator in accordance with the requirements in § 173.124(a)(2)(iii).

Section 171.14. We are proposing to revise paragraphs (d), (d)(1), (d)(2), (d)(4), and (d)(5) and add paragraph (d)(6). Paragraphs (d) and (d)(1) would be revised to authorize a delayed implementation date for the proposed amendments in this NPRM. We are proposing an effective date of October 1, 2003, and a voluntary compliance date of January 1, 2003 to correspond with the effective implementation dates of the 2003–2004 ICAO Technical Instructions and Amendment 31 of the IMDG Code. This authorization would allow shippers to prepare their international shipments in accordance with international standards that will become effective on January 1, 2003. We are proposing to authorize a delayed

compliance date of October 1, 2004, which is comparable to the transition provisions provided in the final rule published under Docket HM–215D. The delayed mandatory compliance date would offer sufficient time to implement the new requirements.

Paragraph (d)(2) would be revised to authorize certain intermixing of old and new requirements.

Paragraph (d)(4) would be revised to include DOT Specification 51 portable tanks in the provision to allow, until January 1, 2010, conformance with the T Codes (Special Provisions) in effect on September 30, 2001.

Paragraph (d)(5) would be revised by extending the October 1, 2005 compliance date allowing proper shipping names that included the word ''inhibited'' prior to the June 21, 2001 final rule, HM–215D, to continue to be shown on packagings in place of the word ''stabilized'' until October 1, 2007. Additionally, the October 1, 2007 date would also apply to the proper shipping names in this NPRM that are proposed to be revised by removing the word ''compressed'' (see § 172.101, HMT).

Paragraph (d)(6) would be added to authorize, until October 1, 2005, the marking of certain other proper shipping names on packagings. The proper shipping names would be those that are proposed to be revised to include the position identifiers of the substituents, such as 2-Ethylbutyl acetate (see § 172.101, HMT).

Part 172

Section 172.101. In the regulatory text preceding the Hazardous Materials Table, we are proposing the following changes:

Paragraph (c)(15) would be revised by removing the words ''of inorganic substances.'' Currently, unless a hydrate is specifically listed in the HMT, only hydrates of inorganic substances may be identified using the proper shipping name for the equivalent anhydrous substance, provided the hydrates meet the same hazard class, division, subsidiary risk(s) and packaging group. With the removal of the phrase ''of inorganic substances,'' paragraph (c)(15) would apply to all hydrates.

§ 172.101 The Hazardous Materials Table (HMT). We are proposing to make various amendments to the HMT. Readers should review all changes for a complete understanding of the proposed Table amendments. For purposes of the Government Printing Office's typesetting procedures, proposed changes to the HMT will appear under three sections of the Table, ''remove,'' ''add'' and ''revise.'' Certain entries in the HMT, such as those with proposed revisions to the proper shipping names, will appear as a ''remove'' and ''add.'' Proposed amendments to the HMT for the purpose of harmonizing with international standards, unless otherwise stated, include, but are not limited to the following:

—''*Accumulators, pressurized, pneumatic or hydraulic (containing non-flammable gas), see* Articles, pressurized, pneumatic *or* hydraulic (*containing non-flammable gas*)'' would be added as a ''see'' entry into the HMT to aid the reader in locating the updated entry. This proposed action is based on feedback we received from users of the HMR after we removed the domestic entry (''Accumulators, pressurized, pneumatic,'' UN1956), as well as certain other domestic entries from the HMT in a final rule, HM–215D (66 FR 33316), published June 21, 2001. The entries were removed because we determined that they were no longer necessary considering the HMT already includes equally appropriate international entries. (Also see § 173.306(f) for a related editorial revision.)

—''Air bag inflators, compressed gas *or* Air bag modules, compressed gas *or* Seat-belt pretensioners, compressed gas,'' Division 2.2, UN3353 would be removed. All air bag inflators, air bag modules and seat-belt pretensioners currently classified as Division 2.2 would be reclassified as Class 9. A provision to allow this reclassification without further testing is also being proposed for incorporation into the HMR (see § 173.166). In line with the proposed removal of this entry, Special Provision 133 would also be removed. We are aware that removal of the UN3353 entry will require repackaging, remarking and relabeling of all compressed gas air bag assemblies. We believe that the delayed mandatory compliance date of October 1, 2004 and the transitional provisions proposed in § 171.14(d)(2), authorizing certain intermixing of old and new requirements, will offer sufficient time and flexibility to implement the new requirements and reduce the costs of meeting this requirement.

—''Air bag inflators, *pyrotechnic or* Air bag modules, *pyrotechnic or* Seat-belt pretensioner, *pyrotechnic*'' UN0503, Division 1.4G, would be amended by adding an ''I'' in Column (1), removing the word ''pyrotechnic'' from the proper shipping names in Column (2), revising Columns (8A) and (8C) to read ''None,'' revising Column (8B) to read ''§ 173.62'' (also see § 173.62), adding proposed Special Provision 161 (see § 172.102), and revising the vessel stowage columns (10A) and (10B). We are proposing to add the ''I'' in Column (1) because we do not agree that an air bag that meets the criteria for a Division 1.4G explosive should be transported under an air bag description for domestic transportation. We believe that a more appropriate name is ''Articles, pyrotechnic *for technical purposes,*'' UN0431. We are not aware of any air bags that have been shown through testing to meet a Division 1.4G classification for transport in the United States.

—''Air bag inflators, *pyrotechnic or* Air bag modules, *pyrotechnic or* Seat-belt pretensioner, *pyrotechnic,*'' UN3268, Class 9, would be amended by removing the optional word ''pyrotechnic'' and adding proposed Special Provision 160 (see § 172.102).

—''Ammonium nitrate, *with not more than 0.2 percent combustible material, including any organic substance, calculated as carbon to the exclusion of any other added substance,*'' UN1942 would be amended by editorially correcting the italicized portion of the proper shipping name by adding the word ''total'' after ''0.2 %.''

—''Ammonium nitrate based fertilizers,'' UN2071, and ''Ammonium nitrate based fertilizers,'' UN2067 would be amended by removing the italicized portion of the proper shipping names, adding proposed new Special Provision 150 to the UN2067 entry, and revising Special Provision 132 which applies to the UN2071 entry (see § 172.102 for Special Provision amendments).

—''Ammonium nitrate fertilizers,'' NA2072 and ''Ammonium nitrate mixed fertilizers,'' NA2069 would be removed. We believe that the international entry ''Ammonium nitrate fertilizers,'' UN2067 can be used in place of the domestic entries which do not provide any additional exceptions.

—A new entry, ''Ammonium nitrate emulsion *or* Ammonium nitrate suspension or Ammonium nitrate gel, *intermediate for blasting explosives,*'' UN3375 (also see § 172.102, Special Provisions 52 and 147) would be added.

—For the entry ''Calcium hypochlorite, hydrated *or* Calcium hypochlorite, hydrated mixtures, *with not less than 5.5 percent but not more than 10 percent water,*'' UN2880, the wording ''*not more than 10 percent water*''

would be revised to read ''*not more than 16 percent water.*''

—Four proper shipping names would be revised by adding the position identifiers of the substituents. The proper shipping names are ''Diethylaminopropylamine,'' position identifier ''3''; ''Dimethylcyclohexylamine,'' position identifiers ''N,N''; ''Ethylbutyl acetate,'' position identifier ''2''; ''Propyl chloride'' which would be replaced by ''1-Chloropropane,'' and ''Tetrachloroethane,'' position identifiers ''1,1,2,2,''. Also, see § 171.14(d)(6) for the proposed continued use provision of these proper shipping names.

—The entry ''Hydrazine hydrate *or* Hydrazine aqueous solutions, *with not less than 37 percent but not more than 64 percent hydrazine, by mass,*'' UN2030 and ''Hydrazine, anhydrous or Hydrazine aqueous solutions *with more than 64 percent hydrazine, by mass,*'' UN2029 would be removed and ''Hydrazine aqueous solution, *with more than 37% hydrazine, by mass,*'' UN2030 and ''Hydrazine, anhydrous,'' UN2029 would be added.

—Eleven entries would be revised by removing the qualifying word ''compressed.'' This action is consistent with the revisions to proper shipping names for compressed and liquefied gases that were incorporated into the twelfth edition of the UN Recommendations and which we are proposing to adopt into the HMR (see § 173.115 for additional discussion). The eleven entries are ''Boron trifluoride, compressed,'' UN1008; ''Carbonyl fluoride, compressed,'' UN2417; ''Diborane, compressed,'' UN1911; ''Ethylene, compressed,'' UN1962; ''Hexafluoroethane, compressed *or* Refrigerant gas R 116,'' UN2193; ''Nitrogen trifluoride, compressed,'' UN2451; ''Phosphorus pentafluoride, compressed,'' UN2198; ''Silane, compressed,'' UN2203; ''Silicon tetrafluoride, compressed,'' UN1859; ''Tetrafluoromethane, compressed *or* Refrigerant gas R 14,'' UN1982; and ''Xenon, compressed,'' UN2036. Also, see § 171.14(d)(6) for the proposed continued use provision of these proper shipping names.

—For the proper shipping name ''Lighters *or* Lighter refills *cigarettes, containing flammable gas,*'' UN1057, the word ''cigarettes'' would be removed.

—The proper shipping name ''Lithium hydroxide, monohydrate *or* Lithium hydroxide, solid,'' UN2680 would be revised to read ''Lithium hydroxide.''

—For the entry ''Medicine, liquid, toxic, n.o.s.,'' UN1851, we propose to add Special Provision 36. The special provision, which limits the maximum net quantity per package at 5 L (1 gallon) for liquids and 5 kg (11 pounds) for solids, is currently assigned to ''Medicine, liquid, flammable, toxic, n.o.s.,'' UN3248 and ''Medicine, solid, toxic, n.o.s.,'' UN3249.

—For the entry ''Motor fuel anti-knock mixtures,'' UN1649, we propose to remove the subsidiary risk hazard from the labeling requirement, and add proposed Special Provision 151. This action is based on a petition for rulemaking (P–1420) we received (see discussion under § 172.102).

—The proper shipping name ''Uranium nitrate hexahydrate solution,'' UN2980 would be corrected by replacing the word ''Uranium'' with ''Uranyl.'' The typographical error occurred in the April 3, 2002 document published in the **Federal Register** (67 FR 15736).

—The entry ''Xylidines, solution,'' UN1711 would be revised to read ''Xylidines, liquid.''

—In addition to those entries identified above, we are proposing to add the following new entries: ''Chlorosilanes, toxic, corrosive, n.o.s.,'' UN3361; ''Chlorosilanes, toxic, corrosive, flammable, n.o.s.,'' UN3362; ''Ethylene glycol diethyl ether,'' UN1153; ''Fibers, animal *or* fibers, vegetable *burnt, wet or damp,*'' UN1372; ''Fibers, vegetable, dry,'' UN3360; ''4-Nitrophenylhydrazine, *with not less than 30% water, by mass,*'' UN3376; ''Organometallic compound, solid, water-reactive, flammable, n.o.s.,'' UN3372; ''Rags, oily,'' UN1856; ''Rubber scrap *or* Rubber shoddy, *powdered or granulated, not exceeding 840 microns and rubber content exceeding 45%,*'' UN1345; ''Sodium dinitro-o-cresolate, wetted, *with not less than 10% water by mass,*'' UN3369; ''Textile waste, wet,'' UN1857; ''Trinitrobenzene, wetted, *with not less than 10% water by mass,*'' UN3367; ''Trinitrobenzoic acid, wetted, *with not less than 10% water by mass,*'' UN3368; ''Trinitrochlorobenzene (picryl chloride), wetted, *with not less than 10% water by mass,*'' UN3365; ''Trinitrophenol (picric acid), wetted, *with not less than 10% water by mass,*'' UN3364; ''Trinitrotoluene (TNT), wetted, *with not less than 10% water by mass,*'' UN3366 and ''Wool waste, wet,'' UN1387.

—Various entries would be amended by revising the vessel stowage columns (10A) and/or (10B). The entries include the following: the five ''Aerosols,'' UN1950 entries; ''Ammunition, smoke *with or without burster, expelling charge or propelling charge,*'' UN0303; ''Battery fluid, alkali,'' UN2797; ''Methacrylic acid, stabilized,'' UN2531; ''Sulfur, molten,'' UN2448; and ''Urea, nitrate, *wetted with not less than 20 percent water, by mass,*'' UN1357.

Also, see § 172.102 for additional HMT amendments.

Appendix B to § 172.101. In Appendix B to § 172.101, List of Marine Pollutants, we are proposing to revise paragraphs ''4'' and ''5'' to update the location in the IMDG Code for the ''Guidelines for the Identification of Harmful Substances in Packaged Form.'' This update is based on the IMDG Code's change in location from the General Introduction to Chapter 2.10.

In addition, we are removing the entries ''Alkylphenols, liquid, n.o.s. (*including C2–C12 homologues*),'' ''Alkylphenols, solid, n.o.s. (*including C2–C12 homologues*),'' ''Chlorophenols, liquid,'' and ''Chlorophenols, solid,'' from the List of Marine Pollutants. We are revising the entry ''Alkylbenzenesulphonates, branched and straight chain'' by adding a qualifying phrase to clarify that C11-C13 straight chain or branched chain homologues are not regulated as marine pollutants. Finally, we are adding the entry ''Decyl acrylate.''

Section 172.102. We are proposing to amend § 172.102, Special Provisions, as follows:

—Special Provisions 7 and 10 would be removed. These special provisions are assigned to the entries ''Ammonium nitrate mixed fertilizers,'' NA2069 and ''Ammonium nitrate fertilizers,'' NA2072, respectively, which we propose to remove (see § 172.101, HMT).

—Special Provision 15, which is assigned to ''Chemical kits,'' UN3316 and ''First aid kits,'' UN3316, would be revised by removing the authorized packagings, revising them consistent with packagings authorized for limited quantity exceptions, and relocating them to § 173.161. The proposed Special Provision 15 would specify which chemical and first aid kits apply to the entries; that for transportation by aircraft, materials forbidden by air may not be included in the kits; and that kits carried on board transport vehicles for first aid or operating purposes are not subject to the HMR.

—Special Provision 30 would be revised to include an exception from the

placarding requirements for ''Sulfur, molten'' UN2448 and ''Sulfur,'' UN1350. Currently, the domestic entries ''Sulfur, molten,'' NA2448 and ''Sulfur,'' NA1350 do not require placards because both entries are assigned as Class 9 materials and meet the placarding exceptions for the hazard class in § 172.504(f)(9). We are proposing to provide the same placarding exceptions for the international entries through the revision of Special Provision 30, provided the markings in § 172.325 are applied.

—Special Provision 52 would be editorially revised by removing the wording specific to fertilizers. The special provision, which is currently applied to ''Ammonium nitrate fertilizers,'' UN2067, would be added to the proposed new entry ''Ammonium nitrate emulsion *or* Ammonium nitrate suspension *or* Ammonium nitrate gel, *intermediate for blasting explosives,*'' UN3375. The special provision states that a material using the assigned entries may not exhibit explosive properties of Class 1 (explosive) when tested in accordance with the UN Manual of Tests and Criteria, Part I, Test Series 1 and 2.

—Special Provision 130, which excepts dry batteries from the HMR, would be revised by adding the requirement that such batteries must be securely packed and protected against short circuits and by clarifying that dry batteries specifically named in the § 172.101 Table are not eligible for the exception.

—Special Provision 132 would be revised by adding the criteria for which the assigned entry may be used. The special provision would be added to the proposed revised entry ''Ammonium nitrate,'' UN2071, Class 9. Currently, the special provision provides the criteria for ammonium nitrate fertilizers that are excepted from the HMR.

—Special Provision 133 would be removed. The special provision is currently assigned to ''Air bag inflators, compressed gas *or* Air bag modules, compressed gas *or* Seat-belt pretensioners, compressed gas'' UN3353, Division 2.2, which is proposed to be removed from the HMT (see discussion under § 172.101, HMT.)

—New Special Provision 145 would be added for the existing entry ''Hydrogen peroxide and peroxyacetic acids mixtures, stabilized, *with acids, water and not more than 5 percent peroxyacetic acid,*'' UN3149. The special provision describes the formulations for which this entry would apply.

—New Special Provision 146 would be added for the entries ''Environmentally hazardous substances, liquid, n.o.s.,'' UN3082 and ''Environmentally hazardous substances, solid, n.o.s.,'' UN3077 to clarify that the entries may be used to describe materials that pose a hazard to the environment but do not meet the definition of a hazardous waste, hazardous substance or any hazard class as defined in the HMR. This includes materials or wastes that are designated as environmentally hazardous by the Competent Authority of the country of origin.

—New Special Provision 147 would be added for assignment to the proposed new entry, ''Ammonium nitrate emulsion *or* Suspension *or* Gel, *intermediate for blasting explosives,*'' UN3375. The special provision describes the composition of the material for which the use of the entry would be authorized and prohibits the material from being classified and transported unless approved by the Associate Administrator.

—New Special Provision 149 would be added to the Packing Group II entries for 14 existing proper shipping names. The special provision would allow the maximum net capacity for inner packagings to be increased to no more than 5 L (1.3 gallons) when the material is transported as a limited quantity. The 14 entries are: ''Adhesives, *containing a flammable liquid,*'' UN1133; ''Coating solution (*includes surface treatments or coatings used for industrial or other purposes such as vehicle undercoating, drum or barrel lining*),'' UN1139; ''Extracts, aromatic, liquid,'' UN1169; ''Extracts, flavoring, liquid,'' UN1197; ''Printing ink, *flammable or* Printing ink related material (*including printing ink thinning or reducing compound), flammable,*'' UN1210; ''Paint including paint, lacquer, enamel, stain, shellac solutions, varnish, polish, liquid filler, and liquid lacquer base,'' UN1263; ''Paint related material *including paint thinning, drying, removing, or reducing compound,*'' UN1263; ''Perfumery products *with flammable solvents,*'' UN1266; ''Rubber solution,'' UN1287; ''Wood preservatives, liquid,'' UN1306; ''Resin solution, *flammable,*'' UN1866; ''Tars, liquid *including road asphalt and oils, bitumen and cut backs,*'' UN1999; ''Alcoholic beverages,'' UN3065; and ''Polyester resin kit,'' UN3269 for Packing Group II resin kits as specified in Special Provision 40.

—New Special Provision 150 would be added for assignment to the entry ''Ammonium nitrate based fertilizer,'' UN2067 to authorize the use of the entry for uniform mixtures containing ammonium nitrate as the main ingredient within certain composition limits.

—New Special Provision 151 would be added for assignment to the proposed new entry ''Hydrazine aqueous solution, *with more than 37% hydrazine, by mass*'' UN2030, Packing Group I and to the existing entry ''Motor fuel anti-knock mixtures,'' UN1649. The special provision requires a packaging containing a material meeting the definition of a flammable liquid to display a flammable liquid label, and requires a Class 3 subsidiary hazard to be shown on shipping papers.

With regard to the entry ''Motor fuel anti-knock mixtures,'' UN1649, we received a petition for rulemaking (P–1420) requesting that we remove the flammable subsidiary risk for this entry. The petitioner stated that the international standards do not assign the entry a flammable subsidiary risk and that the inconsistency with the HMR causes a regulatory compliance burden when transporting the material internationally. The petitioner stated that removing the subsidiary risk is additionally justified because motor fuel anti-knock mixtures containing tetramethyl lead, with fire points greater than 54 °C (129.2 °F) are no longer manufactured or transported. Although the UN Recommendations, the ICAO Technical Instructions and the IMDG Code do not assign a flammable subsidiary risk to the entry, all three standards assign a special provision stating that mixtures with a flashpoint of less than 60.5 °C (141 °F) must bear a flammable liquid subsidiary risk label. We are proposing to remove the flammable subsidiary risk from the label requirements in Column (6) of the HMT for ''Motor fuel anti-knock mixtures,'' UN1649 and add a new Special Provision 151 to require a flammable liquid subsidiary label only when the mixtures have a flashpoint of less than 60.5 °C (140.9 °F). Also, see preamble text under the § 172.101 Table changes.

—New Special Provision 153 would be added to the five ''Aerosols,'' UN1950 entries to provide the criteria for classifying aerosols.

—New Special Provision 155 would be added to two entries, ''Fish meal, stabilized *or* Fish scrap, stabilized,'' UN2216 and ''Fish meal, unstabilized

or Fish scrap, unstabilized,'' UN1374. The special provision specifies that if the temperature of fish scrap at the time of loading either exceeds 35 °C (95 °F), or exceeds 5 °C (41 °F) above the ambient temperature, whichever is higher, the fish scrap may not be transported. Also see § 173.218 for additional discussion.

—New Special Provision 156 would be added for assignment to three entries, ''Blue asbestos *(Crocidolite) or* Brown asbestos (*amosite, mysorite*),'' UN2212, ''White asbestos *(chrysotile, actinolite, anthophyllite, tremolite),*'' UN2590, and ''Asbestos,'' NA2212. The special provision provides an exception from the HMR for certain asbestos. The exception, which is currently in § 173.216(b), excepts asbestos immersed or fixed in a natural or artificial binder material and asbestos contained in manufactured products. We received comments that the current § 173.216 location for this exception is not appropriate because it is referenced in the non-bulk column of the HMT, leading readers to believe that the exception applies to non-bulk packagings only. To clarify that this exception applies to both non-bulk and bulk packagings, we are proposing to move the exception from § 173.216(b) to proposed Special Provision 156.

—New Special Provision 157 would be added to the entries ''Vehicle, flammable gas powered,'' and ''Vehicle, flammable liquid powered,'' each of which is assigned to UN3166. The proposed special provision specifies that the use of the entries includes hybrid electric vehicles powered by both internal combustion engines and wet, sodium or lithium batteries.

—New Special Provision 159 would be added to the entry ''5-tert-Butyl-2,4,6-trinitro-m-xylene *or* Musk Xylene,'' UN2956. The special provision requires this material to be protected from direct sunshine and kept in a cool, well-ventilated place away from sources of heat.

—New Special Provision 160 would be added to the entry ''Air bag inflators, *or* Air bag modules, or Seat-belt pretensioner,'' UN3268, Class 9. The special provision includes the requirement that air bag inflators and modules must be tested in accordance with Test series 6(c) of Part I of the UN Manual of Tests and Criteria, and also includes an exception from testing air bag modules that contain an inflator previously approved for transportation. Also, see § 172.102, HMT, which includes additional proposed revisions such as removing the italicized word ''pyrotechnic'' from the UN3268 entry.

—New Special Provision 161 would be added to the entry ''Air bag inflators, *pyrotechnic or* Air bag modules, *pyrotechnic or* Seat-belt pretensioner, *pyrotechnic,*'' UN0503, Division 1.4G. The special provision specifies that the UN0503 entry may not be used for domestic transportation, and that the more appropriate description is ''Articles, pyrotechnic *for technical purposes*,'' UN0431. We are specifically requesting comments concerning whether this may result in an unnecessary burden for international shippers. We are not aware of any air bag inflators that are transported as Division 1.4G in the United States. Also, see § 172.102, HMT, which includes the proposed amendment to remove the italicized word ''pyrotechnic'' from the UN0503 entry.

—New Special Provision 162 would be added to eight proposed entries and two existing entries. The Special Provision authorizes the material to be transported under the provisions of Division 4.1, only if it is so packed that at no time during transport will the percentage of diluent fall below the percentage that is specified in the proper shipping name. The proposed new entries are ''4-Nitrophenylhydrazine, *with not less than 30% water, by mass,*'' UN3376; ''Sodium dinitro-o-cresolate, wetted, *with not less than 10% water by mass,*'' UN3369; ''Trinitrobenzene, wetted, *with not less than 10% water by mass,*'' UN3367; ''Trinitrobenzoic acid, wetted, *with not less than 10% water by mass,* UN3368; ''Trinitrochlorobenzene (picryl chloride), wetted, *with not less than 10% water by mass*,'' UN3365; ''Trinitrophenol (picric acid), wetted, *with not less than 10% water by mass,*'' UN3364; ''Trinitrotoluene (TNT), wetted, *with not less than 10% water by mass,*'' UN3366; and ''Urea nitrate, wetted, *with not less than 10% water by mass,*'' UN3370. The two existing entries are ''Barium azide, wetted *with not less than 50 percent water, by mass,*'' UN1571 and ''Dipicryl sulfide, wetted *with not less than 10 percent water, by mass,*'' UN2852.

—New Special Provisions A54 and A55 would be added to address certain requirements for the transportation of lithium batteries by aircraft. Special Provision A54 provides an approval provision that authorizes lithium batteries and lithium batteries contained in equipment or packed with equipment to exceed the quantity limits as specified in Column (9B) of the HMT when transported by cargo aircraft, if approved by the Associate Administrator. Special Provision A55 provides an approval provision to authorize prototype batteries to be transported by cargo aircraft if approved by the Associate Administrator. Special Provisions A54 and A55 would be assigned to ''Lithium battery,'' UN3090, ''Lithium batteries, contained in equipment,'' UN3091 and ''Lithium batteries packed with equipment,'' UN3091.

—New Special Provision A56 would be added to address the air transport of radioactive material with subsidiary hazards of Divisions 4.2, Packing Group I, 2.1 or 2.3. Division 4.2, Packing Group I subsidiary hazard materials would be required to be transported by aircraft in Type B packagings only. Division 2.1 subsidiary hazard materials would be prohibited from passenger aircraft. The special provision is in alignment with the ICAO Technical Instruction's Special Provision A78, with regard to radioactive materials with Division 2.1 subsidiary hazard but not the Division 4.2, PG I packaging requirement or the Division 2.3 subsidiary hazard approval provision. Proposed Special Provision A56 includes Division 4.2, PG I because we believe it was inadvertently omitted in ICAO's Special Provision A78, and we understand that steps are being taken to address the matter with the ICAO Dangerous Goods Panel. See the § 172.101 HMT in the regulatory text of this rule for specific entries.

—Special Provision IB3 would be revised by excepting ''Ammonia solutions, *relative density between 0.880 and 0.957 at 15 degrees C in water, with more than 10 percent but not more than 35 percent ammonia,*'' UN2672 from the special provision's ''Additional Requirement'' that authorizes liquids with a vapor pressure less than or equal to 110 kPa at 50 °C (1.1 bar at 122 °F), or 130 kPa at 55 °C (1.3 bar at 131 °F). Proposed new Special Provision IP8 would also be added to the UN2672 entry.

—Special Provision IB52 (Table 2) would be revised by adding additional packaging authorizations for certain entries and correcting various typographical errors. The entry ''Dicumyl peroxide, ''UN3110 would be corrected by adding ''2000'' as the maximum quantity in liters. In addition, we are proposing to move the approval provision for formulations not covered in Special Provision IB52 to § 173.225(e)(5).

Section 173.225(e) currently contains an approval provision for portable tanks, and we believe this paragraph is a more appropriate location for the IB52 approval provision.

—New Special Provision IP8 (Table 3) would be added for assignment to the existing entry ''Ammonia solutions, *relative density between 0.880 and 0.957 at 15 degrees C in water, with more than 10 percent but not more than 35 percent ammonia,*'' UN2672 (see Special Provision IB3). The special provision authorizes ammonia solutions to be transported in rigid or composite plastic intermediate bulk containers (IBCs) (31H1, 31H2 and 31HZ1), if the rigid plastic and composite IBCs have successfully passed, without leakage or permanent deformation, the hydraulic test specified in § 178.814 at a test pressure that is not less than 1.5 times the vapor pressure of the contents at 55 °C (131 °F).

—New Special Provision N83 would be added to the proposed new entry ''Urea nitrate, wetted, *with not less than 10% water by mass,*'' UN3370. This special provision limits the quantity of this material to no more than 11.5 kg (25.4 lbs) per package.

—New Special Provision N84 would be added for assignment to six proposed new entries and one existing entry. The special provision limits the quantity per package to no more than 500 g (1.1 lbs.). The six proposed new entries are: ''Trinitrophenol (picric acid), wetted, *with not less than 10% water by mass,*'' UN3364; ''Trinitrochlorobenzene (picryl chloride), wetted, *with not less than 10% water by mass,*'' UN3365; ''Trinitrotoluene (TNT), wetted *with not less than 10% water by mass,*'' UN3366; ''Trinitrobenzene, wetted, *with not less than 10% water by mass,*'' UN3367; ''Trinitrobenzoic acid, wetted, *with not less than 10% water by mass,*'' UN3368; and ''Sodium Dinitroocresolate, wetted, *with not less than 10% water by mass,*'' UN3369. The existing entry is ''Dipicryl sulfide, wetted *with not less than 10 percent water, by mass,*'' UN2852.

—New Special Provision N85 would be added for assignment to two existing entries, ''Isosorbide dinitrate mixture *with not less than 60 percent lactose, mannose, starch or calcium hdrogen phosphate,*'' UN2907 and ''Pentaerythrite tetranitrate mixture, desensitized, solid, n.o.s. *with more than 10 percent but not more than 20 percent PETN, by mass,*'' UN3344. The special provision prohibits the material from being transported in packagings conforming to the requirements of Part 178 of the HMR at the Packing Group I performance level. This proposed action would address overconfinement hazards associated with these materials by prohibiting the use of packagings meeting the Packing Group I performance criteria.

—Special Provision T23 would be revised to correct typographical errors for the entries ''tert-Butyl peroxyacetate, not more than 32% in diluent type B'' and ''tert-Butyl peroxypivalate, not more than 27% in diluent type B.'' The word ''tyupe'' would be corrected to read ''type'' in the former and the control ''temperature, −5 °C,'' would be corrected to read ''+5 °C.''

—Special Provision TP3 would be editorially revised for clarity.

Section 172.202. We are proposing to revise paragraphs (a)(2), (a)(5) and (b). In paragraph (a)(2), we are proposing to require the subsidiary hazard class or subsidiary division number(s) to be entered in parentheses following the primary hazard class or division number on shipping papers. This requirement is currently required only for transportation by vessel. This proposed requirement responds to three petitions for rulemaking, P–1363, P–1398 and P–1402. One petitioner (P–1363) stated that the lack of such a requirement poses problems for motor carriers with regard to complying with segregation, separation and placarding requirements, as well as posing a safety hazard. The petitioner pointed out that when the hazardous materials being transported include a subsidiary hazard such as ''dangerous when wet'' or a subsidiary hazard requiring more stringent requirements than the primary hazard, there is no indication of the subsidiary hazards on the shipping papers and no indication of the subsidiary risks on placards. The petitioner stated that when motor vehicles are being loaded at a dock, labels are not enough to alert hazardous materials employees loading the vehicles or emergency responders of the subsidiary risks of materials in the vehicle.

Two petitions (P–1398 and P–1402) were specific to Division 4.3 materials. The petitioners requested that we require the shipping paper to contain the words ''dangerous when wet'' following the basic description for hazardous materials classed as Division 4.3 or having a Division 4.3 subsidiary hazard. The petitioners stated that the additional information would aid emergency responders by more clearly identifying the hazard.

We agree with the petitioners with regard to their request to require that subsidiary hazard class or subsidiary division number(s) be entered on the shipping paper. Thus, we are proposing to add a requirement to identify all subsidiary risks of a hazardous material on the shipping paper. We do not agree, however, with the suggestion to adopt the same requirement for the primary hazard class. We believe that this is unnecessary because the primary hazard is clearly identified on shipping papers by the division number as part of the basic description. We also do not agree with the petitioner's (P–1363) suggestion to provide an exception from the proposed requirement to include the subsidiary hazard on shipping papers when the subsidiary hazard is identified in the proper shipping name (for example, ''Flammable liquid, toxic, n.o.s.''). This suggested approach would be inconsistent with the UN Recommendations and would result in the addition of a domestic exception that would not enhance hazard communication and could also lead to frustrated international shipments while unnecessarily complicating the HMR.

We are also proposing to revise paragraph (a)(5) regarding the indication on shipping papers of the total quantity of hazardous materials. The proposed requirement, which is currently optional for all modes of transportation other than vessel, would make it mandatory for shippers to indicate on shipping papers the types of packages, such as drums, boxes, jerricans, etc., being used to transport hazardous materials by all modes of transportation. This requirement is consistent with international standards. We invite comments on costs, benefits, and complications that could result from adoption of this requirement. For example, certain electronic shipping paper programs, materials transported under a single basic description that are packaged in more than one type of packaging possibly would need to be listed more than once on the shipping paper. Alternatively, alterations to those programs may be necessary to provide space required to list more than one type of package for a single basic description. Therefore, we request comments addressing these issues, including suggestions to minimize any impacts associated with this proposed change, such as providing an extended transition period. For the purpose of consolidation, we would also transfer to this paragraph the existing additional requirements for transportation by vessel currently located in § 172.203 (i)(1), (i)(2), (i)(3) and (i)(6).

In addition, paragraph (b) would be revised to allow, as an alternative to the basic description sequence currently required in this paragraph, the identification number to be listed first on shipping papers and the proper shipping name to be listed following the hazard class and subsidiary risk. Noting that international standards will allow both sequences, we request comments specific to whether we should incorporate this amendment as an alternative for all shipments to, from, or within the U.S., or whether we should allow it for international shipments only. We also ask for comments addressing the impact this proposed amendment may have on emergency response training.

Section 172.203. We are proposing to remove and relocate paragraphs (i)(1), (i)(2), (i)(3) and (i)(6). With adoption of the proposal to indicate types of packagings on shipping papers in § 172.202, we would consolidate the four vessel requirements in § 172.203(i) by moving them to the description requirements in § 172.202(a)(5). The paragraphs address additional shipping paper requirements for the identification of the type, number and gross mass of packagings, and the identification of subsidiary hazards consistent with international standards. The current paragraphs (i)(4) and (i)(5) would be redesignated (i)(1) and (i)(2).

Section 172.301. Paragraph (a)(1) would be revised to reflect the proposed new marking requirement in § 172.315 for packagings containing limited quantities of hazardous materials. Packagings containing limited quantities would no longer require the proper shipping name on the packagings, but would be required to be marked in accordance with the proposed § 172.315 marking requirement that consists of an identification number placed within a diamond. (See § 172.315).

Section 172.312. A new paragraph (c)(6) would be added to allow packages containing liquid infectious substances in primary receptacles not exceeding 50 ml (1.7 oz) to be excepted from the requirements in § 172.312(a). Section 172.312(a) requires liquid hazardous materials packaged in non-bulk combination packagings to be packed with closures upward and to be legibly marked with orientation markings.

Section 172.315. A new section, § 172.315, would be added as a new marking requirement for packagings containing limited quantities of hazardous materials. This section would require such packagings to be marked with the identification (ID) number placed within a diamond. Marking the proper shipping name on limited quantity packagings would not be required. The line forming the diamond would be required to be at least 2 mm thick and the height of the ID number no less than 6 mm. For packagings containing more than one limited quantity of hazardous materials with different ID numbers, the packaging would be required to be marked with either individual diamonds bearing a single ID number, or a single diamond large enough to include each applicable ID number. The marking would be required to be durable, legible and of a size relative to the packaging as to be readily visible.

Section 172.323. A new section, § 172.323, would be added to incorporate an air eligibility marking requirement into the HMR for all non-bulk packages offered for transportation or transported by aircraft. The marking would certify compliance with all applicable air transport package requirements, including pressure differential requirements, package markings and labels, inner packaging limits, selection of appropriate types of packagings, use of closure instructions for inner packagings, application of the cargo aircraft handling label (when applicable), and proper classification.

The ICAO has adopted this requirement in the 2003–2004 edition of the ICAO Technical Instructions, and a number of packaging vendors and military shippers are currently marking packagings to indicate that they meet the additional air requirements through the use of an air eligibility symbol, such as we are proposing, or by use of the statement ''Air Eligible.'' In addition to consistency with the ICAO Technical Instructions, we believe that the use of an air eligibility mark would be beneficial in heightening shipper awareness and responsibility for meeting the additional air transport package requirements. Adoption of this requirement would reduce the inadvertent acceptance for transportation by aircraft of packages that conform only to highway, rail or vessel requirements.

The shipper would be responsible for the application of the marking, but would not be required to physically place it on the package. The marking could be applied by using a durable sticker or label, preprinting it on the packaging, or drawing it on the package by hand. The marking would be required to be durable, legible, and of such size relative to the packaging as to be readily visible. Preprinting by the package manufacturer would require the manufacturer and the shipper to closely coordinate to ensure that the package meets the applicable air transport requirements. The shipper would be responsible for ensuring that the package meets the applicable air transport requirements.

Section 172.411. We are proposing to revise the section heading and paragraphs (b) and (d), and to add new paragraphs (e) and (f). In the June 21, 2001 HM–215D final rule, we removed the requirement to differentiate between primary and subsidiary labels by requiring the class number to be displayed on both types of labels. The primary explosive label requires the appropriate division number and compatibility group to be displayed, but the explosive subsidiary label does not. This disparity was an oversight, and we are proposing to correct this section by adding the pictorial of the explosive subsidiary label and revising the text accordingly.

Section 172.504. Based on a telephone call we received from a shipper, paragraph (g) would be editorially revised by adding a clarification emphasizing the distinction between the words ''explosive articles'' and ''explosive substances.'' The commenter stated that the paragraph is often misinterpreted because the two phrases are not understood as having different meanings.

Part 173

Section 173.2a. In paragraph (b), the second line of the title of the Precedence of Hazard Table is editorially revised to include the word ''division.'' In addition, the Table is revised for the first three entries by inserting ''4.3'' under the Division 4.3 column to indicate that Division 4.3 takes precedence over Class 3 when classifying a material having more than one hazard.

Section 173.21. In paragraph (f)(3)(ii), we are proposing to update the location reference to the control temperature requirements in the IMDG Code to its current location in Chapter 7.7.

Section 173.22. We are proposing to revise paragraph (a)(4) to clarify that, in addition to complying with the Part 178 requirements, the shipper is responsible for ensuring that packages comply with the Part 173 requirements. This revision is consistent with the proposed amendments to § 173.24a relative to closures, and to § 173.27 relative to packages intended for air transport.

Section 173.24. A new paragraph (b)(4) would be added and paragraph (f)(1) would be revised. Paragraph (b)(4) would be revised by adding general requirements applicable to the integrity of packagings. The revision would amend the requirement that packagings must be closed in accordance with the

closure instructions provided by the manufacturer. Paragraph (f)(1) would be revised to address requirements for the construction and design of closures.

Section 173.25. In paragraph (a)(2), for the marking requirements pertaining to overpacks, we are proposing to include the air eligibility marking as proposed in § 172.323.

Section 173.27. We are proposing to revise paragraph (e) and add a new paragraph (i).

Paragraph (e) would be revised to require packagings with plastic and metal inner packagings to be packaged using absorbent material when Packing Group I or II liquids of Class 3, 4 or 8 or Division 5.1, 5.2 or 6.1 are offered for transport by passenger or cargo aircraft. Currently, the requirement to use absorbent material applies to Packing Group I and II materials when offered for transport by passenger aircraft, and to Packing Group I materials when offered for transport by cargo aircraft. We are proposing to also apply this requirement to Packing Group II materials offered for transport by cargo aircraft. Existing absorbent material requirements apply when inner packagings are constructed of glass or earthenware. The absorbent material requirement currently does not apply to Division 5.2 liquids. Various air carriers are currently imposing such a requirement, and it has been adopted in the 2003–2004 edition of the ICAO Technical Instructions, effective January 1, 2003. Therefore, offerors and shippers will be required to meet these requirements when air transport is in accordance with the ICAO Technical Instructions regardless of whether the requirements are incorporated into the HMR.

We are proposing to add a new paragraph (i) to refer the reader to proposed new section § 172.323 for the air eligibility marking requirement for packagings containing hazardous materials being transported by aircraft. See § 172.323 for the discussion on this proposed requirement.

Section 173.62. In § 173.62, in the paragraph (b) Explosives Table, the entry ''UN0503'' would be added for assignment to the packing instruction P135. UN0503 is assigned to the proper shipping name ''Air bag inflators, *or* Air bag modules, *or* Seat-belt pretensioners,'' Division 1.4G (also see § 172.101, HMT). The Class 9 ''Air bag inflators, *or* Air bag modules, *or* Seat-belt pretensioners'' entry would continue to be packaged in accordance with § 173.166.

In addition, in paragraph (c), in the Explosives Packing Instructions Table, in the first column, for the packing instruction entry 112(b), in the last sentence, the obsolete ID number, ''UN 0223,'' would be removed. The entry was removed from the § 172.101 Table in a separate rulemaking.

Section 173.115. In paragraphs (d) and (e), we are proposing to amend the regulatory text that describes ''non-liquefied compressed gas'' and ''liquefied compressed gas.'' The proposed amendment would revise the reference temperature from 20 °C to −50 °C, consistent with internationally accepted definitions for gases and consistent with the twelfth edition of the UN Recommendations.

We are also proposing to divide compressed liquefied gases into high and low pressure categories. The UN Subcommittee revised the terminology for gases to align them with the terminology used in the International Organization for Standardization (ISO) Standard 10286. This standard establishes the terminology applicable to gas cylinders and provides definitions for gases. The proposed regulatory text would affect 11 entries in the § 172.101 Table by removing the word ''compressed'' from the proper shipping names. Under a separate rulemaking, we will address whether the affected gases should be reassigned to more appropriate packagings sections, such as revising the packaging authorization from § 173.302 to § 173.304 in Column (8B) in the § 172.101 Table. We will also address the use of the high- and low-pressure compressed liquefied gas designations.

Sections 173.152, 173.153 and 173.154. The following sections would be revised by increasing the inner packaging net capacity limit for Packing Group III liquids from 4 L (1.1 gallons) to 5 L (1.3 gallons): § 173.152(b)(2), exceptions for Division 5.1 oxidizers and Division 5.2 organic peroxides; § 173.153(b)(1), exceptions for Division 6.1 poisonous materials; and § 173.154(b)(2), exceptions for Class 8 corrosive materials. Section 173.152(b)(4)(ii) would also be revised by raising the net capacity of inner packagings containing PG II flammable liquids in polyester resin kits from 1 L (0.3 gallons) to 5 L (1.3 gallons) each.

Section 173.159. A new sentence would be added to paragraph (a) requiring packagings for certain batteries to include an acid/alkali proof liner or a supplementary packaging with sufficient strength and adequate sealant to prevent leakage of electrolyte fluid in the event of spillage. This requirement would apply to packagings transported by aircraft and containing electric storage batteries with electrolyte acid or alkaline corrosive battery fluid.

A new paragraph (d)(4) would be added to require non-spillable batteries, that are excepted from all other requirements of the HMR, to meet the condition that at a temperature of 55 °C (131 °F), the electrolyte will not flow from a ruptured or cracked case and there is no free, unabsorbed liquid in the battery.

Section 173.161. We are proposing to revise this section to specify the packaging requirements for chemical and first aid kits consistent with international standards.

Section 173.166. This section would be revised consistent with the proposed removal of the Division 2.2 entry for ''Air bag inflators, compressed gas or Air bag modules, compressed gas or Seat-belt pretensioners, compressed gas,'' UN3353 (see § 172.101, HMT). We are proposing in this section to authorize reclassification to Class 9 without further testing for air bag inflators, air bag modules and pretensioners currently approved for transportation as Division 2.2.

Section 173.185. Paragraphs (e)(4) and (e)(7) would be revised and a new paragraph (k) would be added. We are proposing to combine paragraphs (e)(4) and (e)(5) into one paragraph, (e)(4), and to remove and reserve paragraph (e)(5).

The proposed revised paragraph (e)(4) would allow the use of dividers or other suitable means as alternative methods to inner packagings for effective means of preventing short circuits of lithium cells and batteries.

Based on a comment that was beyond the scope of the HM–215D final rule, we are proposing to revise paragraph (e)(7) by applying the prohibition to offer for transportation or transport certain cells and batteries to only those with a liquid cathode containing sulfur dioxide, sulfuryl chloride or thionyl chloride. Currently, any cell or battery with a cell that has been discharged to the extent that the open circuit voltage is less than 2 volts, or less than two-thirds of the open circuit voltage of the fully charged cell, whichever is less, is prohibited from being offered for transportation or transported. We have included sulfuryl chloride in this proposal and specifically request comments on whether these types of batteries exist to determine whether it is necessary to include sulfuryl chloride batteries and cells in this amendment. The UN Recommendations do not include this prohibition. The reduced voltage condition was included in the HMR to address lithium sulfur dioxide, sulfuryl chloride and lithium thionyl chloride primary batteries on the basis of safety issues with low-voltage cells. The lithium sulfur dioxide batteries present

hazards in transportation when the sulfur dioxide is depleted. The depletion can cause the removal or breakdown of the passivation film on the lithium anode which could result in a undesirable exothermic reaction of the lithium metal and the electrolyte solvent leading to high temperatures, cell venting, cell rupture, and fires. In addition, a new paragraph (k) would be added to allow batteries with a mass of 12 kg or greater and having strong, impact-resistant outer casings to be packed in strong outer packagings, protective enclosures, or unpacked on pallets. Packaging in this manner for transportation by cargo-only aircraft would be permitted only with the approval of the Associate Administrator.

Additional amendments to the requirements for lithium batteries are being addressed in a separate rulemaking, under Docket HM–224C (NPRM published on April 2, 2002, 67 FR 15510). One of the proposals under Docket HM–224C addresses a reorganization of § 173.185. Any amendments adopted in either final rule will be reflected in the other.

Section 173.216. We are proposing to move the exceptions for asbestos in paragraph (b) to a new special provision (see Special Provision 156 in § 172.102). Paragraph (b) excepts asbestos immersed or fixed in a natural or artificial binder material and also excepts asbestos contained in manufactured products. We understand that because the exception is located in § 173.216 and referenced in Column (7) of the HMT for non-bulk packagings, the exception appears to be limited to non-bulk packagings. To clarify the applicability, we are proposing to remove and reserve paragraph (b) and transfer the exception to the proposed new Special Provision 156. The exception will continue to apply to three entries, ''Blue asbestos (Crocidolite) or Brown asbestos (amosite, mysorite),'' UN2212, ''White asbestos (chrysotile, actinolite, anthohyllite, tremolite),'' UN2590, and ''Asbestos,'' NA2212.

Section 173.218. Paragraph (a) introductory text would be revised and paragraph (b) would be removed. Paragraph (a) introductory text would be editorially revised to reflect the proposed relocation of the requirement currently contained in paragraph (b). In the current paragraph (b), the requirement for the maximum temperature at which fish meal or fish scrap may not be offered for transportation would be revised from 49 °C (120 °F) to 35 °C (95 °F), or 5 °C (41 °F) above ambient temperature, whichever is higher, and relocated to proposed Special Provision 155 (*see* § 172.102).

Section 173.220. We are proposing to add a new paragraph to include additional requirements for certain engines and vehicles. The current paragraph (e) would be redesignated (f) and the new paragraph would become paragraph (e). The new paragraph would include several additional requirements for internal combustion engines and vehicles equipped with certain devices when transported by aircraft or vessel. When engines are shipped separately, we are proposing that all fuel, coolant or hydraulic systems in or on the engine must be drained as far as practicable, must have disconnected fluid pipes sealed with leak-proof caps that are positively retained, and any installed theft-protection devices, radio communications equipment or navigational systems must be disabled.

Section 173.223. We are proposing to add a new packaging section, § 173.223, for musk xylene. Currently, the authorized packaging section, § 173.214, for musk xylene requires approval by the Associate Administrator. We are proposing to add a new section that is consistent with the UN packing instruction P409 assigned to musk xylene, so that approval by the Associate Administrator will no longer be necessary.

Section 173.224. In paragraph (b)(4), the incorrect reference for bulk packaging authorizations, § 173.225(d), would be corrected to read § 173.225(e). In the Self-Reactive Materials Table following paragraph (b)(7), five entries in Column (1) would be revised and four new entries would be added. The five revised entries appear first as ''removes'' and then ''adds'' in the regulatory text section of this NPRM. For the entry ''2,2'-Azodi(isobutryonitrile) as a water based paste,'' the misaligned column entries would be corrected. A new Note 4 would be added following the table for assignment to the new entry ''2-Diazo-1Naphthol sulphonic acid ester mixture, Type D.''

Section 173.225. We are proposing to amend the paragraph (b) Organic Peroxide Table, the Notes following the Table, and paragraphs (e)(3)(xii) and (e)(5).

The proposed amendments to the Organic Peroxide Table include the addition of bulk and IBC packaging authorizations for certain entries, the addition of several new entries and various corrections to certain entries.

Note 9 following the Table would be revised by correcting the paragraph reference ''(e)(3)(ii)'' to read ''(e)(3)(xii).'' A new Note 27 would be added for the proposed entry ''Peroxyacetic acid, distilled, Type F, stabilized,'' UN3110. A new Note 28 would be added to clarify that ''Peroxyacetic acid'' and Peracetic acid'' are synonymous.

Paragraph (e)(3)(xii) would be revised to clarify that DOT Specification 57 portable tanks are not subject to any other requirements in paragraph (e).

We are also proposing to move the approval provisions currently contained in the § 172.102(c)(4) Table 2, Special Provision IB52, to paragraph (e)(5). We believe this is a more appropriate section for the approval provisions, which we are proposing to expand to provide for the use of IBCs other than those indicated in the IB52 Table when approved by the Associate Administrator.

Section 173.244. We are proposing to revise paragraph (c) by adding a clarification that UN portable tanks are also authorized for use if a T code is specified in Column (7) of the HMT for the specific hazardous material.

Section 173.306. We are proposing to revise the paragraph heading in § 173.306(f) by adding the proper shipping name ''Articles, pressurized, pneumatic *or* hydraulic *containing non-flammable gas*.'' The revision is based on the proper shipping name replacing the domestic entry ''Accumulators, pressurized, pneumatic *or* hydraulic (*containing non-flammable gas*),'' which was removed in HM–215D published on June 21, 2001. We received telephone calls requesting the addition to the paragraph heading to clarify the intent of the paragraph.

We are also proposing to add a new paragraph (j) to reference the exception for certain compressed gases in § 173.307.

Section 173.307. We are proposing to add a new paragraph (a)(5) to except Division 2.2 gas aerosols with a capacity of not more than 50 ml and with a pressure not exceeding 970 kPa (141 psig) from the HMR.

Section 173.422. We are proposing to revise the certification statements in paragraphs (a)(2), (a)(3) and (a)(4) to reflect the updated proper shipping names and UN identification numbers currently authorized in the § 172.101 Table for excepted packages of radioactive materials.

Part 175

Section 175.10. We are proposing to revise paragraph (a)(25) to allow two small CO_2 cartridges fitted in self-inflating life jackets and two spare cartridges to be carried by a passenger or crew member in checked or carry-on

baggage. Currently, paragraph (a)(25) allows, with the approval of the aircraft operator, one small carbon dioxide cylinder fitted into a self-inflating life-jacket, plus one spare cartridge.

We are also proposing to add a new paragraph (c) to extend the paragraph (a) exceptions from the HMR to aircraft operators when transporting baggage that has been inadvertently separated from a passenger or crew member before reaching its final destination.

Section 175.30. We are proposing to add a new paragraph (a)(5) requiring that the proposed air eligibility marking requirement in § 172.323 must be met before a person may accept hazardous materials for transportation by aircraft.

Section 175.90. We are proposing to revise paragraphs (b) and (c). Paragraph (b) would be revised to include amendments relative to an aircraft operator's responsibility concerning packagings, baggage or cargo that have become contaminated by leaking hazardous materials. This proposal is consistent with the 2003–2004 edition of the ICAO Technical Instructions and is in response to a National Transportation Safety Board (NTSB) recommendation (A–96–30) issued to the Federal Aviation Administration. This NTSB recommendation resulted from an incident involving an undeclared shipment of a hydrogen peroxide solution that leaked, resulting in injuries to airline personnel and a potential fire hazard aboard a passenger aircraft. Paragraph (c) prohibits a person from placing a damaged packaging aboard an aircraft. We are proposing to revise the paragraph by including the words ''baggage or cargo'' when referring to a damaged or leaking packaging.

Part 176

Section 176.27. In paragraph (c)(2), we are proposing to remove the words ''of 49 CFR 176.27(c)'' at the end of the certification statement and add the words ''of 49 CFR'' or ''of the IMDG Code.''

Section 176.63. We are proposing to add a new paragraph (f) to include the conditions for the authorized stowage of containers on board hatchless container ships.

Section 176.83. We are proposing to add a new paragraph (l) to include the requirements for the segregation of containers on board hatchless container ships.

Section 176.84. In the paragraph (b) Table of Provisions, we are proposing to add nine new provisions (codes) for certain stowage and segregation requirements for hazardous materials that are transported by vessel. The terms ''separated from'' and ''away from'' in the proposed codes are defined in § 176.83 of the HMR.

Code 124 would be added for assignment to the proposed new entry ''Ammonium nitrate emulsion *or* Ammonium nitrate suspension *or* Ammonium nitrate gel, *intermediate for blasting explosives,*'' UN3375 and would require the material to be stowed ''separated from'' bromates.

Code 125 would be added for assignment to the proposed new entry ''Chlorosilanes, toxic, corrosive, flammable, n.o.s.,'' UN3362 and would require segregation to be the same as for flammable liquids; however, those materials also would be required to be ''away from'' flammable solids.

Code 126 would be added for assignment to the five current UN1950 aerosol entries and would require segregation to be the same as for Class 9 miscellaneous hazardous materials.

Code 127 would be added for assignment to ''5-tert-Butyl-2,4,6-trinitro-m-xy-xylene,'' UN2956 and would require packagings carrying a subsidiary risk of Class 1 (explosives) to be segregated as required for Class 1, Division 1.3.

Code 128 would be added for assignment to ''Fish meal, stabilized,'' UN2216 and ''Fish meal, unstabilized,'' UN1374 and would require stowage to be in accordance with the IMDG Code, sub-section 7.1.10.3.

Code 129 would be added for assignment to ''Radioactive material, low specific activity (LSA–I) *non fissile or fissile-excepted,*'' UN2912 (the international entry); ''Radioactive material, low specific activity, n.o.s. *or* Radioactive material, LSA, n.o.s.,'' UN2912 (the domestic entry); ''Radioactive material, low specific activity (LSA–II) *non fissile or fissile-excepted,* ''UN3321; and ''Radioactive material, low specific activity (LSA–III) *non fissile or fissile excepted*,'' UN3322. This code would require stowage to be in accordance with Stowage Category A, with certain exceptions noted.

Code 130 would be added for assignment to ''Radioactive material, Type A package *non-special form, non fissile or fissile-excepted,*'' UN2915 to require Stowage Category A. Certain exceptions are noted.

Code 131 would be added for assignment to ''Radioactive material, Type A package, fissile *non-special form,*'' UN3327 to require Stowage Category A, with certain exceptions noted.

Code 132 would be added for assignment to ''Uranium hexafluoride, fissile (*with more than 1 percent U–235),*'' UN2977; ''Uranium hexafluoride, *fissile excepted or non-fissile*,'' UN2978; ''Radioactive material, uranium hexafluoride, fissile,'' UN2977; and ''Radioactive material, uranium hexafluoride *non fissile or fissile-excepted*,'' UN2978. This code requires stowage to be in accordance with Stowage Category A and note that any supplementary requirements specified in the transport documents must be considered.

Section 176.140. The reference to the IMDG Code in paragraph (b) would be updated by removing the wording ''General Introduction.''

Section 176.170. Paragraph (b) would be removed and reserved. For alignment with a revision made in Amendment 31 of the IMDG Code, we are removing the requirement that prohibits freight containers exceeding 6 m (20 feet) in length from carrying more than 5000 kg (11,023 pounds) net explosive weight of most explosive substances. This provision was removed from the IMDG Code because it placed an inconsistent and unnecessary restriction on containers exceeding 6 m (20 foot) in length while placing no such restriction on smaller containers.

Sections 176.410 and 176.415. We are proposing to update these sections for consistency with international standards and with the prior removal of ammonium nitrate fertilizer proper shipping names from the HMR.

Part 178

Section 178.2. Paragraph (c)(1)(ii) would be revised by clarifying the information that the packaging manufacturer and each subsequent distributor are required to provide to packaging users.

Section 178.274. Based on a telephone call we received, in paragraph (j)(6), the size of the ''NOT FOR RAIL TRANSPORT'' marking would be revised from 20 cm (8 inches) to no less than 10 cm (4 inches) in height. We agree with the commenter's reasoning that 8 inches is excessive for portable tanks in that it could require a decal as long as 14 feet, 3 inches.

Section 178.705. We are proposing to correct the paragraph (c)(1)(iv)(A) wall thickness table for metal IBCs. During the typesetting process of the HM–215D final rule (66 FR 33316), published on June 21, 2001, the headings for the IBC types were misaligned, and we are proposing to correct them as presented in the HM–215D NPRM (65 FR 63294) published on October 23, 2000.

Section 178.812. In § 178.812(b)(1), we are proposing to add the words ''with the load being evenly distributed,'' consistent with the wording in § 178.812(b)(2). This text is

necessary to clarify that the test must not be conducted with the load unequally applied to an individual lifting device.

Part 180

Section 180.350. We are amending § 180.350 by revising the section heading from ''Applicability'' to ''Applicability and definitions'' and by adding definitions for ''Remanufactured IBCs,'' ''Repaired IBCs'' and ''Routine Maintenance of IBCs.''

Section 180.352. Two paragraphs would be revised and one new paragraph would be added. Paragraph (d)(1)(i) would be revised to specify that a repaired IBC must be retested and inspected in accordance with the applicable requirements in this section. Paragraph (f) would be revised to require that a record of such tests performed on repaired IBCs must be kept by the IBC owner or lessee. Finally, a new paragraph (d)(1)(iv) would be added to specify a requirement for marking repaired IBCs.

Section 180.605. Paragraph (k) would be revised to restore the inadvertently omitted inspection and test marking requirements for Specification DOT 51, 56, 57 and 60 portable tanks. The text, which was previously located in § 173.32, was omitted during the process of consolidating certain requirements and moving them to part 180 in the final rule, HM–215D, published June 21, 2001. For the height of the marking when displayed on the portable tank, we are also proposing to revise the ''0.5 inches'' conversion for 12 mm to ''0.47'' inches consistent with § 178.3.

IV. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This proposed rule is not considered a significant rule under the Regulatory Policies and Procedures of the Department of Transportation [44 FR 11034]. Benefits resulting from the adoption of the amendments in this proposed rule include enhanced transportation safety resulting from the consistency of domestic and international hazard communications and continued access to foreign markets by domestic shippers of hazardous materials. This proposed rule applies to offerors and carriers of hazardous materials, such as chemical manufacturers, chemical users and suppliers, packaging manufacturers, distributors, battery manufacturers, radiopharmaceutical companies, and training companies.

The majority of amendments in this proposed rule should result in cost savings and ease the regulatory compliance burden for shippers engaged in domestic and international commerce, including trans-border shipments within North America. For example, cost savings will be realized by shippers and carriers as a result of the following:

—Eliminating the differences between proper shipping names, UN number assignments and hazard classification, including subsidiary hazards, between the HMR and international regulations. As a result of these changes, shippers and carriers would not have to re-mark or repackage hazardous materials that are offered in both domestic and international transportation. Shipping papers would not need to be revised when shipping descriptions differ in domestic and international regulations.

—Providing certain exceptions including a placarding exception for sulfur and molten sulfur when the UN number is displayed on bulk packagings, and providing a packaging exception for large hard-cased robust lithium batteries.

We would authorize a delayed effective date and a one-year transition period to allow for training of employees and to ease any burden on entities affected by the amendments.

We recognize that there may be costs associated with the proposed § 172.202(a)(5) amendment requiring the type of packaging(s) to be entered on shipping papers. We believe that the proposed one-year transition period should minimize any costs; however, we are specifically requesting comments addressing the impact that the proposed amendment may have on businesses. Additionally, we are requesting suggestions to minimize any adverse impact, such as providing an extended transition period.

Many companies involved in domestic, as well as global operations, would realize economic benefits as a result of the adoption of amendments in this rulemaking. If the proposed changes are not adopted, U.S. companies will be at an economic disadvantage by being forced to comply with a dual system of regulations. The total net increase in costs to businesses in implementing this rulemaking is considered to be so minimal as to not warrant preparation of a regulatory impact analysis or regulatory evaluation.

B. Executive Order 13132

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This proposed rule preempts State, local and Indian tribe requirements but does not propose any regulation that has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazardous material transportation law, 49 U.S.C. 5101–5127, contains an express preemption provision (49 U.S.C. 5125(b)) that preempts State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(1) The designation, description, and classification of hazardous materials;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous; or

(5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This proposed rule addresses covered subject items (1), (2), (3), and (5) above and would preempt State, local, and Indian tribe requirements not meeting the ''substantively the same'' standard. This proposed rule is necessary to incorporate changes adopted in international standards, effective January 1, 2003. If the changes in this proposed rule are not adopted in the HMR, U.S. companies, including numerous small entities competing in foreign markets, would be at an economic disadvantage. These companies would be forced to comply with a dual system of regulations. The changes proposed in this rulemaking are intended to avoid this result. Federal hazardous materials transportation law provides at section 5125(b)(2) that, if DOT issues a regulation concerning any of the covered subjects, DOT must

determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. We propose that the effective date of Federal preemption be 90 days from the date of publication of a final rule in the **Federal Register**.

C. Executive Order 13175

This proposed rule was analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this proposed rule does not have tribal implications, does not impose substantial direct compliance costs, and is required by statute, the funding and consultation requirements of Executive Order 13175 do not apply.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities, unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. This proposed rule would serve to facilitate the transportation of hazardous materials in international commerce by providing consistency with international standards. This proposed rule applies to offerors and carriers of hazardous materials, some of whom are small entities, such as chemical users and suppliers, packaging manufacturers, distributors, battery manufacturers, and training companies.

As discussed above, under *Executive Order 12866*, the majority of amendments in this proposed rule should result in cost savings and ease the regulatory compliance burden for shippers engaged in domestic and international commerce, including trans-border shipments within North America.

We recognize that there may be costs associated with the proposed § 172.202(a)(5) amendment requiring the type of packaging(s) to be entered on shipping papers. We believe that the proposed one-year transition period should allow sufficient time to train employees and to ease any burden on small entities affected by the amendments. We are specifically requesting comments addressing the impact that the proposed amendment may have on businesses, including suggestions to minimize any adverse impact, such as incorporating an extended transition period.

Many companies will realize economic benefits as a result of the proposed amendments. If the changes proposed in this NPRM are not adopted, U.S. companies, including small entities competing in foreign markets, will be forced to comply with a dual system of regulations to their economic disadvantage. Therefore, I certify that these proposed amendments will not, if promulgated, have a significant economic impact on a substantial number of small entities. This certification is subject to modification as a result of a review of comments received in response to this proposed rulemaking.

E. Paperwork Reduction Act

We submitted the information collection and recordkeeping requirements contained in this NPRM to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act of 1995, Section 1320.8(d). Title 5, Code of Federal Regulations requires us to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. Under the Paperwork Reduction Act, no person must comply with an information collection requirement unless it has been approved by OMB and displays a valid OMB control number.

Due to the new information collection requirement proposed in this NPRM for additional shipping paper documentation, we will be submitting a proposed new information collection to OMB for review and approval. This proposed new information collection, ''Subsidiary Hazard Class & Number/Type of Packagings'', would be assigned an OMB control number after review and approval by OMB. There would be an increase in information collection and recordkeeping burdens under this new information collection, OMB Control Number 2137–xxxx due to additional information, (*e.g.*, subsidiary hazard class or division number and number and type of packagings) proposed to be included on shipping papers under this rule. RSPA currently has an approved information collection under OMB Control Number 2137–0557, ''Approvals for Hazardous Materials'' with 25,605 burden hours and $562,837.40. There would be only minor editorial revisions for section designations, etc., and no change in the burden for OMB Control Number 2137–0557 proposed under this rule. There would be only minor editorial revisions for section designations, etc., and no change in the burden for OMB Control Number 2137–0557 proposed under this rule.

We estimate that the new total information collection and recordkeeping burden resulting from the proposed additional information required on shipping papers would be:

''Subsidiary Hazard Class & Number/Type of Packagings'' (New Information Collection) OMB No. 2137–xxxx

Total Annual Number of Respondents: 250,000.
Total Annual Responses: 6,337,500.
Total Annual Burden Hours: 17,604.
Total Annual Burden Cost: $216,705.
Total Year Annual Burden Hours: 45,705.
Total First Year Annual Start Up Cost: $1,115,992.

There are minor editorial changes proposed under this rule; however, there is no increase in burden for this information collection approval proposed under this rule. We estimate that the proposed total information collection and recordkeeping burden as follows:

''Approvals for Hazardous Materials''

OMB Number 2137–0557:
Total Annual Number of Respondents: 3,523.
Total Annual Responses: 3,874.8.
Total Annual Burden Hours: 25,605.
Total Annual Burden Cost: $562,837.40.

Requests for a copy of this information collection should be directed to Deborah Boothe or Glenn Foster, Office of Hazardous Materials Standards (DHM–10), Research and Special Programs Administration, Room 8422, 400 Seventh Street, SW., Washington, DC 20590–0001, Telephone (202) 366–8553. Written comments should be addressed to the Dockets Unit identified in the Addresses section of this rulemaking. We should receive comments regarding information collection burdens prior to the close of the comment period identified in the **DATES** section of this rulemaking. We will publish a notice advising interested parties of the OMB control number for the new information collection when assigned by OMB.

F. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

G. Unfunded Mandates Reform Act

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

H. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA) requires Federal agencies to consider the consequences of major Federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. We developed an assessment to determine the effects of these revisions on the environment and whether a more comprehensive environmental impact statement may be required. Our findings conclude that there are no significant environmental impacts associated with this proposed rule. Consistency in the regulations for the transportation of hazardous materials aids in the shipper's understanding of what is required and permits shippers to more easily comply with safety regulations and avoid the potential for environmental damage or contamination. For interested parties, an environmental assessment is available in the public docket.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Education, Hazardous materials transportation, Hazardous waste, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 175

Air carriers, Hazardous materials transportation, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 176

Hazardous materials transportation, Maritime carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 178

Hazardous materials transportation, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 180

Hazardous materials transportation, Motor carriers, Motor vehicle safety, Packaging and containers, Railroad safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Chapter I is proposed to be amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

2. In § 171.7, in the paragraph (a)(3) table, the following changes would be made:

a. Under the entry ''International Civil Aviation Organization (ICAO)'', the existing entry would be revised;

b. Under the entry ''International Maritime Organization (IMO)'', the entry ''International Maritime Dangerous Goods (IMDG) Code, 1994 Consolidated Edition, as amended by Amendment 29 (1998) (English edition)'' would be removed and one entry would be added in its place;

c. Under the entry ''International Organization for Standardization'', a new entry would be added in alpha-numeric order; and

d. Under the entry ''United Nations'', the entry ''UN Recommendations on the Transport of Dangerous Goods, Eleventh Revised Edition (1999)'' would be revised.

The revisions and additions would read as follows:

§ 171.7 Reference material.

(a) * * *

(3) *Table of material incorporated by reference.* * * *

Source and name of material	49 CFR reference
* * *	* * * *
International Civil Aviation Organization (ICAO),	
* * *	* * * *
Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions), 2003–2004 Edition.	171.11; 172.202; 172.323; 172.401; 172.512; 172.602
International Maritime Organization (IMO),	
International Maritime Dangerous Goods (IMDG Code), as amended by Amendment 31 (English Edition).	171.12; 172.401; 172.502; 173.21; 176.2; 176.5; 176.11; 176.27; 176.30
* * *	* * * *
International Organization for Standardization,	
* * *	* * * *
International Convention for the Safety of Life at Sea, 1974, as amended, Chapter II–2/Regulation 19.	176.63
* * *	* * * *
United Nations,	
* * *	* * * *
UN Recommendations on the Transport of Dangerous Goods, Twelfth Revised Edition (2001).	172.401; 172.407; 172.502; 173.24

Source and name of material	49 CFR reference
* * * * * * *	

* * * * *

3. In § 171.8, in the definition ''Large packaging'', in paragraph (5), the wording ''UN Recommendations'' would be removed and ''UN Recommendations, Chapter 6.6 (incorporated by reference; see § 171.7)'' would be added in its place.

4. In § 171.11, paragraphs (c), (d)(5) and (d)(17) would be revised to read as follows:

§ 171.11 Use of ICAO Technical Instructions.

* * * * *

(c) Is not a forbidden material or package according to § 173.21 of this subchapter; is not a forbidden material as designated in Column (3) of the § 172.101 Table of this subchapter; is not forbidden on cargo aircraft as designated in Columns (9A) and (9B) of the § 172.101 Table of this subchapter; and is not transported on passenger-carrying aircraft if forbidden on passenger-carrying aircraft in Column (9A) of the § 172.102 Table.

(d) * * *

(5) For air bag inflators, air bag modules, or seat-belt pretensioners, the shipping paper description must conform to the requirements of § 173.166(c) of this subchapter.

* * * * *

(17) A self-reactive substance that is not identified by technical name in the Self-reactive Materials Table in § 173.224(b) of this subchapter must be approved by the Associate Administrator in accordance with the requirements of § 173.124(a)(2)(iii) of this subchapter. An organic peroxide that is not identified by a technical name in the Organic Peroxide Table in § 173.225(b) of this subchapter must be approved by the Associate Administrator in accordance with the requirements of § 173.128(d) of this subchapter.

5. In § 171.12, paragraph (b)(3) would be revised; in paragraph (b)(5), the first sentence would be revised; and paragraphs (b)(19) and (b)(20) would be revised to read as follows:

§ 171.12 Import and export shipments.

* * * * *

(b) * * *

(3) A material that is designated as a hazardous material under this subchapter, but is not subject to the requirements of the IMDG Code (see § 171.12 of this subchapter) may not be transported under the provisions of this section and is subject to the requirements of this subchapter. Examples of such materials include flammable gas powered vehicles and combustible liquids.

* * * * *

(5) Except for IBCs and UN portable tanks intended for liquids or solids, bulk packagings must conform to the requirements of this subchapter. * * *

* * * * *

(19) The shipping paper description for an air bag inflators, air bag module, or seat-belt pretensioner must conform to the requirements of § 173.166 of this subchapter.

(20) A self-reactive substance that is not identified by technical name in the Self-reactive Materials Table in § 173.224(b) of this subchapter must be approved by the Associate Administrator in accordance with the requirements of § 173.124(a)(2)(iii) of this subchapter. An organic peroxide that is not identified by a technical name in the Organic Peroxide Table in § 173.225(b) of this subchapter must be approved by the Associate Administrator in accordance with the requirements of § 173.128(d) of this subchapter.

6. In § 171.12a, paragraph (b)(18) would be revised to read as follows:

§ 171.12a Canadian shipments and packagings.

* * * * *

(b) * * *

(18) A self-reactive substance that is not identified by technical name in the Self-reactive Materials Table in § 173.224(b) of this subchapter must be approved by the Associate Administrator in accordance with the requirements of § 173.124(a)(2)(iii) of this subchapter.An organic peroxide that is not identified by a technical name in the Organic Peroxide Table in § 173.225(b) of this subchapter must be approved by the Associate Administrator in accordance with the requirements of § 173.128(d) of this subchapter.

7. In § 171.14, paragraphs (d) introductory text, (d)(1), (d)(2) introductory text, (d)(4) and (d)(5) would be revised, and paragraph (d)(6) would be added to read as follows:

§ 171.14 Transitional provisions for implementing certain requirements.

* * * * *

(d) A final rule published in the **Federal Register** on (INSERT PUBLICATION DATE OF FINAL RULE), effective October 1, 2003, resulted in revisions to this subchapter. During the transition period, until October 1, 2004, as provided in paragraph (d)(1) of this section, a person may elect to comply with either the applicable requirements of this subchapter in effect on September 30, 2003, or the requirements published in the (INSERT PUBLICATION DATE OF FINAL RULE) final rule.

(1) *Transition dates.* The effective date of the final rule published on (INSERT PUBLICATION DATE OF FINAL RULE) is October 1, 2003. A delayed compliance date of October 1, 2004 is authorized. On and after October 1, 2004, all applicable regulatory requirements adopted in the final rule in effect on October 1, 2003 must be met.

(2) *Intermixing old and new requirements.* Marking, labeling, placarding, and shipping paper descriptions must conform to either the old requirements of this subchapter in effect on September 30, 2003, or the new requirements of this subchapter in the final rule without intermixing communication elements, except that intermixing is permitted, during the applicable transition period, for packaging, hazard communication, and handling provisions, as follows:

* * * * *

(4) Until January 1, 2010, a hazardous material may be transported in an IM, IMO, or DOT Specification 51 portable tank in accordance with the T Codes (Special Provisions) assigned to a hazardous material in Column (7) of the § 172.101 Table in effect on September 30, 2001.

(5) Until October 1, 2007, proper shipping names that included the word ''inhibited'' prior to the June 21, 2001 final rule in effect on October 1, 2001 are authorized on packagings in place of the word ''stabilized.'' Until October 1, 2007, proper shipping names that included the word ''compressed'' prior to the final rule published on (INSERT PUBLICATION DATE OF FINAL RULE) and effective on October 1, 2003 may continue to be shown on packagings.

(6) Until October 1, 2005, proper shipping names that did not identify specific isomers by numbers or letters preceding the chemical name prior to the final rule published on (INSERT PUBLICATION DATE OF FINAL RULE) and effective on October 1, 2003, may

continue to be marked on packagings in place of the proper shipping names revised in the (INSERT PUBLICATION DATE OF FINAL RULE) final rule.

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

8. The authority citation for part 172 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

9. In § 172.101, paragraph (c)(15) would be revised, and the Hazardous Materials Table would be revised to read as follows:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

(c) * * *

(15) Unless a hydrate is specifically listed in the Table, a proper shipping name for the equivalent anhydrous substance may be used, if the hydrate meets the same hazard class or division, subsidiary risk(s) and packing group.

* * * * *

§ 172.101 HAZARDOUS MATERIALS TABLE

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label Codes	Special provisions	(8) Packaging (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	[REMOVE]												
		*	*		*	*	*		*	*			
	Air bag inflators, compressed gas *or* Air bag modules, compressed gas *or* Seat-belt pretensioners, compressed gas.	2.2	UN3353		2.2	133	166	166	166	75 kg	150 kg	A.	
	Air bag inflators, *pyrotechnic or* Air bag modules, *pyrotechnic or* Seat-belt pretensioner, *pyrotechnic*.	1.4G	UN0503	II	1.4G		166	166	166	Forbidden	75 kg	02	24E
	Air bag inflators, *pyrotechnic or* Air bag modules, *pyrotechnic or* Seat-belt pretensioner, *pyrotechnic*.	9	UN3268	III	9		166	166	166	25 kg	100 kg	A.	
D	Ammonium nitrate fertilizers.	5.1	NA2072	III	5.1	7, IB8	152	213	240	25 kg	100 kg	B	48, 59, 60, 117
	Ammonium nitrate fertilizers; *uniform non-segregating mixtures of ammonium nitrate with added matter which is inorganic and chemically inert towards ammonium nitrate, with not less than 90 percent ammonium nitrate and not more than 0.2 percent combustible material (including organic material calculated as carbon), or with more than 70 percent but less than 90 percent ammonium nitrate and not more than 0.4 percent total combustible material.*	5.1	UN2067	III	5.1	52,IB8, IP3	152	213	240	25 kg	100 kg	B	48, 59, 60, 117

A, W	Ammonium nitrate fertilizers: *uniform non-segregating mixtures of nitrogen/phosphate or nitrogen/postash types or complete fertilizers of nitrogen/phosphate/postash type, with not more than 70 percent ammonium nitrate and not more than 0.4 percent total added combustible material or with not more than 45 percent ammonium nitrate with unrestricted combustible material*.	9	UN2071	III	9	132, IB8	155	213	240	200 kg	200 kg	A.	
	Ammonium nitrate mixed fertilizers.	5.1	NA2069	III	5.1	10, IB8	152	213	240	25 kg	100 kg	B	48, 59, 60, 117
	Ammonium nitrate, *with not more than 0.2 percent of combustible substances, including any organic substance calculated as carbon, to the exclusion of any other added substance*.	5.1	UN1942	III	5.1	A1, A29, IB8, IP3.	152	213	240	25 kg	100 kg	A	48, 59, 60, 116
	Boron trifluoride, compressed.	2.3	UN1008		2.3	2, B9, B14	None	302	314, 315	Forbidden	Forbidden	D	40
	Calcium hypochlorite, hydrated *or* Calcium hpyochlorite, hydrated mixtures, *with not less than 5.5 percent but not more than 10 percent water*.	5.1	UN2880	II	5.1	IB8, IP2, IP4, W9.	152	212	240	5 kg	25 kg	D	4, 5, 25, 48, 56, 58, 69
	Carbonyl fluoride, compressed.	2.3	UN2417		2.3, 8	2	None	302	None	Forbidden	Forbidden	D	40
+	Chlorodinitrobenzenes	6.1	UN1577	II	6.1	IB8, IP2, IP4, T7, TP2.	None	212	242	25 kg	100 kg	A	91
	Cigar and cigarette lighters, charged with fuel, see Lighters for cigars, cigarettes, *etc*.												
	Cresols	6.1	UN2076	II	6.1, 8	IB8, IP2, IP4, T7, TP2.	None	202	243	1 L	30 L	B.	
	Diborane, compressed	2.3	UN1911		2.3, 2.1	1	None	302	None	Forbidden	Forbidden	D	40, 57
	Diethylamino-propylamine	3	UN2684	III	3, 8	B1, IB3, T4, TP1.	150	203	242	5 L	60 L	A.	
	Dimethylcyclo-hexylamine	8	UN2264	II	8, 3	B2, IB2, T7, TP2.	154	202	243	1 L	30 L	A	40
	Ethyl methacrylate	3	UN2277	II	3	IB2, T4, TP1.	150	202	242	5 L	60 L	B.	
	Ethylbutyl acetate	3	UN1177	III	3	B1, IB3, T2, TP1.	150	203	242	60 L	220 L	A.	
	Ethylene, compressed	2.1	UN1962		2.1		306	304	302	Forbidden	150 kg	E	40
	Hexafluoroethane, compressed *or* Refrigerant gas R 116.	2.2	UN2193		2.2		306	304	314, 315	75 kg	150 kg	A.	

§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label Codes	Special provisions	(8) Packaging (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Hydrazine, anhydrous *or* Hydrazine aqueous solutions *with more than 64 percent hydrazine, by mass*.	8	UN2029	I	8, 3, 6.1	A3, A6, A7, A10, B7, B16, B53.	None	201	243	Forbidden	2.5 L	D	21, 40, 42, 100
	Hydrazine hydrate *or* Hydrazine aqueous solutions, *with not less than 37 percent but not more than 64 percent hydrazine, by mass*.	8	UN2030	II	8, 6.1	B16, B53, IB2, T7, TP2, TP13.	None	202	243	Forbidden	30 L	D	40, 42, 82
	Lighters *or* Lighter refills *cigarettes, containing flammable gas*.	2.1	UN1057		2.1	N10	None	21, 308	None	1 kg	15 kg	B	40
	Lithium hydroxide, monohydrate *or* Lithium hydroxide, solid.	8	UN2680	II	8	IB8, IP2, IP4.	154	212	240	15 kg	50 kg	A.	
	Nitrogen trifluoride, compressed.	2.2	UN2451		2.2, 5.1		None	302	None	75 kg	150 kg	D	40
	Phosphoric acid, liquid or solid.	8	UN1805	III	8	A7, IB3, IP3, N34, T4, TP1.	154	203	241	5 L	60 L	A.	
	Phosphorus pentafluoride, compressed.	2.3	UN2198		2.3, 8	2, B9, B14	None	302, 304	314, 315	Forbidden	Forbidden	D	40
	Propyl chloride	3	UN1278	II	3	IB2, IP8, N34, T7, TP2.	None	202	242	Forbidden	60 L	E.	
	Refrigerating machines, *containing non-flammable, non-toxic liquefied gas or ammonia solution (UN2672)*.	2.2	UN2857		2.2	A53	306, 307	306	306, 307	450 kg	450 kg	A.	
	Silane, compressed	2.1	UN2203		2.1		None	302	None	Forbidden	Forbidden	E	40, 57, 104
	Silicon tetrafluoride, compressed.	2.3	UN1859		2.3, 8	2	None	302	None	Forbidden	Forbidden	D	40
	Tetrachloroethane	6.1	UN1702	II	6.1	IB2, N36, T7, TP2.	None	202	243	5 L	60 L	A	40
	Tetrafluoromethane, compressed *or* Refrigerant gas R 14.	2.2	UN1982		2.2		None	302	None	75 kg	150 kg	A.	
D	Uranium nitrate hexahydrate solution.	7	UN2980		7, 8		421, 427	415, 416, 417.	415, 416, 417.			D	95
	Xenon, compressed	2.2	UN2036		2.2		306	302	None	75 kg	150 kg	A.	
	Xylidines, solution	6.1	UN1711	II	6.1	IB2, T7, TP2.	None	202	243	5 L	60 L	A.	
	[ADD] *Accumulators, pressurized, pneumatic or hydraulic (containing non-flammable gas), see* Articles pressurized, pneumatic *or* hydraulic *(containing non-flammable gas)*.												

		*		*		*	*	*		*	*				
I	Air bag inflators, *or* Air bag modules, *or* Seat-belt pretensioners.	1.4G	UN0503	II	1.4G	161	None	62	None	Forbidden	75kg	02.	
	Air bag inflators, *or* Air bag modules, *or* Seat-belt pretensioners.	9	UN3268	III	9	160	166	166	166	25 kg	100 kg	A.	
		*		*		*	*	*		*	*				
	Ammonium nitrate emulsion *or* Ammonium nitrate suspension *or* Ammonium nitrate gel, *intermediate for blasting explosives*.	5.1	UN3375	II	5.1	52, 147	None	214	214	Forbidden	Forbidden	D	48, 59, 60, 124
		*		*		*	*	*		*	*				
	Ammonium nitrate based fertilizer.	5.1	UN2067	III	5.1	52, 150, IB8, IP3.	152	213	240	25 kg	100 kg	B	48, 59, 60, 117
A, W	Ammonium nitrate based fertilizer.	9	UN2071	III	9	132, IB8	155	213	240	200 kg	200 kg	A.	
		*		*		*	*	*		*	*				
	Ammonium nitrate, *with not more than 0.2% total combustible material, including any organic substance, calculated as carbon to the exclusion of any other added substance*.	5.1	UN1942	III	5.1	A1, A29, IB8, IP3.	152	213	240	25 kg	100 kg	A	48, 59, 60, 116
		*		*		*	*	*		*	*				
	Boron trifluoride	2.3	UN1008		2.3	2, B9, B14	None	302	314, 315	Forbidden	Forbidden	D	40
		*		*		*	*	*		*	*				
	Calcium hypochlorite, hydrated *or* Calcium hypochlorite, hydrated mixtures, *with not less than 5.5 percent but not more than 16 percent water*.	5.1	UN2880	II	5.1	IB8, IP2, IP4, W9.	152	212	240	5 kg	25 kg	D	4, 5, 25, 48, 56, 58, 69
		*		*		*	*	*		*	*				
	Carbonyl fluoride	2.3	UN2417		2.3, 8	2	None	302	None	Forbidden	Forbidden	D	40
		*		*		*	*	*		*	*				
+	Chlorodinitrobenzenes, liquid.	6.1	UN1577	II	6.1	IB2, T11, TP2, TP27.	None	202	243	5 L	60 L	B	91
+	Chlorodinitrobenzenes, solid.	6.1	UN1577	II	6.1	IB8, IP4, T7, TP2.	None	212	242	25 kg	100 kg	A	91
		*		*		*	*	*		*	*				
	1-Chloropropane	3	UN1278	II	3	IB2, N34, T7, TP2.	None	202	242	Forbidden	60 L	E.	
		*		*		*	*	*		*	*				
	Chlorosilanes, toxic, corrosive, n.o.s.	6.1	UN3361	II	6.1, 8	IB1, T11, TP2, TP13.	None	202	243	1 L	30 L	C	40
	Chlorosilanes, toxic, corrosive, flammable, n.o.s.	6.1	UN3362	II	6.1, 3, 8	IB1, T11, TP2, TP13.	None	202	243	1 L	30 L	C	40, 125

§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label Codes	Special provisions	(8) Packaging (§ 173.***) Exceptions	Non-bulk	Bulk	(9) Quantity limitations Passenger aircraft/rail	Cargo aircraft only	(10) Vessel stowage Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
		*	*		*	*	*		*	*			
	Cigar and cigarette lighters, charged with fuel, see Lighters *or* Lighter refills *containing flammable gas.*												
		*	*		*	*	*		*	*			
	Cresols, liquid	6.1	UN2076	II	6.1, 8	IB8, IP2, IP4, T7, TP2.	None	202	243	1 L	30 L	B.	
	Cresols, solid	6.1	UN2076	II	6.1, 8	IB8, IP2, IP4, T7, TP2.	None	202	243	1 L	30 L	B.	
		*	*		*	*	*		*	*			
	Diborane	2.3	UN1911		2.3, 2.1	1	None	302	None	Forbidden	Forbidden	D	40, 57
		*	*		*	*	*		*	*			
	3-Diethylamino-propylamine.	3	UN2684	III	3, 8	B1, IB3, T4, TP1.	150	203	242	5 L	60 L	A.	
		*	*		*	*	*		*	*			
	N, N-Dimethylcyclohexylamine.	8	UN2264	II	8, 3	B2, IB2, T7, TP2.	154	202	243	1 L	30 L	A	40
		*	*		*	*	*		*	*			
	Ethyl methacrylate, stabilized.	3	UN2277	II	3	IB2, T4, TP1.	150	202	242	5 L	60 L	B.	
		*	*		*	*	*		*	*			
	2-Ethylbutyl acetate	3	UN1177	III	3	B1, IB3, T2, TP1.	150	203	242	60 L	220 L	A.	
		*	*		*	*	*		*	*			
	Ethylene	2.1	UN1962		2.1	306	304	302	Forbidden	150kg	E	40.	
		*	*		*	*	*		*	*			
	Ethylene glycol diethyl ether.	3	UN1153	II	3	IB2, T4, TP1.	150	202	242	5 L	60 L	A.	
		*	*		*	*	*		*	*			
A, I, W	Fibers, animal *or* Fibers, vegetable *burnt, wet or damp*.	4.2	UN1372	III	4.2		151	213	240	Forbidden	Forbidden	A.	
		*	*		*	*	*		*	*			
I, W	Fibers, vegetable, dry	4.1	UN3360		4.1	137	151	213	240	No limit	No limit	A.	
		*	*		*	*	*		*	*			
	Hexafluoroethane, *or* Refrigerant gas R 116.	2.2	UN2193		2.2		306	304	314, 315	75 kg	150 kg	A.	

	*		*		*	*	*	*	*	*				
	Hydrazine, anhydrous	8	UN2029	I	8, 3, 6.1	A3, A6, A7, A10, B7, B16, B53.	None	201	243	Forbidden	2.5 L	D	40, 125
	*		*		*	*	*	*	*	*				
	Hydrazine aqueous solution, *with more than 37% hydrazine, by mass.*	8	UN2030	I	8, 6.1	151	None	201	243	Forbidden	2.5 L	D	40
				II	8, 6.1		None	202	243	Forbidden	30 L	D	40
				III	8, 6.1		154	203	241	5 L	60 L	D	40
	*		*		*	*	*	*	*	*				
	Hydrobromic acid, with more than 4 percent hydrobromic acid 9.	8	UN1788										
	*		*		*	*	*	*	*	*				
	Lighters *or* Lighter refills *containing flammable gas*.	2.1	UN1057		2.1	N10	None	21, 308	None	1 kg	15 kg	B	40
	*		*		*	*	*	*	*	*				
	Lithium hydroxide	8	UN2680	II	8	IB8, IP2, IP4.	154	212	240	15 kg	50 kg	A.	
	*		*		*	*	*	*	*	*				
	2-Methylbutanal	3	UN3371	II	3	IB2, T4, TP1.	150	202	242	5 L	60 L	B.	
	*		*		*	*	*	*	*	*				
	Nitrogen trifluoride	2.2	UN2451		2.2, 5.1		None	302	None	75 kg	150 kg	D	40
	*		*		*	*	*	*	*	*				
	4-Nitrophenylhydrazine, *with not less than 30% water, by mass*.	4.1	UN3376	I	4.1	162, A8, A19, A20, N41.	None	211	None	Forbidden	Forbidden	E	36
	*		*		*	*	*	*	*	*				
G	Organometallic compound, solid, water-reactive, flammable, n.o.s.	4.3	UN3372	I	4.3, 4.1	IB4, N40	None	211	242	Forbidden	15 kg	E	40
				II	4.3, 4.1	IB4	151	212	242	15 kg	50 kg	E	40
				III	4.3, 4.1	IB6	151	213	241	25 kg	100 kg	E	40
	*		*		*	*	*	*	*	*				
	Phosphoric acid, liquid	8	UN1805	III	8	A7, IB3, IP3, N34, T4, TP1.	154	203	241	5 L	60 L	A.	
	Phosphoric acid, solid	8	UN1805	III	8	IB8, IP3, T3, TP1.	154	213	240	25 kg	100 kg	A.	
	*		*		*	*	*	*	*	*				
	Phosphorus	2.3	UN2198		2.3, 8	2, B9, B14	None	302, 304	314, 315	Forbidden	Forbidden	D	40
	*		*		*	*	*	*	*	*				
	Propyl chloride see 1-Chloropropane.												
	*		*		*	*	*	*	*	*				
A, W	Rags, oily	4.2	UN1856	III	4.2		151	213	240	Forbidden	Forbidden	A.	

§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label Codes	Special provisions	(8) Packaging (§ 173.***) Exceptions	Non-bulk	Bulk	(9) Quantity limitations Passenger aircraft/rail	Cargo aircraft only	(10) Vessel stowage Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	*		*		*	*	*		*	*			
	Refrigerating machines, *containing non-flammable, non-toxic, liquefied or compressed gas or ammonia solution (UN2672)*.	2.2	UN2857		2.2	A53	306, 307	306	306, 307	450 kg	450 kg	A.	
	*		*		*	*	*		*	*			
	Rubber scrap *or* shoddy, *powdered or granulated, not exceeding 840 microns and rubber content exceeding 45%*.	4.1	UN1345	II	4.1	IB8, IP2, IP4.	151	212	240	15 kg	50 kg	A.	
	*		*		*	*	*		*	*			
	Silane	2.1	UN2203		2.1		None	302	None	Forbidden	Forbidden	E	40, 57, 104
	*		*		*	*	*		*	*			
	Silicon tetrafluoride	2.3	UN1859		2.3, 8	2	None	302	None	Forbidden	Forbidden	D	40
	*		*		*	*	*		*	*			
	Sodium dinitro-o-cresolate, wetted, *with not less than 10% water by mass*.	4.1	UN3369	I	4.1	162, A8, A19, N41, N84.	None	211	None	0.5 kg	0.5 kg	E	36
	*		*		*	*	*		*	*			
	1,1,2,2-Tetrachloroethane	6.1	UN1702	II	6.1	IB2, N36, T7, TP2.	None	202	243	5 L	60 L	A	40
	*		*		*	*	*		*	*			
	Tetrafluoromethane, *or* Refrigerant gas R 14.	2.2	UN1982		2.2		None	302	None	75 kg	150 kg	A.	
	*		*		*	*	*		*	*			
A, I, W	Textile waste, wet	4.2	UN1857	III	4.2		151	213	240	Forbidden	Forbidden	A.	
	*		*		*	*	*		*	*			
	Trinitrobenzene, wetted, *with not less than 10% water by mass*.	4.1	UN3367	I	4.1	162, A8, A19, N41, N84.	None	211	None	0.5 kg	0.5 kg	E	36
	*		*		*	*	*		*	*			
	Trinitrobenzoic acid, wetted, *with not less than 10% water by mass*.	4.1	UN3368	I	4.1	162, A8, A19, N41, N84.	None	211	None	0.5 kg	0.5 kg	E	36
	*		*		*	*	*		*	*			
	Trinitrochlorobenzene (picryl chloride), wetted, *with not less than 10% water by mass*.	4.1	UN3365	I	4.1	162, A8, A19, N41, N84.	None	211	None	0.5 kg	0.5 kg	E	36

		*		*		*	*	*		*	*				
	Trinitrophenol (picric acid), wetted, *with not less than 10% water by mass*.		4.1	UN3364	I	4.1	162, A8, A19, N41, N84.	None	211	None	0.5 kg	0.5 kg	E	36
		*		*		*	*	*		*	*				
	Trinitrotoluene (TNT), wetted, *with not less than 10% water by mass*.		4.1	UN3366	I	4.1	162, A8, A19, N41, N84.	None	211	None	0.5 kg	0.5 kg	E	36
		*		*		*	*	*		*	*				
D	Uranyl nitrate hexahydrate solution.		7	UN2980		7, 8		421, 427	415, 416, 417.	415, 416, 417.			D	95
		*		*		*	*	*		*	*				
	Urea nitrate, wetted, *with not less than 10% water by mass*.		4.1	UN3370	I	4.1	162, A8, A19, N41, N83.	None	211	None	0.5 kg	0.5 kg	E	36
		*		*		*	*	*		*	*				
A, I, W	Wool waste, wet		4.2	UN1387	III	4.2		151	213	240	Forbidden	Forbidden	A.	
		*		*		*	*	*		*	*				
	Xenon		2.2	UN2036		2.2		306	302	None	75 kg	150 kg	A.	
		*		*		*	*	*		*	*				
	Xylidines, liquid		6.1	UN1711	II	6.1	IB2, T7, TP2.	None	202	243	5 L	60 L	A.	
	[REVISE]													
	Adhesives, *containing a flammable liquid*.		3	UN1133	II	3	149, B52, IB2, T4, TP1, TP8.	150	173	242	5 L	60 L	B.	
		*		*		*	*	*		*	*				
	Aerosols, *corrosive, Packaging Group II or III*, (*each not exceeding 1 L capacity*).		2.2	UN1950		2.2, 8	153, A34	306	None	None	75 kg	150 kg	A	48, 87, 126
	Aerosols, *flammable*, (*each not exceeding 1 L capacity*).		2.1	UN1950		2.1	153, N82	306	None	None	75 kg	150 kg	A	48, 87, 126
	Aerosols, *flammable, n.o.s. (engine starting fluid*) (*each not exceeding 1 L capacity*).		2.1	UN1950		2.1	153, N82	306	304	None	Forbidden	150 kg	A	48, 87, 126
	Aerosols, *non-flammable*, (*each not exceeding 1 L capacity*).		2.2	UN1950		2.2	153	306, 307	None	None	75 kg	150 kg	A	48, 87, 126
	Aerosols, poison, *each not exceeding 1 L capacity*.		2.2	UN1950		2.2	153	306	None	None	Forbidden	Forbidden	A	48, 87, 126
		*		*		*	*	*		*	*				
	Alcoholic beverages		3	UN3065	II	3	24, 149, B1, 1B2, T4, TP1.	150	202	242	5 L	60 L	A	
		*		*		*	*	*		*	*				
	Alkylsulfuric acids		8	UN2571	II	8	B2, IB2, T8, TP2, TP12, TP13, TP28.	154	202	242	1 L	30 L	C	14

§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label Codes	Special provisions	(8) Packaging (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	*		*		*	*	*		*	*			
	Ammonia solutions, *relative density between 0.880 and 0.957 at 15 degrees C in water, with more than 10 percent but not more than 35 percent ammonia*.	8	UN2672	III	8	IB3, IP8, T7, TP1.	154	203	241	5 L	60 L	A	40, 85
	*		*		*	*	*		*	*			
	Ammunition, smoke *with or without burster, expelling charge or propelling charge*.	1.2G	UN0015	II	1.2G			62	None	Forbidden	Forbidden		8E, 17E, 20E
	Ammunition, smoke *with or without burster, expelling charge or propelling charge*.	1.3G	UN0016	II	1.3G			62	None	Forbidden	Forbidden		8E, 17E, 20E
	Ammunition, smoke *with or without burster, expelling charge or propelling charge*.	1.4G	UN0303	II	1.4G			62	None	Forbidden	75 kg		7E, 8E, 14E, 15E, 17E
	*		*		*	*	*		*	*			
	Arsenic compounds, liquid, n.o.s. *inorganic, including arsenates, n.o.s.; arsenites, n.o.s.; arsenic sulfides, n.o.s.; and organic compounds of arsenic, n.o.s.*	6.1	UN1556	I	6.1	T14, TP2, TP9, TP13, TP27.	None	201	243	1 L	30 L	B	40
				II	6.1	IB2, T11, TP2, TP13, TP27.	None	202	243	5 L	60 L	B	40
				III	6.1	IB3, T7, TP2, TP28.	153	203	241	60 L	220 L	B	40
	*		*		*	*	*		*	*			
	Asbestos	9	NA2212	III	9	156, IB8, IP2, IP4.	155	216	240	200 kg	200 kg	A	34, 40
	*		*		*	*	*		*	*			
	Barium azide, wetted *with not less than 50 percent water, by mass*.	4.1	UN1571	I	4.1, 6.1	162, A2	None	182	None	Forbidden	0.5	D	28
	*		*		*	*	*		*	*			
	Battery fluid, alkali	8	UN2797	II	8	B2,IB2, N6, T7, TP2, TP28.	154	202	242	1 L	30 L	A	26

		*		*		*	*	*		*	*				
I	Blue asbestos (*Crocidolite*) *or* Brown asbestos (*amosite*, *mysorite*).		9	UN2212	II	9	156, IB8, IP2, IP4.	155	216	240	Forbidden	Forbidden	A	34, 40
		*		*		*	*	*		*	*				
	5-tert-Butyl-2,4,6-trinitro-m-xylene *or* Musk xylene.		4.1	UN2956	III	4.1	159	None	223	None	Forbidden	Forbidden		D12, 25, 48, 127
		*		*		*	*	*		*	*				
	Chemical kits		9	UN3316		9	15	161	161	None	10 kg	10 kg	A	
		*		*		*	*	*		*	*				
	Chloroacetic acid, molten		6.1	UN3250	II	6.1, 8	IB1, T7, TP3, TP28.	None	202	243	Forbidden	Forbidden	C	40
		*		*		*	*	*		*	*				
	4-Chloro-o-toluidine hydrochloride.		6.1	UN1579	III	6.1	IB8, IP3, T4, TP1.	153	213	240	100 kg	200 kg	A	
		*		*		*	*	*		*	*				
	Coating solution (*includes surface treatments or coatings used for industrial or other purposes such as vehicle undercoating, drum or barrel lining*).		3	UN1139	II	3	149,IB2, T4, TP1, TP8.	150	202	242	5 L	60 L	B	
		*		*		*	*	*		*	*				
	Dichlorodimethyl ether, symmetrical.		6.1	UN2249	I	6.1, 3		None	201	243	Forbidden	Forbidden		40
		*		*		*	*	*		*	*				
	Dipicryl sulfide, wetted *with not less than 10 percent water, by mass*.		4.1	UN2852	I	4.1	162, A2, N41, N84.	None	211	None	Forbidden	0.5 kg	D	28
		*		*		*	*	*		*	*				
G	Environmentally hazardous substances, liquid, n.o.s.		9	UN3082	III	9	8, 146, IB3, T4, TP1, TP29.	155	203	241	No limit	No limit	A	
G	Environmentally hazardous substances, solid, n.o.s.		9	UN3077	III	9	8, 146, B54, IB8, N20.	155	213	240	No limit	No limit	A	
		*		*		*	*	*		*	*				
	Extracts, aromatic, liquid		3	UN1169	II	3	149, IB2, T4, TP1, TP8.	150	202	242	5 L	60 L	B	
	Extracts, flavoring, liquid		3	UN1197	II	3	149, IB2, T4, TP1, TP8.	150	202	242	5 L	60 L	B	
		*		*		*	*	*		*	*				
	First aid kits		9	UN3316		9	15	161	161	None	10 kg	10 kg	A	
W	Fish meal, stablized *or* Fish scrap, stablized.		9	UN2216	III		155, IB8	155	218	218	No limit	No limit	B	88, 122, 128
	Fish meal, unstabilized *or* Fish scrap, unstabilized.		4.2	UN1374	II	4.2	155, A1, A19, IB8, IP2.	None	212	241	15 kg	50 kg	B	88, 122, 128

§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label Codes	Special provisions	(8) Packaging (§ 173.***) Exceptions	Non-bulk	Bulk	(9) Quantity limitations Passenger aircraft/rail	Cargo aircraft only	(10) Vessel stowage Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	*		*		*	*	*		*	*			
G	Flammable liquids, n.o.s	3	UN1993	I	3	T11, TP1, TP27.	150	201	243	1 L	30 L	E	
	*		*		*	*	*		*	*			
	Hydrobromic acid, *with not more than 49 percent hydrobromic acid.* (Revision to PG III entry only).	8	UN1788	III	8	IB3, T4, TP1.	154	203	241	5 L	60 L	C	8
	*		*		*	*	*		*	*			
	Hydrocarbons, liquids, n.o.s.	3	UN3295	I	3	T11, TP1, TP8, TP28.	150	201	243	1 L	30 L	E	
	*		*		*	*	*		*	*			
	Hydrogen peroxide and peroxacetic acid mixtures, stabilized *with acids, water and not more than 5 percent peroxyacetic acid*.	5.1	UN3149	II	5.1, 8	145, A2, A2, A6, B53, IB2, IP5, T7, TP2, TP6, TP24.	None	202	243	1 L	5 L	D	25, 66, 75, 106
	*		*		*	*	*		*	*			
	Iodine pentafluoride	5.1	UN2495	I	5.1, 6.1, 8		None	205	243	Forbidden	Forbidden	D	25, 40, 66, 90
	*		*		*	*	*		*	*			
	Isosorbide dinitrate mixture *with not less than 60 percent lactose, mannose, starch or calcium hydrogen phosphate*.	4.1	UN2907	II	4.1	IB6, IP2, N85.	None	212	None	15 kg	50 kg	E	
	*		*		*	*	*		*	*			
	Lithium batteries, contained in equipment.	9	UN3091	II	9	29, A54, A55.	185	185	None	5 kg	5 kg	A	
	Lithium batteries packed with equipment.	9	UN3091	II	9	29, A54, A55.	185	185	None	5 kg gross	35 kg gross	A	
	Lithium battery	9	UN3090	II	9	29, A54, A55.	185	185	None	5 kg gross	35 kg gross	A	
	*		*		*	*	*		*	*			
	Medicine, liquid, toxic, n.o.s.	6.1	UN1851	II	6.1	36	153	202	243	5 L	5 L	C	40
				III	6.1	36	153	203	241	5 L	5 L	C	40
	*		*		*	*	*		*	*			
	Methacrylic acid, stabilized.	8	UN2531	II	8	IB3, T4, TP1, TP18, TP30.	154	202	242	1 L	30 L	C	40

		*		*		*		*	*		*		*			
	Methyl bromide		2.3	UN1062		2.3	3, B14, T50	None	193	314, 315	Forbidden	Forbidden	D	40
		*		*		*		*	*		*		*			
	Morpholine		8	UN2054	I	8,3	T10, TP2	None	201	243	.5 L	2.5 L	A	
		*		*		*		*	*		*		*			
+	Motor fuel anti-knock mixtures.		6.1	UN1649	I	6.1	14, 151, B9, B90, T14, TP2, TP13.	None	201	244	Forbidden	30 L	D	25, 40
		*		*		*		*	*		*		*			
G	Organic peroxide type F, solid temperature controlled.		5.2	UN3120	II	5.2	IB52, T23	None	225	225	Forbidden	Forbidden	D	2
	Organochlorine pesticides, liquid, toxic, flammable, *flash point not less than 23 degrees C*.		6.1	UN2995	III	6.1, 3	B1, IB3, T7, TP2, TP28.	153	203	242	60 L	220 L	A	40
		*		*		*		*	*		*		*			
	Organophosphorus compound, toxic, flammable, n.o.s.		6.1	UN3279	I	6.1, 3	5, T14, TP2, TP13, TP27.	None	201	243	1 L	30 L	B	40
		*		*		*		*	*		*		*			
	Paint *including paint, lacquer, enamel, stain, shellac solutions, varnish, polish, liquid filler, and liquid lacquer base*.		3	UN1263	II	3	149, B52, IB2, T4, TP1, TP8.	150	173	242	5 L	60 L	B	
		*		*		*		*	*		*		*			
	Paint related *including paint thinning, drying, removing, or reducing compound*.		3	UN1263	II	3	149, B52, IB2, T4, TP1, TP8.	150	173	242	5 L	60 L	B	
		*		*		*		*	*		*		*			
	Pentaerythrite tetranitrate mixture, desensitized, solid, n.o.s. *with more than 10 percent but not more than 20 percent PETN, by mass*.		4.1	UN3344	II	4.1	118, N85	None	214	None	Forbidden	Forbidden	E	
		*		*		*		*	*		*		*			
	Perfumery products *with flammable solvents*.		3	UN1266	II	3	149, IB2, T4, TP1, TP8.	150	202	242	15 L	60 L	B	
		*		*		*		*	*		*		*			
	Phosphorus, white dry *or* Phosphorus, white, under water *or* Phosphorus white, in solution *or* Phosphorus, yellow dry *or* Phosphorus, yellow, under water *or* Phosphorus, yellow, in solution.		4.2	UN1381	I	4.2, 6.1	B9, B26, N34, T9, TP3, TP31.	None	188	243	Forbidden	Forbidden	E	

§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label Codes	Special provisions	(8) Packaging (§ 173.***) Exceptions	Non-bulk	Bulk	(9) Quantity limitations Passenger aircraft/rail	Cargo aircraft only	(10) Vessel stowage Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	*		*		*	*	*		*	*			
	Piperazine	8	UN2579	III	8	IB8, IP3, T4, TP1, TP30.	154	213	240	25 kg	100 kg	A	12
	*		*		*	*	*		*	*			
	Polyester resin kit	3	UN3269		3	40, 149	152	225	None	5 kg	5 kg	B	
	*		*		*	*	*		*	*			
	Potassium	4.3	UN2257	I	4.3	A19, A20, B27, IB1, IP1, N6, N34, T9, TP3, TP7, TP31.	None	211	244	Forbidden	15 kg	D	
	*		*		*	*	*		*	*			
	Potassium sodium alloys	4.3	UN1422	I	4.3	A19, B27, IB4, IP1, N34, N40, T9, TP3, TP7, TP31.	None	211	244	Forbidden	15 kg	D	
	*		*		*	*	*		*	*			
	Printing ink, *flammable or* Printinig ink related material (*including printing ink thinning or reducing compound*), *flammable.*	3	UN1210	II	3	149, IB2, T4, TP1, TP8.	150	173	242	5 L	60 L	B	
	*		*		*	*	*		*	*			
D	Radioactive material, fissile, n.o.s.	7	UN2918		7	A56	453	417	417			A	95, 105
I	Radioactive material, low specific activity (LSA–I) *non fissile or fissile-excepted.*	7	UN2912		7	A56, T5, TP4, W7.	421, 422, 428.	427	427			A	95, 129
	*		*		*	*	*		*	*			
I	Radioactive material, low specific activity (LSA–II) *non fissile or fissile-excepted.*	7	UN3321		7	A56, T5, TP4, W7.	421, 422, 428.	427	427			A	95, 129
I	Radioactive material, low specific activity (LSA–II) *non fissile or fissile excepted.*	7	UN3322		7	A56, T5, TP4, W7.	421, 422, 428.	427	427			A	95, 129
D	Radioactive material, low specific activity, n.o.s. *or* Radioactive material, LSA, n.o.s.	7	UN2912		7	A56, T5, TP4.	421, 428	427	427			A	95, 129
D	Radioactive material n.o.s	7	UN2982		7	A56	421, 428	415, 416	415, 416			A	95

D	Radioactive material, special form, n.o.s.	7	UN2974		7		A56	421, 424	415, 416	415, 416			A	95
D	Radioactive material, surface contaminated object *or* Radioactive material, SCO.	7	UN2913		7		A56	421, 424, 426.	427	427			A	95
D	Radioactive material surface contaminated objects (SCO–I *or* SCO–II) *non fissile or fissile-excepted*.	7	UN2913		7		A56	421, 422, 428.	427	427			A	95
I	Radioactive material, transported under special arrangement, *non fissile or fissile excepted*.	7	UN2919		7		A56, 139						A	95, 105
I	Radioactive material, transported under special arrangement, fissile.	7	UN3331		7		A56, 139						A	95, 105
I	Radioactive material, Type A package, fissile *non-special form*.	7	UN3327		7		A56, W7, W8.	453	417	417			A	95, 105, 131
I	Radioactive material, Type A package *non-special form, non fissile or fissile-excepted*.	7	UN2915		7		A56, W7, W8.		415	415			A	95, 130
I	Radioactive material, Type A package, special form *non fissile or fissile-excepted*.	7	UN3332		7		A56, W7, W8.		415, 476	415, 476			A	95
I	Radioactive material, Type A package, special form, fissile.	7	UN3333		7		A56, W7, W8.	453	417, 476	417, 476			A	95, 105
I	Radioactive material, Type B(M) package, fissile.	7	UN3329		7		A56	453	417	417			A	95, 105
I	Radioactive material, Type B(M) package *non fissile or fissile-excepted*.	7	UN2917		7		A56		416	416			A	95, 105
I	Radioactive material, Type B(U) package, fissile.	7	UN3328		7		A56	453	417	417			A	95, 105
I	Radioactive material, Type B(U) package *non fissile or fissile-excepted*.	7	UN2916		7		A56		416	416			A	95, 105
I	Radioactive material, uranium hexafluoride *non fissile or fissile-excepted*.	7	UN2978		7, 8			423	420, 427	420, 427			A	95, 132
	Radioactive material, uranium hexafluoride, fissile.	7	UN2977		7, 8			453	417, 420	417, 420			A	95, 132
*	*	*	*	*	*	*	*	*	*	*	*	*	*	
	Resin solution, *flammable*	3	UN1866	II	3		149, B52, IB2, T4, TP1, TP8.	150	173	242	5 L	60 L	B	
*	*	*	*	*	*	*	*	*	*	*	*	*	*	
	Rubber solution	3	UN1287	II	3		149, IB2, T4, TP1, TP8.	150	202	242	5 L	60 L	B	

§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label Codes	Special provisions	(8) Packaging (§ 173.***) Exceptions	Non-bulk	Bulk	(9) Quantity limitations Passenger aircraft/rail	Cargo aircraft only	(10) Vessel stowage Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
		*	*		*	*	*		*	*			
G	Self-reactive liquid type F	4.1	UN3229	II	4.1	T23	None	114	None	10 L	25L	D	61
		*	*		*	*	*		*	*			
	Silver picrate, wetted *with not less than 30 percent water, by mass*.	4.1	UN1347	I	4.1	23	None	211	None	Forbidden	Forbidden	D	28, 36
		*	*		*	*	*		*	*			
	Sludge, acid	8	UN1906	II	8	A3, A7, B2, IB2, N34, T8, TP2, TP12, TP28.	None	202	242	Forbidden	30 L	C	14
		*	*		*	*	*		*	*			
	Sodium	4.3	UN1428	I	4.3	A7, A8, A19, A20, B9, B48, B68, IB4, IP1, N34, T9, TP3, TP7, TP31, TP46.	None	211	244	Forbidden	15 kg	D	
		*	*		*	*	*		*	*			
D	Sulfur, molten	9	NA2448	III	9	30, IB3,, T1, TP3.	None	213	247	Forbidden	Forbidden	C	61
I	Sulfur, molten	4.1	UN2448	III	4.1	30, IB1, T1, TP3.	None	213	247	Forbidden	Forbidden	C	74
		*	*		*	*	*		*	*			
	Tars, liquid *including road asphalt and oils, bitumen and cut backs*.	3	UN1999	II	3	149, B13, IB2, T3, TP3, TP29.	150	202	242	5 L	60 L	B	
		*	*		*	*	*		*	*			
D	Thorium metal, pyrophoric	7	UN2975		7, 4.2	A56	None	418	None			D	95
D	Thorium nitrate, solid	7	UN2976		7, 5.1		None	419	None	Forbidden	15 kg	A	95
		*	*		*	*	*		*	*			
D	Uranium hexafluoride, *fissile excepted or non-fissile*.	7	UN2978		7, 8		423	420, 427	420, 427			A	95, 132
D	Uranium hexafluoride, fissile (*with more than 1 percent U–235*).	7	UN2977		7, 8		453	417, 420	417, 420			A	95, 132
D	Uranium metal, pyrophoric	7	UN2979		7, 4.2	A56	None	418	None			D	95
		*	*		*	*	*		*	*			
D	Uranyl nitrate, solid	7	UN2981		7, 5.1		None	419	None	Forbidden	15 kg	A	95

	*		*		*		*	*		*	*				
	Urea nitrate, wetted *with not less than 20 percent water, by mass*.	4.1	UN1357	I	4.1		23, 39, A8, A19, N41.	None	211	None	1 kg	15 kg	E	28, 36
	*		*		*		*	*		*	*				
	Vehicle, flammable gas powered.	9	UN3166		9		135, 157	220	220	220	Forbidden	No limit	A	
	Vehicle, flammable liquid powered.	9	UN3166		9		135, 157	220	220	220	No limit	No limit	A	
	*		*		*		*	*		*	*				
I	White asbestos (*chrysotile*, *actinolite*, *anthophyllite*, *tremolite*).	9	UN2590	III	9		156, IB8, IP2, IP3.	155	216	240	200 kg	200 kg	A	34, 40
	Wood preservatives, liquid	3	UN1306	II	3		149, IB2, T4, TP1, TP8.	150	202	242	5 L	60 L	B	
	*		*		*		*	*		*	*				

10. In Appendix B to § 172.101, paragraphs 4. and 5. would be revised and the List of Marine Pollutants would be amended by removing 5 entries, and adding 2 entries in appropriate alphabetical order to read as follows:

Appendix B to § 172.101—List of Marine Pollutants

* * * * *

4. If a material is not listed in this appendix and meets the criteria for a marine pollutant as provided in Chapter 2.10 of the IMDG Code, ''Guidelines for the Identification of Harmful Substances in Packaged Form'' (incorporated by reference; see § 171.7 of this subchapter), the material may be transported as a marine pollutant in accordance with the applicable requirements of this subchapter.

5. If a material listed in this appendix does not meet the criteria for a marine pollutant as provided in Chapter 2.10 of the IMDG Code, ''Guidelines for the Identification of Harmful Substances in Packaged Form'' (incorporated by reference; see § 171.7 of this subchapter), it may be excepted from the requirements of this subchapter as a marine pollutant if that exception is approved by the Associate Administrator.

* * * * *

LIST OF MARINE POLLUTANTS

S.P.M. (1)	(2)
[Remove:]	
	Marine pollutant
	Alkylbenzenesulphonates, branched and straight chain.
	Alkylphenols, liquid, n.o.s. (*including C2–C12 homologues*).
	Alkylphenols, solid, n.o.s. (*including C2–C12 homologues*).
	Chlorophenols, liquid.
	Chlorophenols, solid.
[Add:]	
* *	* * * * *
	Alkybenzenesulphonates, branched and straight chain (*excluding C11–C13 straight chain or branched chain homologues*).
* *	* * * * *
	Decyl acrylate.
* *	* * * * *

11. In § 172.102:

a. In paragraph (c)(1), Special Provisions 15, 30, 52, 130 and 132 would be revised; Special Provisions 7, 10 and 133 would be removed; and Special Provisions 145, 146, 147, 149, 150, 151, 153, 155, 156, 157, 159, 160, 161 and 162 would be added.

b. In paragraph (c)(2), Special Provisions A54, A55 and A56 would be added.

c. In paragraph (c)(4), the text would be revised; in Table 1, Special Provision IB3 would be revised; in Table 2, the Table heading would be revised, 1 entry would be removed, 4 entries would be added, and 1 entry would be revised; and in Table 3, Special Provision IP8 would be added.

d. In paragraph (c)(5), Special Provisions N83, N84 and N85 would be added.

e. In paragraph (c)(7)(iii), Portable Tank Code T23 would be revised by removing 2 entries, adding 4 entries, and revising 2 entries.

f. In paragraph (c)(7)(viii), Special Provision TP3 would be revised.

The additions and revisions would read as follows:

§ 172.102 Special provisions.

* * * * *

(c) * * *

(1) * * *

Code/Special Provisions

* * * * *

15 This entry applies to ''Chemical kits'' and ''First aid kits'' containing one or more compatible items of hazardous materials in boxes, cases, *etc.* that are used for medical, analytical, diagnostic or testing purposes. For transportation by aircraft, materials forbidden for transportation by passenger aircraft or cargo aircraft may not be included in the kits. The quantity of hazardous materials in any inner packaging must not exceed the limited quantity inner packaging limits specified for each hazardous material in the applicable limited quantity sections (§ 173.150 through § 173.155, and § 173.306) in Part 173 of this subchapter. Each package must conform to the packaging requirements of Subpart B of Part 173 and must not exceed 30 kg (66 lbs.) gross weight. Chemical and first aid kits are excepted from labeling, unless offered or intended for transportation by aircraft, from the specification packaging requirements of this subchapter when packaged in combination packagings, and from the placarding requirements of this subchapter. Chemical and first aid kits may be transported in accordance with the consumer commodity and ORM exceptions in § 173.156, provided they meet all required conditions. Kits that are carried on board transport vehicles for first aid or operating purposes are not subject to the requirements of this subchapter.

* * * * *

30 Sulfur is not subject to the requirements of this subchapter if transported in a non-bulk packaging or if formed to a specific shape (for example, prills, granules, pellets, pastilles, or flakes). A bulk packaging is not subject to the placarding requirements of subpart F of this part, if it is marked with the appropriate identification number as required by subpart D of this part. Molten sulfur must be marked as required by § 172.325 of this subchapter.

* * * * *

52 This entry may only be used for substances that do not exhibit explosive properties of Class 1 (explosive) when tested in accordance with Test Series 1 and 2 of Class 1 (explosive) in the UN Manual of Tests and Criteria, Part I (incorporated by reference; see § 171.7 of this subchapter).

* * * * *

130 For other than a dry battery specifically covered by another entry in the § 172.101 Table, ''Batteries, dry'' are not subject to the requirements of this subchapter when they are securely packaged and offered for transportation in a manner that prevents the dangerous

evolution of heat (for example, by the effective insulation of exposed terminals) and protects against short circuits.

* * * * *

132 This entry may only be used for uniform, ammonium nitrate-based fertilizer mixtures, containing nitrogen, phosphate or potash, meeting the following criteria: (1) Contains not more than 70% ammonium nitrate; and (2) Contains not more than 0.4% total combustible, organic material calculated as carbon or with not more than 45% ammonium nitrate and unrestricted combustible material. Fertilizers within these composition limits are only subject to the requirements of this subchapter when transported by air or sea, and are not subject to the requirements of this subchapter if shown by a trough test, as specified in the UN Manual of Tests and Criteria, Part III, sub-section 38.2 (incorporated by reference; see § 171.7 of this subchapter), not to be liable to self-sustaining decomposition.

* * * * *

145 This entry applies to formulations that neither detonate in the cavitated state nor deflagrate in laboratory testing, show no effect when heated under confinement, exhibit no explosive power, and are thermally stable (that is the self-accelerating decomposition temperature (SADT) at 60 °C (140 °F) or higher for a 50 kg (110.2 lbs.) package). Formulations not meeting these criteria must be transported under the provisions applicable to the appropriate entry in the Organic Peroxide Table in § 173.225 of this subchapter.

146 This description may be used for a material that poses a hazard to the environment but does not meet the definition for a hazardous waste or a hazardous substance, as defined in § 171.8 of this subchapter, or any hazard class as defined in Part 173 of this subchapter, if it is designated as environmentally hazardous by the Competent Authority of the country of origin, transit or destination.

147 This entry applies to non-sensitized emulsions, suspensions and gels consisting primarily of a mixture of ammonium nitrate and a fuel intended to produce a Type E blasting explosive only after further processing. The mixture typically has the following composition: 60—85% ammonium nitrate; 5—30% water; 2—8% fuel; 0.5—4% emulsifier or thickening agent; 0—10% soluble flame suppressants; and trace additives. Other inorganic nitrate salts may replace part of the ammonium nitrate. These substances may not be classified and transported unless approved by the Associate Administrator.

* * * * *

149 When transported as a limited quantity, the maximum net capacity for inner packagings may be increased to 5 L (1.3 gallons).

150 This description may be used only for uniform mixtures of fertilizers containing ammonium nitrate as the main ingredient within the following composition limits:

a. Not less than 90% ammonium nitrate with not more than 0.2% total combustible, organic material calculated as carbon, and with added matter, if any, that is inorganic and inert when in contact with ammonium nitrate; or

b. Less than 90% but more than 70% ammonium nitrate with other inorganic materials, or more than 80% but less than 90% ammonium nitrate mixed with calcium carbonate and/or dolomite, and not more than 0.4% total combustible, organic material calculated as carbon; or

c. Ammonium nitrate-based fertilizers containing mixtures of ammonium nitrate and ammonium sulphate with more than 45% but less than 70% ammonium nitrate, and not more than 0.4% total combustible, organic material calculated as carbon such that the sum of the percentage of compositions of ammonium nitrate and ammonium sulphate exceeds 70%.

151 If this material meets the definition of a flammable liquid in § 173.120 of this subchapter, a flammable liquid label is also required and the basic description on the shipping paper must indicate the Class 3 subsidiary hazard.

* * * * *

153 The following applies to aerosols:

a. Division 2.1 applies when the aerosol is flammable according to § 173.306(i) of this subchapter.

b. Division 2.2 applies when the contents of the aerosol do not meet the above criteria for Division 2.1, or Division 2.3.

c. Gases of Division 2.3 may not be used in an aerosol dispenser.

d. When the contents are classified as Division 6.1, or Class 8, the aerosol must have a subsidiary risk of Division 6.1 or Class 8.

e. Aerosols with contents meeting the criteria for PG I and PG II for Division 6.1 or Class 8 are forbidden for transportation.

f. Aerosols must meet the definition for aerosols in § 171.8 of this subchapter.

* * * * *

155 Fish meal or fish scrap may not be transported if the temperature at the time of loading either exceeds 35 °C (95 °F), or exceeds 5 °C (41 °F) above the ambient temperature, whichever is higher.

156 Asbestos that is immersed or fixed in a natural or artificial binder material such as cement, plastic, asphalt, resins or mineral ore, and manufactured products containing asbestos are not subject to the requirements of this subchapter.

157 This entry includes hybrid electric vehicles powered by both an internal combustion engine and wet, sodium or lithium batteries, transported with one or more batteries installed. Vehicles containing an internal combustion engine must be described as ''Vehicle, flammable gas powered,'' UN3166, or ''Vehicle, flammable liquid powered,'' UN3166, as appropriate.

159 This material must be protected from direct sunshine and kept in a cool, well-ventilated place away from sources of heat.

160 This entry applies to articles that are used as life-saving vehicle air bag inflators, air bag modules or seat-belt pretensioners that contain Class 1 (explosive) materials or materials of other hazard classes. Air bag inflators and modules must be tested in accordance with Test series 6(c) of Part I of the UN Manual of Tests and Criteria (incorporated by reference; see § 171.7 of this subchapter), with no explosion of the device, no fragmentation of device casing or pressure vessel, and no projection hazard or thermal effect that would significantly hinder fire-fighting or other emergency response efforts in the immediate vicinity. If the air bag inflator unit satisfactorily passes the series 6(c) test, it is not necessary to repeat the test on the air bag module.

161 For domestic transport, air bag inflators or air bag modules that meet the criteria for a Division 1.4G explosive must be transported using the description, ''Articles, pyrotechnic *for technical purposes,*'' UN0431.

162 This material may be transported under the provisions of Division 4.1 only if it is so packed that at no time during transport will the percentage of diluent fall below the percentage that is stated in the shipping description.

(2) * * *

Code/Special Provisions

* * * * *

A54 Lithium batteries or lithium batteries contained or packed with equipment that exceed 35 kg (77 pounds) gross weight may only be

transported on cargo aircraft if approved by the Associate Administrator.

A55 Prototype lithium batteries and cells that are packed with not more than 24 cells or 12 batteries per packaging that have not completed the test requirements in Sub-section 38.3 of the UN Manual of Tests and Criteria (incorporated by reference; see § 171.7 of this subchapter) may be transported by cargo aircraft if approved by the Associate Administrator and provided the following requirements are met:

a. The cells and batteries must be transported in rigid outer packagings that conform to the requirements of part 178 of this subchapter at the Packing Group I performance level ; and

b. Each cell and battery must be protected against short circuiting, surrounded by cushioning material that is non-combustible and non-conductive, and be individually packed in an inner packaging that is placed inside an outer specification packaging.

A56 Radioactive material with a subsidiary hazard of Division 4.2, Packing Group I, must be transported by aircraft in Type B packages. Radioactive material with a subsidiary hazard of Division 2.1 is forbidden from transport on passenger aircraft.

* * * * *

(4) *Table 1, Table 2, and Table 3—IB Codes, Organic Peroxide IBC Code, and IP Special IBC Packing Provisions.*

These provisions apply only to transportation in IBCs. When no IBC code is assigned in the § 172.101 Table for a specific proper shipping name, an IBC may be authorized when approved by the Associate Administrator. When only certain types of IBCs are authorized in Table 2 (IBC Code IB52), alternative types of IBCs may be authorized when approved by the Associate Administrator. The letter ''Z'' shown in the marking code for composite IBCs must be replaced with a capital code letter designation found in § 178.702(a)(2) of this subchapter to specify the material used for the outer packaging. Tables 1, 2, and 3 follow:

TABLE 1.—IB CODES (IBC CODES)

IBC code	Authorized IBCs
* *	* * * * * *
IB3	*Authorized IBCs:* Metal (31A, 31B and 31N); Rigid plastics (31H1 and 31H2); Composite (31HZ1 and 31HA2, 31HB2, 31HN2, 31HD2 and 31HH2). *Additional Requirement:* Only liquids with a vapor pressure less than or equal to 110 kPa at 50 °C (1.1 bar at 122 °F), or 130 kPa at 55 °C (1.3 bar at 131 °F) are authorized, except for UN2672 (also see Special Provision IP8 in Table 3 for UN2672).
* *	* * * * * *

TABLE 2.—ORGANIC PEROXIDE IBC CODE (IB52)

UN No.	Organic peroxide	Type of IBC	Maximum quantity (liters)	Control temperature	Emergency temperature
* *	* *	*		*	*
	REMOVE:				
3109	Di-tert-butyl peroxide, not more than 52% in diluent type A.	31A 31HA1	1250 1000		
	ADD:.				
* *	* *	*		*	*
3109	Dicumyl peroxide, less than or equal to 100%.	31A 31HA1	1250 1000		
* *	* *	*		*	*
3109	Di-tert-butyl peroxide, not more than 52% in diluent type B.	31A 31HA1	1250 1000		
* *	* *	*		*	*
	Peroxyacetic acid, with not more than 26% hydrogen peroxide.	31A 31HA1	1500 1500		
* *	* *	*		*	*
	Peroxyacetic acid, type F, stabilized	31A 31HA1	1500 1500		
* *	* *	*		*	*
	REVISE:				
* *	* *	*		*	*
3110	Dicumyl peroxide, less than or equal to 100%.	31A	2000		
* *	* *	*		*	*

* * * * *

TABLE 3.—IP CODES

* * * * * * *

IP8 Ammonia solutions may be transported in rigid or composite plastic IBCs (31H1, 31H2 and 31HZ1) that have successfully passed, without leakage or permanent deformation, the hydraulic test specified in § 178.814 of this subchapter at a test pressure that is not less than 1.5 times the vapor pressure of the contents at 55 °C (131 °F).

* * * * * * *

(5) * * *

Code/Special Provisions

* * * * *

N83 This material may not be transported in quantities of more than 11.5 kg (25.4 lbs) per package.

N84 The maximum quantity per package is 500 g (1.1 lbs.).

N85 Packagings certified at the Packing Group I performance level may not be used.

* * * * *

(7) * * *

(iii) * * *

PORTABLE TANK CODE T23

[Portable tank code T23 applies to self-reactive substances of Division 4.1 and organic peroxides of Division 5.2.]

UN No.	Hazardous material	Minimum pressure (bar)	Minimum test thickness (mm-reference steel) See...	Bottom opening requirements See...	Pressure-relief requirements See...	Filling limits	Control temperature	Emer temperature
	*	*	*	*	*	*	*	
	REMOVE:							
3119	tert-Butyl peroxyacetate, not more than 32% in diluent type B.	4	§ 178.274(d)(2)	§ 178.275(d)(3)	§ 178.275(g)(1)	Not more than 90% at 59 °F (15 °C).	+30 °C	+35 °C
3120	Organix peroxide, Type F, solid, temperature controlled.	4	§ 178.274(d)(2)	§ 178.275(d)(3)	§ 178.275(g)(1)	Not more than 90% at 59 °F (15 °C).	As approved by Assoc. Admin.	As approved by Assoc. Admin.
	*	*	*	*	*	*	*	
	ADD:							
	*	*	*	*	*	*	*	
3109	Dicumyl peroxide, less than or equal to 100% in diluent type B.	4	§ 178.274(d)(2)	§ 178.275(d)(3)	§ 178.275(g)(1)	Not more than 90% at 59 °F (15 °C).		
	*	*	*	*	*	*	*	
3119	tert-Butyl peroxyacetate, not more than 32% in diluent type B.	4	§ 178.274(d)(2)	§ 178.275(d)(3)	§ 178.275(g)(1)	Not more than 90% at 59 °F (15 °C).	+30 °C	+35 °C
	*	*	*	*	*	*	*	
	Peroxyacetic acid, distilled, stabilized, not more than 41%.	4	§ 178.274(d)(2)	§ 178.275(d)(3)	§ 178.275(g)(1)	Not more than 90% at 59 °F (15 °C).	+30	+35
3120	Organic peroxide Type F, solid, temperature controlled.	4	178.274(d)(2)	§ 178.275(d)(3)	§ 178.275(g)(1)	Not more than 90% at 59 °F (15 °C).	As approved by Assoc. Admin.	As approved by Assoc. Admin.
	*	*	*	*	*	*	*	
3110								
	REVISE:							
	*	*	*	*	*	*	*	
	Dicumyl peroxide, less than or equal to 100% with inert solids. Maximum quantity per portable tank 2,000 kg.	4	§ 178.274(d)(2)	§ 178.275(d)(3)	§ 178.275(g)(1)	Not more than 90% at 59 °F (15 °C).		

PORTABLE TANK CODE T23—Continued

[Portable tank code T23 applies to self-reactive substances of Division 4.1 and organic peroxides of Division 5.2.]

UN No.	Hazardous material	Minimum pressure (bar)	Minimum test thickness (mm-reference steel) See...	Bottom opening requirements See...	Pressure-relief requirements See...	Filling limits	Control temperature	Emer temperature
*		*	*	*	*	*	*	
3119	tert-Butyl peroxypivalate, not more than 27% in diluent type B.	4	§ 178.274(d)(2) ..	§ 178.275(d)(3) ..	§ 178.275(g)(1) ..	Not more than 90% at 59 °F (15 °C).	+5 °C	+10 °C

(viii) * * *

Code/Special Provisions

* * * * *

TP3 For materials transported under elevated temperatures, the maximum degree of filling is determined by the following:

$$\left(\text{Degree of filling} = 95\frac{d_t}{d_f}\right).$$

Where:

d_t is the density of the material at the maximum mean bulk temperature during transport; and d_f is the density of the material at the temperature in degrees celsius of the material during filling; and

* * * * *

12. In § 172.202, paragraphs (a)(2), (a)(5) and (b) would be revised to read as follows:

§ 172.202 Description of hazardous material on shipping papers.

(a) * * *

(2) The hazard class or division number prescribed for the material, as shown in Column (3) of the § 172.101 Table. Except for combustible liquids, the subsidiary hazard class or subsidiary division number(s) must be entered in parentheses following the primary hazard class or division number. Subsidiary hazard(s) must be enclosed in parentheses following the primary hazard class or division number. The words ''Class'' or ''Division'' may be included preceding the primary and subsidiary hazard class or division numbers. The hazard class need not be included for the entry ''Combustible liquid, n.o.s.'';

* * * * *

(5) Except for empty packagings (see § 173.29 of this subchapter), cylinders for Class 2 materials and bulk packagings, the total quantity of hazardous materials covered by the description (by volume or mass, as appropriate) of each hazardous material bearing a different proper shipping name, UN number or packing group must be indicated together with the appropriate units of measurement (for example, 200 kgs). For Class 1 (explosive) materials, the quantity must be the net explosive mass. For shipments of packages in an overpack or transport unit (for example, freight container), this information must be provided for each hazardous material in each package within the overpack or transport unit. For hazardous materials transported in salvage packagings, an estimate of the quantity must be indicated. For cylinders for Class 2 materials and bulk packagings, indication of the total quantity must be shown (for example, ''10 cylinders,'' ''2 IBCs,'' or ''1 cargo tank''). The number of packages and type of packages (for example, drum, box, jerrican, etc.) must also be indicated. Abbreviations may be used to specify the unit of measurement for the total quantity. Examples of descriptions of units of measure and the number and type of packagings include: ''1 box, net mass, 30 kg'' or ''2 drums, gross mass, 200 kg.''

(b) Except as provided in this subpart, the basic description specified in paragraphs (a)(1), (2), (3) and (4) of this section must be shown in sequence with no additional information interspersed. For example, ''Cyclobutyl chloroformate, 6.1, (8,3), UN2744, PGII.'' Alternatively, the identification (ID) number may be listed first and the proper shipping name may be listed directly following the class and subsidiary risk. For example, ''UN2744, 6.1, (8,3), Cyclobutyl chloroformate, PGII.''

* * * * *

§ 172.203 [Amended]

13. In § 172.203, paragraphs (i)(1), (i)(2), (i)(3) and (i)(6) would be removed and paragraphs (i)(4) and (i)(5) would be redesignated (i)(1) and (i)(2), respectively.

14. In § 172.301, paragraph (a)(1) is revised to read as follows:

§ 172.301 General marking requirements for non-bulk packagings.

(a) * * *

(1) Except as otherwise provided by this subchapter, each person who offers for transportation a hazardous material in a non-bulk packaging must mark the package with the proper shipping name and identification number (preceded by ''UN'' or ''NA,'' as appropriate) for the material as shown in the § 172.101 Table. Identification numbers are not required on packagings that contain only ORM–D materials. Packagings that contain only limited quantities, as defined in § 171.8 of this subchapter, may be marked with the proper shipping name, but must be marked in accordance with § 172.315.

* * * * *

15. In § 172.312, a new paragraph (c)(6) would be added to read as follows:

§ 172.312 Liquid hazardous materials in non-bulk packagings.

* * * * *

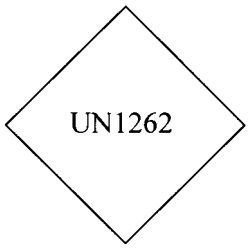
(c) * * *

(6) Packages containing liquid infectious substances in primary receptacles not exceeding 50 ml (1.7 oz.).

16. A new section § 172.315 would be added to read as follows:

§ 172.315 Packagings containing limited quantities.

(a) Packagings containing limited quantities of hazardous materials need not be marked with the proper shipping name, but must be marked with the identification (ID) number, preceded by the letters ''UN'' or ''NA,'' as applicable, and placed within a diamond as follows:



(b) The ID number marking must be durable, legible and of such a size relative to the packaging as to be readily visible. The width of line forming the

diamond must be at least 2 mm and the height of the ID number must be at least 6 mm. The marking must be applied on at least one side or one end of the outer packaging and must be durable, legible and of a size that is clearly visible.

(c) When more than one hazardous material is contained in the packaging and the hazardous materials are assigned different ID numbers, the packaging must be marked with either individual diamonds bearing a single ID number, or a single diamond large enough to include each applicable ID number.

17. A new section § 172.323 would be added to read as follows:

§ 172.323 Air eligibility mark.

(a) *Air eligibility marking.* Except as otherwise specified in this subchapter, each person who offers for transportation or transports by aircraft a hazardous material in a non-bulk package, including packages used for consumer commodities and limited quantities of hazardous materials, must mark the package to indicate that it meets the applicable requirements for air transport. The marking is a certification that the person offering the package into transportation has determined that it complies with the requirements of this subchapter.

(b) The marking must be placed adjacent to the markings prescribed in § 172.301(a), or for limited quantity packages, adjacent to the marking prescribed in § 172.315. The marking must be durable, legible and of a size relative to the package so as to be readily visible. The marking must include an aircraft within a circle and may include the words ''Air Eligible'' in conjunction with the mark such as:

Air Eligible

(c) *Exceptions from the air eligibility mark.* The air eligibility mark is not required for packagings that are transported in accordance with the small quantity exception in § 173.4, or for packagings that contain solid carbon dioxide (dry ice) packaged with materials that are not subject to the requirements of this subchapter.

18. In § 172.411, the section heading and paragraphs (b) and (d) would be revised, and new paragraphs (e) and (f) would be added to read as follows:

§ 172.411 EXPLOSIVE 1.1, 1.2, 1.3, 1.4, 1.5 and 1.6 labels, and EXPLOSIVE Subsidiary label.

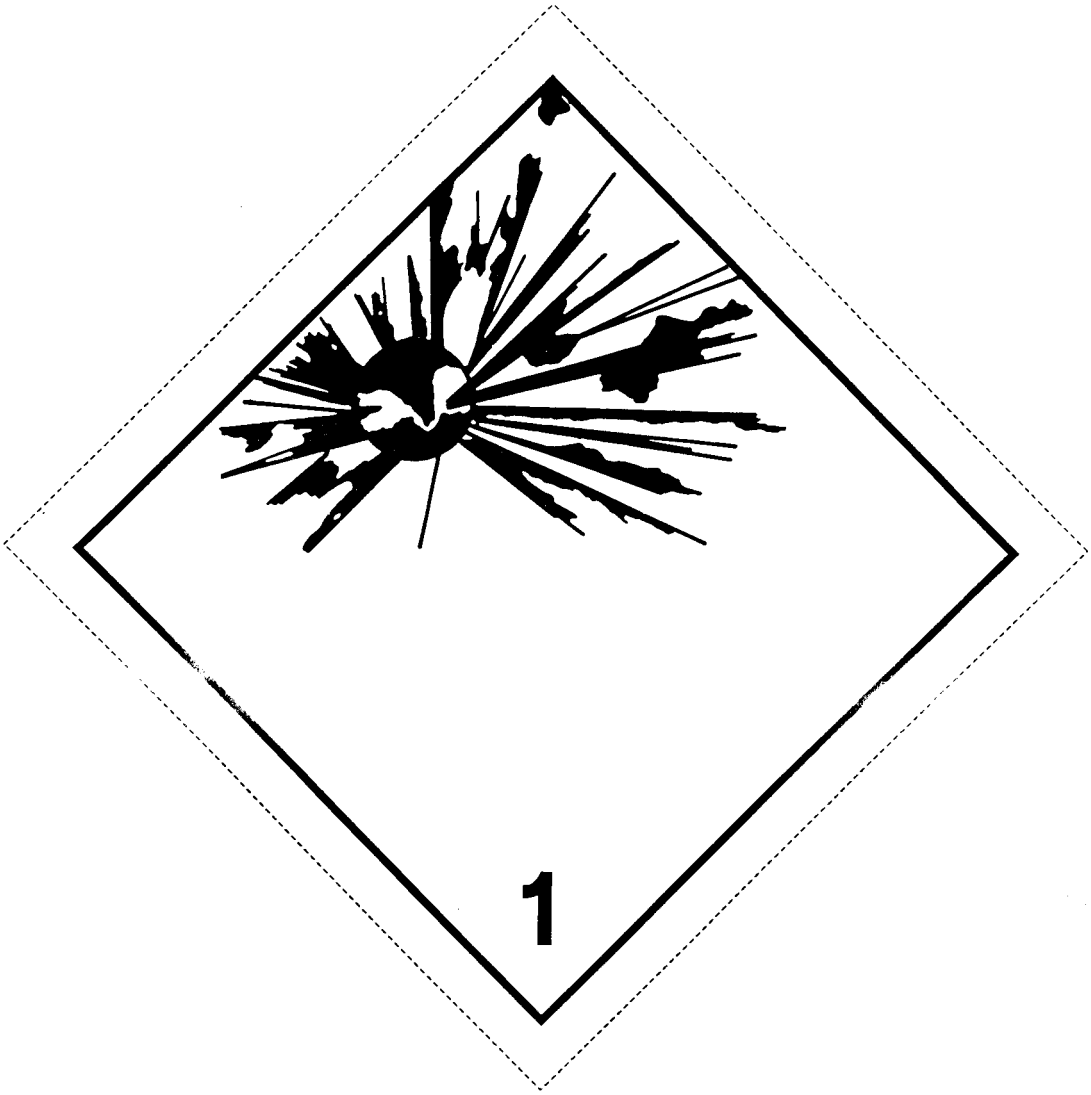
* * * * *

(b) In addition to complying with § 172.407, the background color on the EXPLOSIVE 1.1, EXPLOSIVE 1.2 and EXPLOSIVE 1.3 labels must be orange. The ''**'' must be replaced with the appropriate division number and compatibility group. The compatibility group letter must be the same size as the division number and must be shown as a capitalized Roman letter.

* * * * *

(d) In addition to complying with § 172.407, the background color on the EXPLOSIVE 1.4, EXPLOSIVE 1.5 and EXPLOSIVE 1.6 label must be orange. The ''*'' must be replaced with the appropriate compatibility group. The compatibility group letter must be shown as a capitalized Roman letter. Division numbers must measure at least 30 mm (1.2 inches) in height and at least 5 mm (0.2 inches) in width.

(e) An EXPLOSIVE subsidiary label is required for materials identified in Column (6) of the HMT as having an explosive subsidiary hazard. Except for size and color, the EXPLOSIVE subsidiary label must be as follows:



(f) In addition to complying with § 172.407, the background color on the EXPLOSIVE subsidiary label must be orange.

19. In § 172.504, paragraph (g) introductory text would be revised to read as follows:

§ 172.504 General placarding requirements.

* * * * *

(g) For shipments of Class 1 (explosive materials) by aircraft or vessel, the applicable compatibility group letter must be displayed on the placards required by this section. When more than one compatibility group placard is required for Class 1 materials, only one placard is required to be displayed, as provided in paragraphs (g)(1) through (g)(4) of this section. For the purposes of paragraphs (g)(1) through (g)(4), there is a distinction between the phrases *explosive articles* and *explosive substances. Explosive article* means an article containing an explosive substance; examples include a detonator, flare, primer or fuse. *Explosive substance* means a substance contained in a packaging that is not contained in an article; examples include black powder and smokeless powder.

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

20. The authority citation for part 173 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; 49 CFR 1.53.

21. In § 173.2a, in the paragraph (b) Precedence of Hazard Table, the title of the table and the first three entries in Precedence of Hazard Table would be revised to read as follows:

§ 173.2a Classification of a material having more than one hazard.

* * * * *

(b) * * *

PRECEDENCE OF HAZARD TABLE

[Hazard class or division and packing group]

	4.2	4.3	5.1 I [1]	5.1 II [1]	5.1 III [1]	6.1, I dermal	6.1, I oral	6.1 II	6.1 III	8, I liquid	8, I solid	8, II liquid	8, II solid	8, III liquid	8, III solid
3 I [2]	.....	4.3	.....	.....	.....	3	3	3	3	3	(3)	3	(3)	3	(3)

PRECEDENCE OF HAZARD TABLE—Continued

[Hazard class or division and packing group]

	4.2	4.3	5.1 I [1]	5.1 II [1]	5.1 III [1]	6.1, I dermal	6.1, I oral	6.1 II	6.1 III	8, I liquid	8, I solid	8, II liquid	8, II solid	8, III liquid	8, III solid
3 II [2]	.....	4.3	.....	.....	.....	3	3	3	3	8	(3)	8	(3)	3	(3)
3 III [2]	.....	4.3	.....	.....	.....	6.1	6.1	6.1	[4] 3	8	(3)	8	(3)	3	(3)

* * * * * * *

[2] Materials of Division 4.1 other than self-reactive substances and solid desensitized explosives, and materials of Class 3 other than liquid desensitized explosives.

[3] Denotes an impossible combination.

[4] For pesticides only, where a material has the hazards of Class 3, Packing Group III, and Division 6.1, Packing Group III, the primary hazard is Division 6.1, Packing Group III.

* * * * * * *

* * * * *

22. In § 173.21, paragraph (f)(3)(ii) would be revised to read as follows:

§ 173.21 Forbidden materials and packages.

* * * * *

(f) * * *

(3) * * *

(ii) For transportation by vessel, shipments are authorized in accordance with the control temperature requirements in Chapter 7.7 of the IMDG Code (incorporated by reference; see § 171.7 of this subchapter).

* * * * *

23. In § 173.22, paragraph (a)(4) would be revised to read as follows:

§ 173.22 Shipper's responsibility.

(a) * * *

(4) For a DOT Specification or UN standard packaging subject to the requirements of part 178 of this subchapter, a person must perform all functions necessary to bring the package into compliance with parts 173 and 178 of this subchapter, as identified by the packaging manufacturer or subsequent distributor (for example, applying closures consistent with the manufacturer's closure instructions) in accordance with § 178.2 of this subchapter.

* * * * *

24. In § 173.24, paragraph (b)(4) would be added and paragraph (f)(1) introductory text would be revised to read as follows:

§ 173.24 General requirements for packagings and packages.

* * * * *

(b) * * *

(4) The packagings are strong enough to withstand the shocks and loadings encountered during transportation, including removal from a pallet, unit load device or overpack for subsequent manual or mechanical handlings. Packagings must be constructed and closed in a manner that prevents any loss of contents that may be caused under normal conditions of transportation, by vibration, or by changes in temperature, humidity or pressure, including pressure changes resulting from altitude. Packagings, including inner packagings and receptacles, must be closed in accordance with the information provided by the manufacturer (see § 178.2 of this subchapter). No hazardous material residue may adhere to the outside of the package during transport (see §§ 173.24 and 173.24a).

* * * * *

(f) * * * (1) The closures of packagings must be constructed to resist the effects of temperature, pressure changes and vibration that occur during normal conditions of transportation. Screw-type closures on packagings must be secured to prevent the closures from loosening due to vibration or substantial change in temperature. For air transport, stoppers, corks or other such friction type closures must be held securely, tightly and effectively in place by positive means. This may be accomplished by the use of adhesive tape, friction sleeves, welding or soldering, or positive locking wires, or other equally effective methods. The closure device must be so designed that it is unlikely it can be incorrectly or incompletely closed. The requirements of this paragraph apply to new, reused, reconditioned or remanufactured packagings. Closures must be designed and closed so that under conditions normally incident to transportation—

* * * * *

25. In 173.25, paragraph (a)(2) would be revised to read as follows:

§ 173.25 Authorized packagings and overpacks.

(a) * * *

(2) The overpack is marked with the proper shipping name and identification number, the air eligibility marking, when applicable, and labeled as required by this subchapter for each hazardous material contained therein, unless markings and labels representative of each hazardous material in the overpack are visible.

* * * * *

26. In § 173.27, paragraph (e) would be revised, and a new paragraph (i) would be added to read as follows:

§ 173.27 General requirements for transportation by aircraft.

* * * * *

(e) Absorbent materials. Except as otherwise provided in this subchapter, liquid hazardous materials, other than Class 9, that are packaged and offered for transport in glass, earthenware, plastic or metal inner packagings must be packaged using absorbent material as follows:

(1) Packing Group I liquids on passenger aircraft must be packaged using materials capable of absorbing the entire contents of the inner packagings.

(2) Packing Group I liquids on cargo aircraft, and Packing Group II liquids including Division 5.2 liquids on passenger and cargo aircraft, must be packaged using a sufficient quantity of absorbent material to absorb the entire contents of any one of the inner packagings containing such liquids. When the inner packagings are of different sizes and quantities, sufficient absorbent material must be used to absorb the entire contents of the inner packaging with the greatest volume of liquid.

(3) When absorbent materials are required and the outer packaging is not liquid tight, a means of containing the liquid in the event of a leakage must be provided in the form of a leakproof liner, plastic bag or other equally efficient means of containment.

(4) Absorbent material must not react dangerously with the liquid (see §§ 173.24 and 173.24a.).

(5) Absorbent material is not required if the inner packagings are so protected that breakage of them and leakage of their contents from the outer packaging is not likely to occur under normal conditions of transportation.

* * * * *

(i) Air eligibility marking. Each person who offers for transportation a hazardous material by aircraft must mark the packagings containing the hazardous materials with an air

eligibility mark as specified in § 172.323 of this subchapter.

27. In § 173.62, the following changes would be made:

a. In paragraph (b), in the Explosives Table, a new entry would be added in appropriate numerical order; and

b. In paragraph (c), in the Explosives Packing Instructions Table, in the first column, for the packing instruction entry 112(b), in the last sentence, the wording ''3. For UN 0222 and UN 0223'' would be removed and ''3. For UN 0222'' would be added in its place.

The new entry to be added to the paragraph (b) Explosives Table would read as follows:

§ 173.62 Specific packaging requirements for explosives.

* * * * *

(b) * * *

EXPLOSIVES TABLE

ID#	PI
* * * * *	
UN0503	135
* * * * *	

* * * * *

28. In § 173.115, paragraphs (d) and (e) would be revised to read as follows:

§ 173.115 Class 2, Divisions 2.1, 2.2, and 2.3—Definitions.

* * * * *

(d) *Non-liquefied compressed gas.* A gas, which when packaged under pressure for transportation is entirely gaseous at −50 °C (−58 °F) with a critical temperature less than or equal to −50 °C (−58 °F), is considered to be a non-liquefied compressed gas.

(e) *Liquefied compressed gas.* A gas, which when packaged under pressure for transportation is partially liquid at temperatures above −50 °C (−58 °F), is considered to be a liquefied compressed gas. A liquefied compressed gas is further categorized as follows:

(1) *High pressure liquefied gas* which is a gas with a critical temperature between −50 °C (−58 °F) and +65 °C (149 °F), and

(2) *Low pressure liquefied gas* which is a gas with a critical temperature above +65 °C (149 °F).

* * * * *

29. In § 173.152, paragraphs (b)(2) and (b)(4)(ii) would be revised to read as follows:

§ 173.152 Exceptions for Division 5.1 (oxidizers) and Division 5.2 (organic peroxides).

* * * * *

(b) * * *

(2) For oxidizers in Packing Group III, inner packagings not over 5 L (1.3 gallons) net capacity each for liquids or not over 5.0 kg (11 pounds) net capacity each for solids, and packed in strong outer packagings.

* * * * *

(4) * * *

(ii) The flammable liquid component must be packed in inner packagings not over 5 L (1.3 gallons) net capacity each for Packing Group II or III liquid; and

* * * * *

30. In § 173.153, in paragraph (b) introductory text, a new first sentence would be added, and paragraph (b)(1) would be revised to read as follows:

§ 173.153 Exceptions for Division 6.1 (poisonous materials).

* * * * *

(b) *Limited quantities of Division 6.1 materials.* The exceptions in this paragraph do not apply to poison-by-inhalation materials. * * *

(1) For poisonous liquids in Packing Group III, inner packagings not over 5 L (1.3 gallons) net capacity each, packed in strong outer packagings; and

* * * * *

31. In § 173.154, paragraph (b)(2) would be revised to read as follows:

§ 173.154 Exceptions for Class 8 (corrosive materials).

* * * * *

(b) * * *

(2) For corrosive materials in Packing Group III, in inner packagings not over 5.0 L (1.3 gallons) net capacity each for liquids, or not over 5.0 kg (11 pounds) net capacity each for solids, and packed in strong outer packagings.

* * * * *

32. In § 173.159, in paragraph (a), a second sentence would be added, and a new paragraph (d)(4) would be added to read as follows:

§ 173.159 Batteries, wet.

(a) * * * For transportation by aircraft, the packaging for wet cell batteries must incorporate an acid-or alkali-proof liner, or include a supplementary packaging with sufficient strength and adequately sealed to prevent leakage of electrolyte fluid in the event of spillage.

* * * * *

(d) * * *

(4) At a temperature of 55 °C (131 °F), the battery must not contain any unabsorbed free-flowing liquid, and must be designed so that electrolyte will not flow from a ruptured or cracked case.

* * * * *

33. Section 173.161 would be revised to read as follows:

§ 173.161 Chemical kits and first aid kits.

(a) Chemical kits and First aid kits must conform to the following requirements:

(1) The kits may only contain hazardous materials for which packaging exceptions are provided in the § 172.101 table of this subchapter.

(2) The kits must be packed in a strong outer packaging conforming to the packaging requirements of subpart B of this subchapter.

(3) The kits must include sufficient absorbent material to completely absorb the contents of any liquid hazardous materials contained in the kits. The contents must be separated, placed, or packed, and closed with cushioning material to protect them from damage.

(4) The contents of the kits must be packed so there will be no possibility of the mixture of contents causing dangerous evolution of heat or gas.

(5) The packing group assigned to the kits as a whole must be the most stringent packing group assigned to any individual substance contained in the kits.

(6) Inner receptacles containing hazardous materials within the kits must not contain more than 250 ml for liquids or 250 g for solids per receptacle.

(7) The total quantity of hazardous materials in any one outer package must not exceed either 10 L or 10 kg.

(b) Except when offered for transportation or transported by air, Chemical kits and First aid kits are excepted from the labeling requirements and the specification packaging requirements of this subchapter. In addition, chemical kits and first aid kits are not subject to subpart F of part 172 of this subchapter (Placarding), part 174 (Carriage by rail) of this subchapter except § 174.24 (Shipping papers), and part 177 (Carriage by highway) of this subchapter except § 177.817 (Shipping papers). Kits that meet the definition for a consumer commodity in § 171.8 of this subchapter may be transported in accordance with the exceptions for ORM materials in § 173.156.

34. In § 173.166, paragraphs (b), (c), (d)(2), (e) introductory text and (f) would be revised; paragraph (d)(3) would be redesignated as paragraph (d)(4); and new paragraphs (d)(3), (d)(5), and (e)(5) would be added to read as follows:

§ 173.166 Air bag inflators, air bag modules and seat-belt pretensioners.

* * * * *

(b) *Classification.* For an air bag inflator, air bag module or seat-belt

pretensioner that meets the criteria of Class 1 (explosive), see § 173.62. An air bag inflator, air bag module, or seat-belt pretensioner may be classed as Class 9 (UN3268) if:

(1) The manufacturer has submitted each design type air bag inflator, air bag module, or seat-belt pretensioner to a person approved by the Associate Administrator, in accordance with § 173.56(b), for examination and testing. The submission must contain a detailed description of the inflator or pretensioner or, if more than a single inflator or pretensioner is involved, the maximum parameters of each particular inflator or pretensioner design type for which approval is sought and details on the complete package. The manufacturer must submit an application, including the test results and report recommending the shipping description and classification for each device or design type to the Associate Administrator, and must be notified in writing by the Associate Administrator that the device has been approved for transportation; or,

(2) The manufacturer has submitted an application, including an approved classification issued by the competent authority of a foreign government to the Associate Administrator, and been notified in writing by the Associate Administrator that the device has been approved for transportation and assigned an EX number.

(c) *EX numbers.* When offered for transportation, the shipping paper must contain the EX number or product code for each approved inflator or pretensioner in association with the basic description required by § 172.202(a) of this subchapter. Product codes must be traceable to the specific EX number assigned to the inflator, module or pretensioner by the Associate Administrator. The EX number or product code is not required to be marked on the outside package.

(d) * * *

(2) An air bag module containing an inflator that has been previously approved for transportation is not required to be submitted for further examination or approval.

(3) An air bag module containing an inflator that has previously been approved as a Division 2.2 material is not required to be submitted for further examination to be reclassed as a Class 9 material.

(4) *Shipments for recycling.* When offered for domestic transportation by highway, rail freight, cargo vessel or cargo aircraft, a serviceable air bag module or seat-belt pretensioner removed from a motor vehicle that was manufactured as required for use in the United States may be offered for transportation and transported without compliance with the shipping paper requirement prescribed in paragraph (c) of this section. However, the word ''Recycled'' must be entered on the shipping paper immediately after the basic description prescribed in § 172.202 of this subchapter. No more than one device is authorized in the packaging prescribed in paragraph (e)(1), (2) or (3) of this section. The device must be cushioned and secured within the package to prevent movement during transportation.

(5) Until October 1, 2005, approved ''Air bag inflators, compressed gas, *or* Air bag modules, compressed gas *or* Seat-belt pretensioners, compressed gas,'' UN3353, packaged in a nonspecification packaging before October 1, 2003, may be transported or offered for domestic transportation when described, marked, and labeled as a Division 2.2 material in accordance with the HMR in effect on September 30, 2002.

(e) *Packagings.* Rigid, outer packagings, meeting the requirements of Part 178 of this subchapter at the Packing Group III performance level are authorized. The packagings must be designed and constructed to prevent movement of the articles and inadvertent operation.

* * * * *

(5) Packagings specified in the approval document issued by the Associate Administrator in accordance with paragraph (e) of this section are also authorized.

(f) *Labeling.* Notwithstanding the provisions of § 172.402 of this subchapter, each package or handling device must display a CLASS 9 label. Additional labeling is not required when the package contains no hazardous materials other than the devices.

35. In § 173.185, paragraph (e)(4) would be revised, paragraph (e)(5) would be removed and reserved, paragraph (e)(7) would be revised, and a new paragraph (k) would be added to read as follows:

§ 173.185 Lithium batteries and cells.

* * * * *

(e) * * *

(4) Authorized outer packagings: rigid outer packagings that conform to the requirements of part 178 of this subchapter at the Packing Group II performance level. Cells and batteries must be packed in such a manner as to effectively prevent short circuits through the use of inner packagings, dividers, or other suitable means.

(5) [Reserved]

* * * * *

(7) Except as provided in paragraph (h) of this section, cells and batteries with a liquid cathode containing sulfur dioxide, sulfuryl chloride or thionyl chloride may not be offered for transportation or transported if any cell has been discharged to the extent that the open circuit voltage is less than two volts, or is less than two-thirds of the voltage of the fully charged cell, whichever is less.

* * * * *

(k) Batteries employing a strong, impact-resistant outer casing and exceeding a gross mass of 12 kg (26.5 lbs.), and assemblies of such batteries, may be packed in strong outer packagings, in protective enclosures (for example, in fully enclosed wooden slatted crates) or on pallets. Batteries must be secured to prevent inadvertent movement, and the terminals may not support the weight of other superimposed elements. Prior to its being offered for transportation aboard cargo aircraft, the packaging must be approved by the Associate Administrator.

§ 173.216 [Amended]

36. In § 173.216, paragraph (b) would be removed and reserved.

37. In § 173.218, paragraph (a) introductory text would be revised and paragraph (b) would be removed and reserved to read as follows:

§ 173.218 Fish meal or fish scrap.

(a) Except as provided in Column (7) of the HMT in § 172.101 of this subchapter, fish meal or fish scrap, containing at least 6%, but not more than 12% water, is authorized for transportation by vessel only when packaged as follows:

* * * * *

(b) [Reserved]

* * * * *

38. In § 173.220, paragraph (e) would be redesignated as paragraph (f) and a new paragraph (e) would be added to read as follows:

§ 173.220 Internal combustion engines, self-propelled vehicles, mechanical equipment containing internal combustion engines, and battery powered vehicles or equipment.

* * * * *

(e) *Additional requirements for internal combustion engines and vehicles with certain electronic equipment when transported by aircraft or vessel.* When internal combustion engines are shipped separately by aircraft or vessel, all fuel, coolant or hydraulic systems remaining in the

engine must be drained as far as practicable, and all disconnected fluid pipes must be sealed with leak-proof caps that are positively retained. Vehicles equipped with theft-protection devices, installed radio communications equipment or navigational systems must have such devices, equipment or systems disabled.

* * * * *

39. A new § 173.223 would be added to read as follows:

§ 173.223 Musk xylene.

(a) Packagings for ''Musk xylene'' or ''5-tert-Butyl-2,4,6-trinitro-m-xylene,'' when offered for transportation or transported by rail, highway, or vessel, must conform to the general packaging requirements of Subpart B of Part 173, and to the requirements of Part 178 of this subchapter at the Packing Group III performance level and may only be transported in the following packagings:

(1) Fiberboard box (4G) with a single inner plastic bag, and a maximum net mass of not more than 50 kg (110 lbs).

(2) Fiberboard box (4G) or fiber drum (1G), with a plastic inner packaging not exceeding 5 kg (11 lbs), and a maximum net mass of not more than 25 kg (55 lbs).

(3) Fiber drum (1G), and a maximum net mass of not more than 50 kg (110 lbs), that may be fitted with a coating or lining.

(b) [Reserved]

40. In § 173.224, in paragraph (b)(4), the fourth sentence would be revised; in the table following paragraph (b)(7), 5 entries would be removed, 9 entries would be added, and 1 entry would be revised in appropriate alphabetical order; and in the ''NOTES'' immediately following the Table, a new Note ''4'' would be added in appropriate numerical order to read as follows:

§ 173.224 Packaging and control and emergency temperatures for self-reactive materials.

* * * * *

(b) * * *

(4) * * * Bulk packagings are authorized as specified in § 173.225(e) for Type F self-reactive substances.

* * *

* * * * *

(7) * * *

SELF-REACTIVE MATERIALS TABLE

Self-reactive substance	Identification No.	Concentration (%)	Packing method	Control temperature(°C)	Emergency temperature	Notes
(1)	(2)	(3)	(4)	(5)	(6)	(7)
* *	*	*		*	*	*
[REMOVE:]						
Benzene-1,3-disulphohydrazide, as a paste.	3226	52	OP7			
Benzene sulphohydrazide	3226	100	OP7			
* *	*	*		*	*	*
2-Diazo-1-Naphthol-4-sulphochloride	3222	100	OP5			
2-Diazo-1-Naphthol-5-sulphochloride	3222	100	OP5			
Diphenyloxide-4,4′-disulphohydrazide	3226	100	OP7			
[ADD:]						
* *	*	*		*	*	*
Benzene-1,3-disulphonylhydrazide, as a paste.	3226	52	OP7			
Benzene sulphohydrazide	3226	100	OP7			
* *	*	*		*	*	*
2-Diazo-1-Naphthol sulphonic acid ester mixture.	3226	<100	OP7			4
2-Diazo-1-Naphthol-4-sulphonyl chloride	3222	100	OP5			
2-Diazo-1-Naphthol-5-sulphonyl chloride	3222	100	OP5			
2,5-Dibutoxy-4-(4-morpholinyl)-Benzene-diazonium, tetrachlorozincate (2:1).	3228	100	OP8			
* *	*	*		*	*	*
2,5-Diethoxy-4-(4-morpholinyl)-benzene-diazonium sulphate.	3226	100	OP7			
* *	*	*		*	*	*
4-(Dimethylamino)-benzenediazonium trichlorozincate (-1).	3228	100	OP8			
Diphenyloxide-4,4'-disulphonylhydrazide	3226	100	OP7			
* *	*	*		*	*	*
[REVISE:]						
2,2′-Azodi(isobutyronitrile) as a water based paste.	3224	≤50	OP6			

* * * * *

Notes:

* * * * *

4. This entry applies to mixtures of esters of 2-diazo-1-naphthol-4-sulphonic

acid and 2-diazo-1-naphthol-5-sulphonic acid.

41. In § 173.225, paragraph (b)(6) would be revised; in the Organic Peroxide Table, 1 entry would be removed, 9 entries would be added, and 21 entries would be revised in appropriate alphabetical order; in the ''Notes'' immediately following the Table, Note ''9'' would be revised, and two new notes, ''28'' and ''29'' would be added in appropriate numerical order; in paragraph (e)(3)(xii), the last sentence would be revised; and paragraph (e)(5) would be revised to read as follows:

§ 173.225 Packaging requirements and other provisions for organic peroxides.

* * * * *

(b) * * *

(6) *Packing method.* Column 6 specifies the highest packing method (largest packaging capacity) authorized for the organic peroxide. Lower numbered packing methods (smaller packaging capacities) are also authorized. For example, if OP3 is specified, then OP2 and OP1 are also authorized. The designation ''IBC'' means Special Provision IB52 in § 172.102 of this subchapter applies. The designation ''Bulk'' means paragraph (e) of this section applies. When an IBC or bulk packaging is authorized and meets the requirements of paragraph (e) of this section, lower control temperatures than those specified for non-bulk packagings may be required. The Table of Packing Methods in paragraph (d) of this section defines the non-bulk packing methods.

* * * * *

(8) * * *

ORGANIC PEROXIDE TABLE

Technical name	ID No.	Concentration (mass %)	Diluent (mass %) A	Diluent (mass %) B		Water (mass %)	Packing method	Temperature (°C) Control	Temperature (°C) Emergency	Notes
(1)	(2)	(3)	(4a)	(4b)	(4c)	(5)	(6)	(7a)	(7b)	(8)
*	*		*	*	*		*	*		
[REMOVE:]										
Peracetic acid with not more than 20% hydrogen peroxide.										
*	*		*	*	*		*	*		
[ADD:]										
*	*		*	*	*		*	*		
tert-Butyl peroxyneodecanoate [as a stable dispersion in water].	UN3119	≤42	.....	.....	.....	.....	OP8, IBC	−5	+5	
*	*		*	*	*		*	*		
Di-tert-butyl peroxide	UN3109	≤32	≥68	.....	.....	.....	Bulk	.....	.....	14
*	*		*	*	*		*	*		
Diisopropyl peroxydicarbonate	UN3115	≤28	≥72	.....	.....	.....	OP7	−15	−5	
*	*		*	*	*		*	*		
Di-n-Propyl peroxydicarbonate	UN3113	≤100	.....	.....	.....	.....	OP3	−25	−15	
*	*		*	*	*		*	*		
Di-(3,5,5-trimethylhexanoyl) peroxide	UN3119	≤38	≥62	.....	.....	.....	Bulk	−5	+5	14
*	*		*	*	*		*	*		
Peroxyacetic acid *with not more than 20% hydrogen peroxide*.	Exempt	≤6	.....	.....	.....	≥60	Exempt	.....	.....	28
Peroxyacetic acid *with not more than 26% hydrogen peroxide*.	UN3109	≤17	.....	.....	.....	.....	OP8, IBC	.....	.....	13, 20, 28
Peroxyacetic acid *with 7% hydrogen peroxide*.	UN3107	≤36	.....	.....	.....	≥15	OP8	.....	.....	13, 20, 28
*	*		*	*	*		*	*		
Peroxyacetic acid, distilled, Type F, stabilized.	UN3119	≤41	.....	.....	.....	.....	Bulk	+30	+35	14, 27, 28
*	*		*	*	*		*	*		
[REVISE:]										
*	*		*	*	*		*	*		
tert-Butyl hydroperoxide	UN3109	≤72	.....	.....	.....	≥28	OP8, IBC, Bulk.	.....	.....	13, 4
*	*		*	*	*		*	*		
tert-Butyl peroxyacetate	UN3109	≤32	≥68	.....	.....	.....	OP8, IBC.			
*	*		*	*	*		*	*		
tert-Butyl peroxyacetate	UN3109	≤32	.....	≥68	.....	.....	OP8.			

*	*		*	*	*		*	*		
tert-Butyl peroxyneodecanoate [as a stable dispersion in water].	UN3117	≤52	.....	.....	.....	.....	OP8, IBC	0	+10	
*	*		*	*	*		*	*		
tert-Butyl peroxyneodecanoate	UN3119	≤32	≥68	.....	.....	.....	OP8, IBC	0	+10	
*	*		*	*	*		*	*		
tert-Butyl peroxy-3,5,5-trimethylhexanoate	UN3109	≤32	≥68	.....	.....	.....	OP8, IBC.			
*	*		*	*	*		*	*		
Cumyl hydroperoxide	UN3109	≤90	≥10	.....	.....	.....	OP8, IBC, Bulk.	.....	.....	13, 14, 15
*	*		*	*	*		*	*		
Dibenzoyl peroxide [as a stable dispersion in water].	UN3109	≤42	.....	.....	.....	.....	OP8, IBC.			
*	*		*	*	*		*	*		
Di-(4-tert-butylcyclohexyl)peroxydicarbonate [as a stable dispersion in water].	UN3119	≤42	.....	.....	.....	.....	OP8, IBC	+30	+35	
*	*		*	*	*		*	*		
Di-tert-butyl peroxide	UN3109	≤52	.....	≥48	.....	.....	OP8, IBC, Bulk.	.....	.....	14, 24
*	*		*	*	*		*	*		
1,1-Di-(tert-butylperoxy)cyclo-hexane	UN3109	≤42	≥58	.....	.....	.....	OP8, IBC.			
*	*		*	*	*		*	*		
Dicetyl peroxydicarbonate [as a stable dispersion in water].	UN3119	≤42	.....	.....	.....	.....	OP8, IBC	+30	+35	
*	*		*	*	*		*	*		
Dicumyl peroxide	UN3109	>52–100	.....	≤48	.....	.....	OP8, IBC, Bulk.	.....	.....	9, 11, 14
Dicumyl peroxide	UN3110	>52–100	.....	.....	≤48	.....	OP8, IBC, Bulk.	.....	.....	9, 11, 14
*	*		*	*	*		*	*		
Dilauroyl peroxide [as a stable dispersion in water].	UN3109	≤42	.....	.....	.....	.....	OP8, IBC.			
*	*		*	*	*		*	*		
Di-(3,5,5-trimethylhexanoyl)peroxide [as a stable dispersion in water].	UN3119	≤52	.....	.....	.....	.....	OP8, IBC	+10	+15	
*	*		*	*	*		*	*		
Isopropylcumyl hydroperoxide	UN3109	≤72	≥28	.....	.....	.....	OP8, IBC, Bulk.	.....	.....	13, 14
*	*		*	*	*		*	*		
p-Menthyl hydroperoxide	UN3109	≤72	≥28	.....	.....	.....	OP8, IBC, Bulk.	.....	.....	14
*	*		*	*	*		*	*		
Peroxyacetic acid, type F, stabilized	UN3109	≤43	.....	.....	.....	.....	OP8, IBC	.....	.....	13, 20, 28

ORGANIC PEROXIDE TABLE—Continued

Technical name	ID No.	Concentration (mass %)	Diluent (mass %)			Water (mass %)	Packing method	Temperature (°C)		Notes
			A	B				Control	Emergency	
(1)	(2)	(3)	(4a)	(4b)	(4c)	(5)	(6)	(7a)	(7b)	(8)
*	*		*	*	*		*	*		
Pinanyl hydroperoxide	UN3109	≤56	≥44	.....	.....	.....	OP8, Bulk	.....	.....	14
*	*		*	*	*		*	*		
1,1,3,3-Tetramethylbutyl peroxyneodecanoate [as a stable dispersion in water].	UN3119	≤52	.....	.....	.....	.....	OP8, IBC	−5	+5	
*	*		*	*	*		*	*		

Notes:

* * * * *

9. For domestic shipments, this material may be packaged in bulk packagings under the provisions of paragraph (e)(3)(xii) of this section.

* * * * *

27. Formulations derived from distillation of peroxyacetic acid originating from peroxyacetic acid in a concentration of not more than 41% with water, total active oxygen less than or equal to 9.5% (peroxyacetic acid plus hydrogen peroxide).

28. For the purposes of this section, the names ''Peroxyacetic acid'' and ''Peracetic acid'' are synonymous.

* * * * *

(e) * * *

(3) * * *

(xii) * * * These portable tanks are not subject to any other requirements of paragraph (e) of this section.

* * * * *

(5) *IBCs.* IBCs are authorized subject to the conditions and limitations of this section if the IBC type is authorized according to Special Provision IB52 (see § 172.102(c)(4) of this subchapter), as applicable, and the IBC conforms to the requirements in subpart O of part 178 of this subchapter at the Packing Group II performance level. The additional requirements in paragraphs (e)(5)(i) and (e)(5)(ii) of this section also apply. Type F organic peroxides or self-reactive substances that are not authorized for a specific IBC may be transported in IBCs other than those specified in IB52 if approved by the Associate Administrator.

* * * * *

42. In § 173.244, paragraph (c) would be revised to read as follows:

§ 173.244 Bulk packaging for certain pyrophoric liquids (Division 4.2), dangerous when wet (Division 4.3) materials, and poisonous liquids with inhalation hazards (Division 6.1).

* * * * *

(c) *Portable tanks:* DOT 51 portable tanks, and UN portable tanks that meet the requirements of this subchapter when a T code is specified in Column (7) of the § 172.101 Table of this subchapter for the specific hazardous material are authorized.

43. In § 173.306, the paragraph (f) heading would be revised and a new paragraph (j) would be added to read as follows:

§ 173.306 Limited quantities of compressed gases.

* * * * *

(f) *Accumulators (Articles, pressurized pneumatic or hydraulic containing non-flammable gas).* * * *

* * * * *

(j) For certain compressed gases not subject to the requirements of this subchapter, see § 173.307(a)(5).

44. In § 173.307, a new paragraph (a)(5) would be added to read as follows:

§ 173.307 Exceptions for compressed gases.

(a) * * *

(5) *Aerosols with a capacity of less than 50 ml.* Aerosols, as defined in § 171.8 of this subchapter, with a capacity not exceeding 50 ml and with a pressure not exceeding 970 kPa (141 psig) at 55 °C (131 °F), containing no hazardous materials other than a Division 2.2 gas, are not subject to the requirements of this subchapter.

* * * * *

45. In § 173.422, paragraphs (a)(2), (a)(3), and (a)(4) would be revised to read as follows:

§ 173.422 Additional requirements for excepted packages containing Class 7 (radioactive materials).

(a) * * *

(2) ''This package conforms to the conditions and limitations specified in 49 CFR 173.424 for radioactive material, excepted package—instruments or articles, UN 2911'';

(3) ''This package conforms to the conditions and limitations specified in 49 CFR 173.426 for radioactive material, excepted package—articles manufactured from natural uranium or depleted uranium or natural thorium, UN 2909''; or

(4) ''This package conforms to the conditions and limitations specified in 49 CFR 173.428 for radioactive material, excepted package—empty packaging, UN 2908.''

* * * * *

PART 175—CARRIAGE BY AIRCRAFT

46. The authority citation for part 175 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

47. In § 175.10, paragraph (a)(25) would be revised and a new paragraph (c) would be added to read as follows:

§ 175.10 Exceptions.

(a) * * *

(25) With approval of the aircraft operator, a passenger or crew member may carry in checked or carry-on baggage no more than two small gas cartridges of carbon dioxide or another non-flammable, non-toxic inert gas in Division 2.2 that are fitted into a self-inflating life-jacket for inflation purposes, plus no more than twospare cartridges.

* * * * *

(c) The exceptions provided in paragraph (a) of this section also apply to aircraft operators when transporting passenger or crew member baggage that has been inadvertently separated from or improperly routed to its intended final destination.

48. In § 175.30, a new paragraph (a)(5) would be added to read as follows:

§ 175.30 Accepting and inspecting shipments.

* * * * *

(a) * * *

(5) Marked with the air eligibility marking in accordance with § 172.323 of this subchapter.

* * * * *

49. In § 175.90, paragraphs (b) and (c) would be revised to read as follows:

§ 175.90 Damaged shipments.

* * * * *

(b) Except as provided in § 175.700, the operator of an aircraft must remove from the aircraft any package, baggage or cargo that appears to be leaking or contaminated by a hazardous material. In the case of a package, baggage or cargo that appears to be leaking, the operator must ensure that other packages, baggage or cargo in the same shipment are in proper condition for transport aboard the aircraft and that no other package, baggage or cargo has been contaminated or is leaking. If an operator becomes aware that a package, baggage or cargo not identified as containing a hazardous material has been contaminated, the operator has cause to believe that a hazardous material may be the cause of the contamination, the operator must take reasonable steps to identify the nature and source of contamination before proceeding with the loading of the contaminated baggage or cargo. If the contaminating substance is found or suspected to be a hazardous material, the operator must isolate the package, baggage or cargo and take appropriate steps to eliminate any identified hazard before continuing the transportation of the item by air.

(c) No person may place aboard an aircraft, a package, baggage or cargo that is contaminated with a hazardous material or appears to be leaking.

* * * * *

PART 176—CARRIAGE BY VESSEL

50. The authority citation for part 176 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

51. In § 176.27, paragraph (c)(2) would be revised to read as follows:

§ 176.27 Certificate.

* * * * *

(c) * * *

(2) The certification may appear on a shipping paper or on a separate document as a statement, such as ''It is declared that the packing of the container has been carried out in accordance with the applicable provisions [of 49 CFR], [of the IMDG Code], or [of 49 CFR and the IMDG Code].''.

52. In § 176.63, a new paragraph (f) would be added to read as follows:

§ 176.63 Stowage locations.

* * * * *

(f) *Stowage of containers on board hatchless container ships* (1) Containers holding a hazardous material may be stowed in or vertically above a hatchless container hold if the following conditions are met:

(1) All hazardous materials are permitted for *under deck* stowage as specified in the Table in § 172.101 of this subchapter; and

(2) The hatchless container hold is in full compliance with the provisions of IMO's ''International Convention for the Safety of Life at Sea (SOLAS),'' Regulation II–2/19 of SOLAS 1974, as amended (incorporation by reference; see § 171.7 of this subchapter), applicable to enclosed container cargo spaces, as appropriate for the cargo transported.

53. In § 176.83, a new paragraph (l) would be added to read as follows:

§ 176.83 Segregation.

* * * * *

(l) *Segregation of containers on board hatchless container ships* (1) This paragraph applies to the segregation of containers that are transported on board hatchless container ships provided that the cargo spaces are properly fitted to give permanent stowage of the cargo transport units during transport.

(2) For partly hatchless container ships that have spaces suitable for breakbulk cargo, conventional container stowage, or any other method of stowage, the appropriate requirements of this section apply to the relevant cargo space.

(3) *Segregation Table:* Table § 176.83(l)(3) sets forth the general requirements for segregation of containers on board hatchless container vessels.

(4) In Table § 176.83(l)(3), a container space means a distance of not less than 6 m (20 feet) fore and aft or not less than 2.5 m (8 feet) athwartship.

TABLE § 176.83(L)(3)—SEGREGATION OF CONTAINERS ON BOARD HATCHLESS CONTAINER SHIPS

Segregation requirement	Vertical				Horizontal					
					Closed versus closed		Closed Versus Open		Open Versus Open	
	Closed versus closed	Closed versus open	Open versus open		On deck	Under deck	On deck	Under deck	On deck	Under deck
1. ''Away from''	One on top of the other permitted.	Open on top of closed permitted. Otherwise as for open versus open.	.....	Fore and aft. Athwartships.	No restriction. No restriction.	No restriction. No restriction.	No restriction. No restriction.	No restriction. No restriction.	One container space. One container space.	One container space or one bulkhead One container space
2. ''Separated from''	Not in the same vertical line.	As for open versus open.	Not in the same vertical line.	Fore and aft. Athwartships.	One container space. One container space.	One container space or one bulkhead. One container space.	One container space. Two container spaces.	One container space or one bulkhead. Two container spaces.	One container space and not above same hold. Two container spaces and not above same hold.	One bulkhead One bulkhead
3. ''Separated by a complete compartment or hold from''.	.....	.....	.....	Fore and aft. Athwartships.	One container space and not above same hold. Two container spaces and not above same hold.	One bulkhead. One bulkhead.	One container space and not in or above same hold. Two container spaces and not above same hold.	One bulkhead. One bulkhead.	Two container spaces and not above same hold. Three container spaces and not above same hold.	Two bulkheads Two bulkheads
4. ''Separated longitudinally by an intervening complete compartment or hold from''.	Prohibited			Fore and aft. Athwartships.	Minimum horizontal distance of 24 M and not above same hold. Prohibited	One bulkhead and minimum horizontal distance of 24 M*. Prohibited	Minimun horizontal distance of 24 M and not above same hold. Prohibited	Two bulkheads. Prohibited	Minimum horizontal distance of 24 M and not above same hold. Prohibited	Two bulkheads Prohibited

*Containers not less than 6 m (20 feet) from intervening bulkhead.
NOTE: All bulkheads and decks must be resistant to fire and liquid.

54. In § 176.84, in paragraph (b), Table of provisions, nine new entries would be added in appropriate numerical order to read as follows:

§ 176.84 Other requirements for stowage and segregation for cargo vessels and passenger vessels.

* * * * *

(b) * * *

Code	Provisions
*	* * * *
124	Stow ''separated from'' bromates.
125	Segregation same as for flammable liquids, but ''away from'' flammable solids.
126	Segregation same as for Class 9, miscellaneous hazardous materials.
127	For packages carrying a subsidiary risk of Class 1 (explosives), segregation same as for Class 1, Division 1.3.
128	Stow in accordance with the IMDG Code, Subsection 7.1.10.3 (incorporated by reference; see § 171.7 of this subchapter).
129	Stowage Category A applies, except for uranyl nitrate hexahydrate solution for which Category D applies.
130	Stowage Category A applies, except for uranyl nitrate hexahydrate solution, uranium metal pyrophoric and thorium metal pyrophoric for which Category D applies.
131	Stowage Category A applies, except for uranyl nitrate hexahydrate solution, uranium metal pyrophoric and thorium metal pyrophoric for which Category D applies, and taking into account any supplementary requirements specified in the transport documents.
132	Stowage Category A applies, taking into account any supplementary requirements specified in the transport documents.
*	* * * *

* * * * *

55. In § 176.140, in paragraph (b), the first sentence would be revised to read as follows:

§ 176.140 Segregation from other classes of hazardous materials.

* * * * *

(b) Class 1 (explosive) materials must be segregated from bulk solid dangerous cargoes in accordance with the IMDG Code (incorporated by reference; see § 171.7 of this subchapter).* * *

§ 176.170 [Removed and Reserved]

56. In § 176.170, paragraph (b) would be removed and reserved.

57. In § 176.410, paragraph (a)(2) would be revised; paragraphs (a)(3), (a)(5) and (a)(6) would be removed; and current paragraph (a)(4) would be redesignated (a)(3) to read as follows:

§ 176.410 Division 1.5 materials, ammonium nitrate and ammonium nitrate mixtures.

(a) * * *

(2) Ammonium nitrate, Division 5.1 (oxidizer), UN1942.

(3) Ammonium nitrate fertilizer, Division 5.1 (oxidizer), UN2067.

* * * * *

58. In § 176.415, paragraphs (a) introductory text, (a)(1), (a)(2), (b)(1), (c)(1) and (c)(2) would be revised; paragraphs (b)(3), (b)(4) and (c)(5) would be removed; and paragraphs (b)(5) and (b)(6) would be redesignated (b)(3) and (b)(4), respectively to read as follows:

§ 176.415 Permit requirements for Division 1.5, ammonium nitrates, and certain ammonium nitrate fertilizers.

(a) Except as provided in paragraph (b) of this section, before any of the following material is loaded on or unloaded from a vessel at any waterfront facility, the owner/operator must obtain written permission from the Captain of the Port (COTP).

(1) Ammonium nitrate UN1942, ammonium nitrate fertilizers containing more than 70% ammonium nitrate, or Division 1.5 compatibility group D materials packaged in a paper bag, burlap bag, or other nonrigid combustible packaging, or any rigid packaging with combustible inside packagings,

(2) Any other ammonium nitrate or ammonium nitrate fertilizer not listed in § 176.410(a) or (b).

(b) * * *

(1) Ammonium nitrate, Division 5.1 (oxidizer) UN1942, in a rigid packaging with a noncombustible inside packaging.

* * * * *

(3) Division 1.5 compatibility group D material in a rigid packaging with a noncombustible inside packaging.

(4) Ammonium nitrate fertilizer, Class 9, UN2071.

(c) * * *

(1) If the material is Explosives, blasting, type E, Division 1.5 compatibility group D, UN0332 in a combustible packaging or in a rigid packaging with a combustible inside packaging, it must be loaded or unloaded at a facility remote from populous areas, or high-value or high-hazard industrial facilities, so that in the event of fire or explosion, loss of lives and property may be minimized;

(2) If the material is a Division 1.5 compatibility group D material in a non-rigid combustible packaging and loaded in a freight container or transport vehicle, it may be loaded or unloaded at a non-isolated facility if the facility is approved by the COTP.

* * * * *

PART 178—SPECIFICATIONS FOR PACKAGINGS

59. The authority citation for part 178 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

60. In § 178.2, paragraph (c)(1)(ii) would be revised to read as follows:

§ 178.2 Applicability and responsibility.

* * * * *

(c) * * *

(1) * * *

(ii) With information specifying the type(s) and dimensions of the closures, including gaskets and any other components needed to ensure that the packaging is capable of successfully passing the applicable performance tests and the general packaging requirements in §§ 173.24 and 173.27 of this subchapter. This information must include any procedures to be followed, including closure instructions for inner packagings and receptacles, to effectively assemble and close the packaging for the purpose of preventing leakage in transportation. For transportation by aircraft, this information must include relevant guidance to ensure that the packaging, as prepared for transportation, will be capable of withstanding the pressure differential requirements in § 173.27 of this subchapter.

* * * * *

§ 178.274 [Amended]

61. In § 178.274, in paragraph (j)(6), in the fourth sentence, the wording ''20 cm (8 inches) on at least two sides'' would be removed and ''10 cm (4 inches) on at least two sides'' would be added in its place.

62. In § 178.705, paragraph (c)(1)(iv)(A) would be revised to read as follows:

§ 178.705 Standards for metal IBCs.

(c) * * *

(1) * * *

(iv) * * *

(A) For a reference steel having a product of $Rm \times Ao = 10{,}000$, where Ao is the minimum elongation (as a percentage) of the reference steel to be used on fracture under tensile stress ($Rm \times Ao = 10{,}000 \times 145$; if tensile strength is in U.S. Standard units of pounds per square inch), the wall thickness must not be less than:

Capacity (C) in liters [1]	Wall thickness (T) in mm			
	Types 11A, 11B, 11N		Types 21A, 21B, 21N, 31A, 31B, 31N	
	Unprotected	Protected	Unprotected	Protected
C≤1000	2.0	1.5	2.5	2.0
1000<C≤2000	T=C/2000 + 1.5	T=C/2000 + 1.0	T=C/2000 + 2.0	T=C/2000 + 1.5
2000<C≤3000	T=C/2000 + 1.5	T=C/2000 + 1.0	T=C/1000 + 1.0	T=C/2000 + 1.5

[1] Where: gallons=liters × 0.264.

* * * * *

63. In § 178.812, paragraph (b)(1) would be revised to read as follows:

§ 178.812 Top lift test.

* * * * *

(b) *Special preparation for the top lift test.* (1) Metal, rigid plastic, and composite IBC design types must be loaded to twice the maximum permissible gross mass with the load being distributed.

* * * * *

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

64. The authority citation for part 180 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

65. Section 180.350 would be revised to read as follows:

§ 180.350 Applicability and definitions.

(a) This subpart prescribes requirements, in addition to those contained in parts 107, 171, 172, 173 and 178 of this subchapter, applicable to any person responsible for the continuing qualification, maintenance, or periodic retesting of an IBC. In addition, the following definitions apply:

(1) *Remanufactured IBCs* are metal, rigid plastic or composite IBCs produced as a UN type from a non-UN type, or are converted from one UN design type to another UN design type. Remanufactured IBCs are subject to the same requirements of this subchapter that apply to new IBCs of the same type (also see § 178.801(c)(1) of this subchapter for design type definition).

(2) *Repaired IBCs* are metal, rigid plastic or composite IBCs that, as a result of impact or for any other cause (such as corrosion, embrittlement or other evidence of reduced strength as compared to the design type), are restored so as to conform to the design type and to be able to withstand the design type tests. For the purposes of this subchapter, the replacement of the rigid inner receptacle of a composite IBC with a receptacle conforming to the original manufacturer's specification is considered repair. Routine maintenance of IBCs (see definition in paragraph (a)(3) of this section) is not considered repair. The bodies of rigid plastic IBCs and the inner receptacles of composite IBCs are not repairable.

(3) *Routine maintenance of IBCs* is the routine performance on metal, rigid plastic or composite IBCs of operations such as:

(i) Cleaning;

(ii) Removal and reinstallation or replacement of body closures (including associated gaskets), or of service equipment conforming to the original manufacturer's specifications provided that the leaktightness of the IBC is verified; or

(iii) Restoration of structural equipment not directly performing a hazardous material containment or discharge pressure retention function so as to conform to the design type (for example, the straightening of legs or lifting attachments), provided the containment function of the IBC is not affected.

66. In § 180.352, paragraphs (d)(1)(i) and (f) would be revised and a new paragraph (d)(1)(iv) would be added to read as follows:

§ 180.352 Requirements for retest and inspection of IBCs.

* * * * *

(d) * * *

(1) * * *

(i) The repaired IBC conforms to the original design type, is capable of withstanding the applicable design qualification tests, and is retested and inspected in accordance with the applicable requirements of this section;

* * * * *

(iv) The person performing the tests and inspections after the repair must durably mark the IBC near the manufacturer's UN design type marking to show the following:

(A) The country in which the tests and inspections were performed;

(B) The name or authorized symbol of the person performing the tests and inspections; and

(C) The date (month, year) of the tests and inspections.

* * * * *

(f) *Record retention.* The owner or lessee of the IBC must keep records of periodic retests, initial and periodic inspections, and tests performed on the IBC if it has been repaired.

67. In § 180.605, paragraph (k) would be revised to read as follows:

§ 180.605 Requirements for periodic testing, inspection and repair of portable tanks.

* * * * *

(k) *Inspection and test markings.* (1) Each IM or UN portable tank must be durably and legibly marked, in English, with the date (month and year) of the last pressure test, the identification markings of the approval agency witnessing the test, when required, and the date of the last visual inspection. The marking must be placed on or near the metal identification plate, in letters and numerals of less than 3 mm (0.118 inches) high when on the metal identification plate, and 12 mm (0.47 inches) high when on the portable tank.

(2) Each Specification DOT 51, 56, 57 or 60 portable tank must be durably and legibly marked, in English, with the date (month and year) of the most recent periodic retest . The marking must be placed on or near the metal certification plate and must be in accordance with § 178.3 of this subchapter. The letters and numerals must not be less than 3 mm (0.118 inches) high when on the metal certification plate, and 12 mm (0.47 inches) high when on the portable tank, except that a portable tank manufactured under a previously authorized specification may continue to be marked with smaller markings if originally authorized under that specification (for example, DOT Specification 57 portable tanks).

* * * * *

Issued in Washington, DC on November 19, 2002, under authority delegated in 49 CFR part 106.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety.

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Part III

Department of Education

National Assessment of Educational Progress (NAEP)—Secondary Analysis Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2003; Notice

DEPARTMENT OF EDUCATION

[CFDA No. 84.902B]

National Assessment of Educational Progress (NAEP)—Secondary Analysis Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2003

Purpose of Program: To encourage the preparation of reports that would not otherwise be available and that apply new approaches to the analysis and reporting of the NAEP and NAEP High School Transcript Studies data. Analyses and reports prepared under this program should potentially be useful to the general public, parents, educators, educational researchers, or policy makers.

For FY 2003, the competition for new awards focuses on projects designed to meet the priorities we describe in the PRIORITIES section of this application notice.

Eligible Applicants: Public or private organizations and consortia of organizations.

Applications Available: December 6, 2002.

The application package for this competition is also available on line at: *http://ed.gov/GrantApps/.*

Deadline for Transmittal of Applications: February 7, 2003.

Estimated Available Funds: $700,000.

The estimated amount of funds available for new awards is based on the Administration's request for this program for FY 2003. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process before the end of the fiscal year, if Congress appropriates funds for this program.

Estimated Range of Awards: $15,000—$100,000.

Estimated Average Size of Awards: $85,000.

Maximum Award: We will reject any application that proposes a budget exceeding $100,000 for a single budget period of 18 months.

Estimated Number of Awards: 6–8.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 18 months.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 60 pages, using the following standards:

- A page is 8.5″ × 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75 (except for those provisions of part 75 noted in 34 CFR 700.5(a)), 77, 80, 81, 82, 85, and 86. (b) The regulations in 34 CFR part 700.

Priorities

Invitational Priorities

We are particularly interested in applications that meet one or more of the following invitational priorities.

Invitational Priority 1—Analysis projects that use NAEP achievement data alone or in combination with other data sets to produce reports designed to assist policy makers and educators in the educational improvement process.

Invitational Priority 2—Projects designed to assist NAEP users in the analysis, interpretation and reporting of State and district-level NAEP results.

Invitational Priority 3—Projects that include the development of methodological or analytic procedures which improve precision in the estimation and reporting of NAEP results.

Invitational Priority 4—Projects to analyze and report data using statistical software developed by the project to permit more advanced analytic techniques to be readily applied to NAEP data.

Under 34 CFR 75.105(c)(1) we do not give an application that meets one or more of the priorities a competitive or absolute preference over other applications.

FOR APPLICATIONS AND FURTHER INFORMATION CONTACT: Alex Sedlacek, U.S. Department of Education, 1990 K Street, NW., room 8007, Washington, DC 20006. Telephone: (202) 502–7446 or via Internet: *Alex.Sedlacek@ed.gov.*

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Program Authority: 20 U.S.C. 9010.

Dated: November 27, 2002.

Grover J. Whitehurst,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 02–30580 Filed 12–2–02; 8:45 am]

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H.R. 1070/P.L. 107–303

Great Lakes and Lake Champlain Act of 2002 (Nov. 27, 2002; 116 Stat. 2355)

H.R. 3340/P.L. 107–304

To amend title 5, United States Code, to allow certain catch-up contributions to the Thrift Savings Plan to be made by participants age 50 or over; to reauthorize the Merit Systems Protection Board and the Office of Special Counsel; and for other purposes. (Nov. 27, 2002; 116 Stat. 2363)

H.R. 3394/P.L. 107–305

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