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Contents

Federal Register

Vol. 67, No. 242

Tuesday, December 17, 2002

Agricultural Marketing Service
RULES
Cotton; futures contracts spot price quotations, 77147–77148

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Forest Service

Animal and Plant Health Inspection Service
RULES
Exportation and importation of animals and animal products:
Foot-and-mouth disease; disease status change—
Great Britain, 77148–77152

Children and Families Administration
PROPOSED RULES
Grants and cooperative agreements; availability, etc.:
Community Services Block Grants; charitable choice provisions, 77367–77371
Temporary Assistance for Needy Families Program:
Charitable Choice provisions, 77361–77366

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration

Copyright Office, Library of Congress
RULES
Copyright Arbitration Royalty Panel rules and procedures:
Noncommercial educational broadcasting compulsory license; rate adjustments, 77170–77173

Customs Service
NOTICES
Automatic program test:
Vessel Automated Manifest System; electronic transmission of cargo declaration information; modifications, 77318–77320

Education Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 77241–77242
Grants and cooperative agreements; availability, etc.:
Postsecondary Education Improvement Fund, 77242–77246

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Grants and cooperative agreements; availability, etc.:
Catalysis science research, 77246–77248

Environmental Protection Agency
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
California, 77196–77220
NOTICES
Grants and cooperative agreements; availability, etc.:
Chesapeake Bay Program, 77256
National Brownfields Job Training Program, 77255–77256
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Sensors, Inc., et al., 77256–77257
Water pollution; discharge of pollutants (NPDES):
Massachusetts—
Reverse osmosis reject water discharges; general permit, 77258–77271
Water pollution control:
Total maximum daily loads—
Mermentau and Vermilion/Teche river basins, LA, 77257–77258
Water supply:
Public water supply supervision program—
Tennessee, 77271–77272

Federal Aviation Administration
PROPOSED RULES
Air traffic operating and flight rules, etc.:
Area navigation and miscellaneous amendments, 77325–77348

Federal Communications Commission
RULES
Common carrier services:
Wireless telecommunications services—-
Cellular radiotelephone and other services; biennial review, 77175–77192
Emergency Alert System
Correction, 77174–77175
Practice and procedure:
Regulatory fees (2001 FY); assessment and collection, 77173–77174
PROPOSED RULES
Common carrier services:
International Settlements Policy reform and international settlement rates, 77220
Digital television stations; table of assignments:
North Carolina and South Carolina, 77220–77221
Radio and television broadcasting:
Broadcast and cable EEO rules and policies—
Part-time employee classification, 77373–77398
NOTICES
Common carrier services:
Telecommunications relay services—
State certification and renewal applications, 77272–77273
Wireless telecommunications services—
Cellular unserved service areas; licenses auction; notice and filing requirements, etc., 77273–77281
Multichannel video distribution and data service licenses; auction, 77281

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
California Independent System Operator Co. et al., 77248–77249
San Diego Gas & Electric Co. et al., 77249–77250

Meetings; Sunshine Act, 77250–77254
Practice and procedure:
Off-the-record communications, 77254–77255
Applications, hearings, determinations, etc.:
Consolidated Edison Co. of New York, Inc.; correction, 77223

Federal Housing Finance Board
NOTICES
Meetings; Sunshine Act, 77281

Federal Trade Commission
NOTICES
Fair Credit Reporting Act:
Disclosure charges, 77282
Meetings:
Weight lost products advertising; workshop, 77282–77283

Fish and Wildlife Service
NOTICES
Endangered and threatened species permit applications, 77286–77287
Natural resource damage assessment plans; availability, etc.:
Saint Louis River Interlake/Duluth Tar Superfund Site, MN, 77287–77288

Forest Service
NOTICES
Environmental statements; notice of intent:
Plumas National Forest, CA, 77222

Health and Human Services Department
See Children and Families Administration
See National Institutes of Health
See Public Health Service
PROPOSED RULES
Grants:
Substance Abuse Prevention and Treatment Block Grant and Projects for Assistance in Transition from Homelessness Programs; charitable choice provisions, 77349–77360

Housing and Urban Development Department
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 77285–77286

Interior Department
See Fish and Wildlife Service
See Land Management Bureau

International Trade Administration
NOTICES
2008 Beijing Olympics; projects participation; mailing list development for U.S. companies, 77222
Antidumping:
Refined brown aluminum oxide from—
China, 77223–77225
Silicon metal from—
Brazil, 77225–77227
Tin mill products from—
Japan, 77227–77230
Antidumping and countervailing duties:
Administrative review requests, 77222–77223

Justice Department
See Juvenile Justice and Delinquency Prevention Office
See Prisons Bureau
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 77289–77290

Juvenile Justice and Delinquency Prevention Office
NOTICES
Grants and cooperative agreements; availability, etc.:
Promising Programs for Substance Abuse Prevention; Replication and Evaluation Initiative, 77290

Labor Department
See Occupational Safety and Health Administration

Land Management Bureau
NOTICES
Realty actions; sales, leases, etc.:
Nevada, 77288–77289

Library of Congress
See Copyright Office, Library of Congress

National Highway Traffic Safety Administration
RULES
Motor vehicle safety standards:
Technical amendments, 77193

National Institutes of Health
NOTICES
Grants and cooperative agreements; availability, etc.:
Mechanical and biological treatments development in interventional cardiovascular medicine using x-ray fluoroscopy and real-time magnetic resonance imaging, 77283

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Caribbean, Gulf, and South Atlantic fisheries—
Gulf of Mexico and South Atlantic coastal migratory pelagic resources, 77193–77195
NOTICES
Grants and cooperative agreements; availability, etc.:
Chesapeake Bay Watershed; environmental education projects, 77230–77235
Gulf of Mexico and off U.S. South Atlantic Coastal States; research and development projects, 77235–77240
Meetings:
Gulf of Mexico Fishery Management Council, 77240–77241

Nuclear Regulatory Commission
NOTICES
Meetings; Sunshine Act, 77291
Applications, hearings, determinations, etc.:
Portland General Electric Co., 77290–77291

Occupational Safety and Health Administration
RULES
Occupational injuries and illnesses; recording and reporting requirements
Musculoskeletal disorders and hearing loss; effective date delay, 77165–77170

Personnel Management Office
NOTICES
Agency information collection activities:
Proposed collection; comment request, 77291–77292

Submission for OMB review; comment request, 77292

Prisons Bureau
RULES
Inmate control, custody, care, etc.:
Incoming publications; softcover materials, 77161–77164

Public Health Service
See National Institutes of Health
NOTICES
Reports and guidance documents; availability, etc.:
National Toxicology Program—
Carcinogens, Tenth Edition, 77283–77285

Railroad Retirement Board
RULES
Railroad Retirement Act:
Reconsideration and appeals requests; procedures clarification, 77152–77158

Securities and Exchange Commission
NOTICES
Securities:
Suspension of trading—
e-Smart Technologies, Inc., 77292–77293
Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC, 77293–77294
Chicago Board Options Exchange, Inc., 77295–77297
Chicago Mercantile Exchange, 77297–77300
National Association of Securities Dealers, Inc., 77301–77309
Pacific Exchange, Inc., 77309–77310

Special Counsel Office
NOTICES
Organization, functions, and authority delegations:
Dallas Field Office, TX; address change, 77310–77311

State Department
RULES
Exchange visitor program:
Foreign medical graduates; two-year home-country physical presence requirement waiver; correction, 77159–77160
Visas; immigrant and nonimmigrant documentation:
Uncertified foreign health-care workers, 77158–77159
Visas; immigrant documentation:
Registration; definition, 77160–77161
NOTICES
Art objects; importation for exhibition:
Origins of the Russian Avant-Garde, 77311
Foreign terrorists and terrorist organizations; designation:
Moroccan Islamic Combatant Group, 77311

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
RailAmerica, Inc., et al., 77315

Transportation Department
See Federal Aviation Administration
See National Highway Traffic Safety Administration
See Surface Transportation Board
NOTICES
Privacy Act:
Systems of records, 77311–77315

Treasury Department
See Customs Service
NOTICES
Privacy Act:
Computer matching programs, 77315–77316
Systems of records, 77316–77318

Veterans Affairs Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 77320–77321
Submission for OMB review; comment request, 77321–77322

Separate Parts In This Issue

Part II
Transportation Department, Federal Aviation Administration, 77325–77348

Part III
Health and Human Services Department, 77349–77360

Part IV
Health and Human Services Department, Children and Families Administration, 77361–77366

Part V
Health and Human Services Department, Children and Families Administration, 77367–77371

Part VI
Federal Communications Commission, 77373–77398

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
27.....77147

9 CFR
94.....77148

14 CFR

Proposed Rules:
1.....77326
71.....77326
91.....77326
95.....77326
97.....77326
121.....77326
125.....77326
129.....77326
135.....77326

20 CFR
260.....77152
320.....77152

22 CFR
40.....77158
41.....77159
42.....77160

28 CFR
540.....77161

29 CFR
1904.....77165

37 CFR
253.....77170

40 CFR

Proposed Rules:
52 (3 documents) 77196, 77204, 77212
81 (3 documents) 77196, 77204, 77212

42 CFR

Proposed Rules:
54.....77350
54a.....77350

45 CFR

Proposed Rules:
96.....77350
260.....77362
1050.....77368

47 CFR
1.....77173
11.....77174
22.....77175
24.....77175

Proposed Rules:
0.....77220
43.....77220
63.....77220
64.....77220
73 (2 documents) 77220, 77374
76.....77374

49 CFR
571.....77193

50 CFR
622.....77193

Rules and Regulations

Federal Register
Vol. 67, No. 242
Tuesday, December 17, 2002

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 27

[Doc. CN–01–004]

RIN 0581–ACOO

Revision of Regulations for Determining Price Quotations for Spot Cotton

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service is amending the regulations concerning designation of the spot markets used to calculate differences for tenderable qualities delivered against cotton futures contracts. The re-designated spot markets will better reflect the trading value of tenderable qualities. Presently, regulations provide for the Secretary of Agriculture to determine and designate spot markets from which spot cotton price information can be collected. Currently, there are seven designated markets that qualify under the Cotton Futures Act requirements and five of those are designated to determine differences for the settlement of futures contracts. The Commodity Futures Trading Commission, in an effort to better reflect market transparency, approved a request from the New York Board of Trade that the spot markets used to calculate commercial differences in Cotton Futures Exchange deliveries be re-designated. The requested changes were as follows: replace the South Delta quote with the West Texas quote; and replace the North Delta quote with the average of the combined North and South Delta quotes.

Including West Texas quotes and combining and averaging North and South Delta quotes provides a more accurate reflection of cotton that is traded for cotton futures contracts.

EFFECTIVE DATE: April 1, 2003.

FOR FURTHER INFORMATION CONTACT: Norma McDill, Deputy Administrator, Cotton Program, AMS, USDA, STOP 0224, 1400 Independence Avenue, SW., Washington, DC 20250–0224. Telephone (202) 720–2145, facsimile (202) 690–1718, or e-mail *norma.mcdill@usda.gov.*

SUPPLEMENTARY INFORMATION: A proposed rule detailing the revisions was published in the **Federal Register** on July 23, 2002, (67 FR 48050). A 90-day comment period was provided for interested persons to respond to the proposed rule. No comments were received and no changes have been made in the provisions of the final rule.

Executive Order 12866

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

Executive Order 12988

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

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), AMS has considered the economic impact of this action on small entities and has determined that its implementation will not have a significant economic impact on a substantial number of small entities.

The New York Cotton Future Market traders include the entire cotton industry: farmers, merchants, and textile mill owners. There are an estimated 3,000 traders. This final rule would affect all such traders. The majority of the traders are small businesses under the criteria established by the Small Business Administration. Amending the regulations to change the designated spot markets for determining tenderable differences will not significantly affect small businesses as defined under the RFA because:

(1) The information gathered will be more reflective of the cotton traded for cotton futures contracts and add more transparency to the market;

(2) The competitive position or market access of small entities in the cotton industry would not be affected;

(3) No new costs would be imposed on the affected industry.

Paperwork Reduction Act

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*) the information collection requirements contained in the regulation to be amended have been previously approved by OMB and were assigned control number 0581–0029 under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Background

The Secretary of Agriculture is authorized under the U.S. Cotton Futures Act (7 U.S.C. 15b) to make such regulations as determined necessary to carry out the provisions of the Act. The Act provides for the designation of at least five bona fide spot markets from which spot cotton price information can be collected. Presently, there are seven such designated markets that qualify under the Cotton Futures Act requirements. The seven designated markets are as follows: Southeastern, North Delta, South Delta, East Texas and Oklahoma, West Texas, Desert Southwest and San Joaquin Valley. For the purposes of determining settlement of futures contracts five of the seven spot markets are used. They are Southeastern, North Delta, South Delta, East Texas and Oklahoma, and Desert Southwest. The Cotton Program of the Agricultural Marketing Service provides market information from these spot markets under the Cotton Statistics and Estimates Act (7 U.S.C. 473b) and the Agricultural Marketing Act of 1946 (7 U.S.C. 1622(g)).

The Commodity Futures Trading Commission, in an effort to better reflect market transparency, approved a request from the New York Board of Trade to change the spot markets used to calculate commercial differences in

Cotton Futures Exchange deliveries. This final rule would change the designation of the spot markets which are used daily to calculate price differences for cotton futures contracts. The current designations were published in the **Federal Register** on August 4, 1988 (53 FR 29327). As previously stated, differences are quoted for those qualities of cotton which are tenderable on active futures contracts in five designated markets. These differences are averaged to obtain the differences quoted for futures settlement.

This final rule would provide that differences would continue to be quoted for those qualities of cotton which are tenderable on active futures contracts in all of the five markets currently designated for this purpose. However, the West Texas spot market would be added as a bone fide spot market for the settlement of futures contracts, and the North Delta and South Delta spot markets would be combined and averaged together when used for this purpose of calculating differences of tenderable qualities for the settlement of futures contracts. This final rule would change the calculation of differences of tenderable qualities for the settlement of futures contracts to be the average of the differences of (1) the Southeastern spot market; (2) the East Texas/Oklahoma spot market; (3) the West Texas spot market; (4) the Desert Southwest spot market; and (5) the combination and averaging of the North Delta and South Delta spot markets. The remaining designated spot markets would not change. These modifications are expected to more accurately reflect the trading value of tenderable cotton on futures contracts and add more transparency in the market.

List of Subjects in 7 CFR Part 27

Commodity futures, cotton.

For the reasons set forth in the preamble, 7 CFR Part 27 is revised as follows:

PART 27—[AMENDED]

1. The authority citation for 7 CFR Part 27 continues to read as follows:

Authority: 7 U.S.C. 15b, 7 U.S.C. 4736, 7 U.S.C. 1622(g).

2. In § 27.94, paragraph (a) is revised to read as follows:

§ 27.94 Spot markets for contract settlement purposes.

(a) For cotton delivered in settlement of any No. 2 contract on the New York Cotton Exchange: Southeastern, North and South Delta, Eastern Texas and Oklahoma, West Texas, and Desert Southwest.

* * * * *

Dated: December 10, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–31633 Filed 12–16–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 01–018–4]

Change in Disease Status of Great Britain With Regard to Foot-and-Mouth Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations governing the importation of certain animals, meat, and other animal products by adding Great Britain (England, Scotland, Wales, and the Isle of Man) to the list of regions considered free of rinderpest and foot-and-mouth disease (FMD) and to the list of regions subject to certain import restrictions on meat and animal products because of their proximity to or trading relationships with rinderpest- or FMD-affected regions. This final rule follows an interim rule that removed Great Britain and Northern Ireland from those lists due to detection of FMD in those regions. Based on the results of an evaluation of the current FMD situation in Great Britain, which took into account, among other things, that Great Britain has met the standards of the Office International des Epizooties for being considered to be free of FMD, we have determined that Great Britain can be added to the list of regions considered free of FMD. This rule relieves certain FMD-related prohibitions and restrictions on the importation of ruminants and swine and fresh (chilled or frozen) meat and other products of ruminants and swine into the United States from Great Britain.

EFFECTIVE DATE: December 17, 2002.

FOR FURTHER INFORMATION CONTACT: Dr. Anne Goodman, Supervisory Staff Officer, Regionalization Evaluation Services Staff, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–4356.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation of certain animals and animal products into the United States in order to prevent the introduction of various animal diseases, including rinderpest and foot-and-mouth disease (FMD). These are dangerous and destructive communicable diseases of ruminants and swine. Section 94.1 of the regulations lists regions of the world that are considered free of rinderpest or free of both rinderpest and FMD. Rinderpest or FMD is considered to exist in all parts of the world not listed. Section 94.11 of the regulations lists regions of the world that the Animal and Plant Health Inspection Service (APHIS) has determined to be free of rinderpest and FMD, but from which importation of meat and animal products into the United States is restricted because of the regions' proximity to or trading relationships with rinderpest- or FMD-affected regions.

In an interim rule effective January 15, 2001, and published in the **Federal Register** on March 14, 2001 (66 FR 14825–14826, Docket No. 01–018–1), we amended the regulations by removing Great Britain (England, Scotland, Wales, and the Isle of Man) and Northern Ireland from the list of regions considered to be free of rinderpest and FMD. (The **Federal Register** published a correction (66 FR 18357) to the interim rule on April 6, 2001.) That interim rule was necessary because FMD had been confirmed in those regions. The effect of the interim rule was to prohibit or restrict the importation of any ruminant or swine and any fresh (chilled or frozen) meat and other products of ruminants or swine into the United States from Great Britain and Northern Ireland.

Although we removed Great Britain and Northern Ireland from the list of regions considered to be free of rinderpest and FMD, we recognized in the interim rule that the appropriate authorities had responded to the detection of FMD by imposing restrictions on the movement of ruminants, swine, and ruminant and swine products from FMD-affected areas; by conducting heightened surveillance activities; and by initiating measures to eradicate the disease. We stated that we intended to reassess the situation in those regions at a future date in the context of Office International des Epizooties (OIE) standards, and that as part of that reassessment process, we would

consider all comments received regarding the interim rule.

Additionally, we stated in the interim rule that the future reassessments would enable us to determine whether it was necessary to continue to prohibit or restrict the importation of ruminants or swine and any fresh (chilled or frozen) meat and other products of ruminants or swine from Great Britain and Northern Ireland, or whether we could restore Great Britain and Northern Ireland to the list of regions in which FMD is not known to exist, or regionalize portions of Great Britain or Northern Ireland as FMD-free.

On January 9, 2002, we published a final rule in the **Federal Register** (67 FR 1072–1074, Docket No. 01–031–3) in which we restored Northern Ireland (as well as the Netherlands) to the list of regions considered to be free of rinderpest and FMD and to the list of regions subject to certain import restrictions on meat and animal products because of their proximity to or trading relationships with rinderpest- or FMD-affected regions. The action with respect to Northern Ireland and the Netherlands was based on the results of an evaluation of the FMD situation in those regions, which took into account, among other things, that each region met the standards of the OIE for being considered to be free of FMD.

On July 16, 2002, we published a notice in the **Federal Register** (67 FR 46628–46629, Docket No. 01–018–2) in which we advised the public of the availability of an evaluation that we had prepared concerning the FMD disease status of Great Britain. (We published a correction (67 FR 54164, Docket No. 01–018–3) to that notice on August 21, 2002.) The evaluation, entitled ''APHIS Evaluation of FMD Status of Great Britain (England, Scotland, Wales, and the Isle of Man)'' (May 2002), assessed the FMD status of Great Britain and the related disease risks associated with importing animals and animal products into the United States from Great Britain.

We solicited comments concerning the evaluation for 60 days ending September 16, 2002, and received 10 comments by that date. The comments were submitted by animal breeders and producers, an animal breeders' association, national beef and pork industry associations, and artificial insemination businesses. Seven of the 10 commenters supported restoring Great Britain to the list of FMD-free regions and relieving certain prohibitions and restrictions on the importation of animals and animal products into the United States from Great Britain. The other comments are discussed below.

One commenter expressed concern that the European Union (EU) is reportedly willing to accept the risk of an outbreak of FMD once every 10 years. The commenter asked what level of FMD risk is acceptable to the United Kingdom, and what actions the United Kingdom was taking to achieve that level of risk.

There is no research of which we are aware, and the commenter did not make reference to any specific report, that indicates that the EU or the United Kingdom is willing to accept the risk of an outbreak of FMD under any circumstances. Regardless of the level of risk that any individual country might be willing to accept, we prepare risk assessments based on our own standards. Our evaluation of Great Britain's eradication and control efforts, including site visits that are detailed in a document that is available to the public (see following section, ''Status of Great Britain''), clearly shows that Great Britain has implemented effective measures to prevent further outbreaks of FMD.

Two commenters stated that, given the delay in diagnosis of FMD in Great Britain during the outbreak in 2001, education regarding the importance of early reporting of suspicious disease situations is advisable. The commenter inquired whether APHIS had any information about any such continuing educational efforts in Great Britain.

The United Kingdom's Department for Environment, Food, and Rural Affairs (DEFRA) maintains a Web site (*http://www.defra.gov.uk/footandmouth*) that offers information about, among other things, the disease and the 2001 outbreak, government restrictions and control measures, and precautions that farmers can take to avoid future outbreaks, including looking for early signs of disease. This information, made readily available to the public, through the internet and other media, demonstrates the commitment of the government of the United Kingdom to maintaining a high level of awareness and education regarding FMD.

One commenter wanted to know if we have received information about the compliance of former swill feeding operations with the swill feeding ban that was enacted by the United Kingdom in May 2001.

The ban on swill feeding is an important mitigating measure for the prevention of FMD, and DEFRA has initiated enforcement measures to ensure compliance with the ban. For 12 months following the implementation of the ban, local authorities, in cooperation with the Chief Veterinary Officer of DEFRA, visited all former swill feeders. The visits occurred at 2 weeks, 1 month, 2 months, 6 months, and 12 months. During those 12 months, many of the former swill feeders gave up pig production altogether. The swill feeding operations that remained were thoroughly inspected to ensure that they had changed their feeding regimes in compliance with the ban. Local authorities took feed samples at any swill feeding operation that they suspected was using meat or meat products in their feed. The necessary enforcement measures, up to and including prosecution, were taken in all cases of non-compliance with the ban. These non-compliant swill feeding operations continue to be inspected on a regular basis to ensure that compliance is upheld.

In addition to these inspection measures, the Chief Veterinary Officer of DEFRA has also instituted an awareness campaign aimed at former swill feeding operators as well as the public. Information about alternative methods of feeding, safe disposal of untreated swill, and various feed options has all been made available on DEFRA's Web site. Letters have been written to the local authorities emphasizing the importance of continued vigilance in their enforcement activities, and DEFRA's State Veterinary Service continues to work closely with the local authorities. Our risk assessment and site visits, in addition to the subsequent information we have received from DEFRA, indicate that these actions taken by DEFRA to ensure compliance with the swill feeding ban have been, and continue to be, an effective mitigation measure against the reintroduction of FMD.

Two commenters asked about the level of testing that had been done in deer and feral boars in areas of the country that had contained infected domestic animals.

The information available to us indicates that the wildlife populations were not tested extensively because FMD infections in wildlife were not believed to be a factor in the spread of FMD or to be a reservoir of infection. Detection and eradication efforts were focused on infected domestic animals. We believe that the risk of the spread of FMD from wildlife is minimal because the disease has been eradicated in the domestic livestock, and there has been no reintroduction of the disease from wildlife.

Two commenters noted that Canada will not allow the importation from the United Kingdom of some commodities that have been imported into the United

Kingdom from certain trading partners in the EU known to be infected with FMD. These commenters asked whether APHIS has reviewed the risk to the United Kingdom, and then subsequently to the United States, of these types of importations. These commenters also inquired how the United Kingdom's import controls for commodities from FMD countries compare to the United States' import controls for commodities from FMD countries, and what level of protection is provided by the 100 percent documentation and identity checks conducted by the United Kingdom on the origin of meat imported from FMD countries.

The risk to the United Kingdom and subsequently to the United States of these types of importations is addressed in the current regulations that govern the importation of meat and other animal products. These regulations include special restrictions for those FMD-free regions that: (1) Supplement their national meat supply by the importation of fresh (chilled or frozen) meat of ruminants or swine from regions that are designated as having FMD; (2) share a common land border with regions that are designated as having FMD; or (3) import ruminants or swine from regions where FMD exists under conditions that are less restrictive than are acceptable for importation into the United States. These restrictions, found in § 94.11, will apply to Great Britain and offer additional protection against the possibility of the introduction of FMD into the United States.

One commenter noted the outbreaks of classical swine fever and FMD in the last 2 years in the United Kingdom and asked if APHIS' risk evaluation and assessment process addressed future risks to the United States based on this type of history.

Our risk evaluation and assessment process takes into account the quick and effective response of the government after the initial outbreaks of these diseases. The emergency response lessons that DEFRA learned have led to an increased level of sensitivity and an enhanced level of awareness of the potential for disease incursions. Although it is impossible to predict the potential for future risk with complete certainty, we believe that the continued surveillance and ongoing educational and control efforts of DEFRA, combined with the restrictions of § 94.11 discussed above, support our determination that there does not exist an undue risk of FMD being introduced into the United States through the importation of animals or animal products from Great Britain.

Two commenters requested that APHIS review other disease situations with regard to health risks to the U.S. livestock herd. One of the commenters specifically mentioned postweaning multi-systemic wasting syndrome (PMWS) and porcine dermatitis and nephropathy syndrome (PDNS), which the commenter said were increasing in prevalence and severity in Great Britain.

APHIS conducts ongoing review and analysis of diseases that could affect the U.S. livestock herd. With regard to PMWS and PDNS, both of these diseases already exist in the United States, and we have initiated an evaluation process to determine the extent of their spread and the health risks that they present both in the United Kingdom and in the United States.

Another commenter supported relieving restrictions on the importation from Great Britain of embryos and semen under certain conditions, but opposed relieving restrictions on the importation of other animal products from Great Britain because of FMD and because of the ''unknown incubation period'' of bovine spongiform encephalopathy (BSE).

Our evaluation of Great Britain's FMD control and eradication efforts since the initial outbreak of FMD indicates that they have been effective. The evaluation, which also took into account OIE's standards, found that there is no undue risk of the presence of FMD in Great Britain. Based on this evidence, we do not consider it necessary to prohibit the importation of animals and animal products from Great Britain due to FMD.

However, because the United Kingdom is listed in § 94.18(a)(1) as a region in which BSE is considered to exist, the importation of ruminants and fresh (chilled or frozen) meat, meat products, and edible products other than meat (excluding gelatin, milk, and milk products) from ruminants from the United Kingdom will continue to be prohibited. Status of Great Britain

In this final rule, we are restoring Great Britain to the list in § 94.1(a) of regions that are considered to be free of rinderpest and FMD. Our reasons follow.

When FMD occurs in an FMD-free country or zone where vaccination is not practiced before the outbreak, the OIE requires a waiting period of 3 months after the last case, when stamping-out and serological surveillance are applied, before that FMD-free country or zone can be reevaluated.

Great Britain did not vaccinate animals against FMD before the initial outbreak that was confirmed on February 20, 2001. Following the initial outbreak, Great Britain implemented a stamping-out policy, movement control measures, serological surveillance, import controls, a ban on swill feeding, and enhanced control of international waste to ultimately control and eradicate the disease.

The last case of FMD in Great Britain occurred on September 30, 2001. The animals were slaughtered immediately, and more than 3 months had elapsed by the time the evaluation was conducted. The OIE reinstated the FMD-free status of the United Kingdom on January 22, 2002. This reinstatement was a significant factor in our evaluation.

We have evaluated the FMD eradication efforts in Great Britain based on information provided to us by this region and by our own site visits. Our findings and site visit reports may be viewed on the Internet at *http://www.aphis.usda.gov/vs/reg-request.html.* You may also request paper copies of these documents by calling or writing the person listed under **FOR FURTHER INFORMATION CONTACT.** Please refer to Docket No. 01–018–4 when requesting copies. These documents are also available 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.)

We further believe that we have an obligation under our international trade agreements to restore a region previously recognized as FMD-free to our list of regions free of FMD as soon as practicable upon its meeting OIE standards for free status. The United States would expect the same policy to be applied in the event of an outbreak of disease, and subsequent eradication of that disease, in this country.

Based on our findings, and after reviewing comments submitted to us on the interim rule and on the evaluation, we are amending the regulations by restoring Great Britain to the list in § 94.1(a)(2) of regions that are declared free of both rinderpest and FMD. We are also restoring GreatBritain to the list in § 94.11(a) of regions that are declared free of rinderpest and FMD but that are subject to special restrictions on the importation of their meat and other animal products into the United States. The regions listed in § 94.11(a) are subject to these special restrictions because they: (1) Supplement their national meat supply by importing fresh

(chilled or frozen) meat of ruminants or swine from regions that are designated in § 94.1(a) as regions where rinderpest or FMD exists; (2) have a common land border with regions where rinderpest or FMD exists; or (3) import ruminants or swine from regions where rinderpest or FMD exists under conditions less restrictive than would be acceptable for importation into the United States.

This action relieves certain restrictions due to FMD on the importation into the United States of certain live animals and animal products from Great Britain. However, because Great Britain has certain trade practices regarding ruminants and swine that are less restrictive than are acceptable for importation into the United States, the importation of meat and other products from ruminants and swine into the United States from Great Britain continues to be subject to certain restrictions. Further, because the United Kingdom is listed in § 94.18(a)(1) as a region in which BSE is considered to exist, the importation of ruminants, fresh (chilled or frozen) meat, meat products, and certain other edible products of ruminants from the United Kingdom will continue to be prohibited.

Miscellaneous

In § 94.18, we refer to Northern Ireland and Great Britain (England, Scotland, Wales, and the Isle of Man) collectively as the United Kingdom. In this rule, we are amending §§ 94.1 and 94.11 to be consistent with § 94.18. Therefore, instead of adding Great Britain to the lists of regions in §§ 94.1 and 94.11, we are removing the references to Northern Ireland that are currently in both sections and adding the United Kingdom to those lists.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. Immediate implementation of this rule is warranted to relieve certain restrictions on the importation of ruminants and swine and fresh (chilled or frozen) meat and other products of ruminants and swine into the United States from Great Britain that are no longer necessary. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

We are amending the regulations governing the importation of certain animals, meat, and other animal products by adding Great Britain to the list of regions considered to be free of rinderpest and FMD and to the list of regions that are subject to certain import restrictions on meat and animal products because of their proximity to or trading relationships with rinderpest- or FMD-affected regions. This final rule follows an interim rule that removed Great Britain and Northern Ireland from those lists due to detection of FMD in those regions. Based on the results of an evaluation of the current FMD situation in Great Britain, which took into account, among other things, that Great Britain met the standards of the OIE for being considered to be free of FMD, we have determined that Great Britain can be added to the list of regions considered free of FMD. This final rule relieves certain prohibitions and restrictions on the importation of ruminants and swine and fresh (chilled or frozen) meat and other products of ruminants and swine into the United States from Great Britain.

Great Britain has not historically been a major source of U.S. imports of the products affected by the FMD-related prohibitions and restrictions of the regulations, which include live ruminants, live swine, fresh (chilled or frozen) meat of ruminants and swine, processed ruminant and swine meat, some dairy products, animal feeds, and other ruminant and swine products such as semen, embryos, untanned hides and skins, unwashed wool, hair, bones, blood, and some other byproducts. Past imports of these products from Great Britain represent a small fraction of the total U.S. imports or total U.S. production of these products. Given the BSE-related prohibitions that will continue to apply to the importation of ruminants, fresh (chilled or frozen) meat, meat products, and certain other edible products of ruminants from the United Kingdom, as well as the restrictions on the importation of meat and other products from ruminants and swine from the United Kingdom that will apply under § 94.11, this final rule is not expected to alter these past trade patterns.

The majority of entities potentially affected by this final rule are considered small. For example, in 1997, approximately 97 percent (2,919 of 2,992) of meat and meat product wholesalers, 99 percent (1,490 of 1,503) of livestock wholesalers,[1] 92 percent (79,155 of 86,022) of dairy farms, 99.3 percent (651,542 of 656,181) of cattle farms, 87 percent (40,185 of 46, 353) of hog and pig farms, 99.5 percent (29,790 of 29,938) of sheep and goat farms,[2] 98 percent (1,272 of 1,297) of slaughtering establishments, and 95 percent (1,324 of 1,393) of meat processing establishments[3] would be considered small entities under the criteria set by the Small Business Administration. However, these entities should be little affected by this rulemaking because of the negligible effect on imports.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This final rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we are amending 9 CFR part 94 as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 continues to read as follows:

[1] 1997 Economic Census, Department of Commerce, Bureau of the Census.

[2] 1997 Census of Agriculture, USDA, National Agricultural Statistics Service.

[3] 1997 Economic Census, Department of Commerce, Bureau of the Census.

Authority: 7 U.S.C. 450, 7711–7714, 7751, 7754, 8303, 8306, 8308, 8310, 8311, and 8315; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 42 U.S.C.4331 and 4332; 7 CFR 2.22, 2.80, and 371.4.

§ 94.1 [Amended]

2. In § 94.1, paragraph (a)(2) is amended by removing the words ''Northern Ireland,'', by removing the word ''and'' immediately before the word ''Trust'', and by adding the words '', and the United Kingdom'' immediately after the words ''Pacific Islands''.

§ 94.11 [Amended]

3. In § 94.11, paragraph (a), the first sentence is amended by removing the words ''Northern Ireland,'' and by removing the words ''and Switzerland'', and adding the words ''Switzerland, and the United Kingdom'' in their place.

Done in Washington, DC, this 12th day of December 2002.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–31659 Filed 12–16–02; 8:45 am]

BILLING CODE 3410–34–P

RAILROAD RETIREMENT BOARD

20 CFR Parts 260 and 320

RIN 3220–AB03

Requests for Reconsideration and Appeals Within the Board

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) amends its regulations to simplify the procedures with respect to requests for reconsideration and appeals within the Board. These amendments clarify the appeals procedures and make the regulations more readable and understandable to the public.

DATES: This rule is effective December 17, 2002.

FOR FURTHER INFORMATION CONTACT: Marguerite P. Dadabo, Assistant General Counsel, Railroad Retirement Board, (312) 751–4945, TDD (312) 751–4701.

SUPPLEMENTARY INFORMATION: Part 260 of the Board's regulations deals generally with administrative review of denials of claims or requests for waiver of recovery of overpayments under the Railroad Retirement Act (RRA). Part 320 deals with the same matters under the Railroad Unemployment Insurance Act (RUIA). The Board believes this regulation streamlines the process without diminishing the rights of claimants in the administrative review process. In addition, the Board believes that part 260 has been made more readable and thus more understandable to the public.

Specifically, the Board amends § 260.2 to clarify that the procedure applicable to the appeal of a decision denying the crediting of compensation also applies to the crediting of service months under the RRA. Sections 260.3(d) and 320.10(e) are amended to add as possible good cause for failure to file a timely reconsideration request or appeal within the agency that the claimant believed his or her representative had filed such a request or appeal. In order to protect an appellant where he or she may have a problem obtaining appeal forms, §§ 260.5(b), 260.9(b), 320.12, and 320.39 are amended to provide that the right to appeal is protected by the submission of a written request received within the appeal period stating an intent to appeal, if the claimant files the appeal form within the 30-day period following the date of the letter sending the form to the claimant.

As proposed, section 260.5(l) provides that a hearing may be conducted by telephone conference at the discretion of the hearings officer. We have also amended section 320.25(d) to conform it to proposed section 260.5(l), which is being adopted without change.

A request for waiver of recovery of an overpayment must be filed within 60 days of the notice of overpayment. Sections 260.4(c) and 320.11(f) provide that the Board will still consider a request for waiver filed after the 60-day time period, but may proceed to collect the overpayment and that any amounts collected prior to the request for waiver will not be waived.

The regulation amends both parts 260 and 320 to delay recovery of an erroneous payment when a timely appeal is filed with the Bureau of Hearings and Appeals (new paragraphs 260.5(d) and 320.12(c)) and also when a timely appeal is filed with the three-member Board (new paragraphs 260.9(d) and 320.39(b)).

Sections 260.9(d) and (e) clarify that new evidence will ordinarily not be accepted on appeal to the three-member Board from a decision of a hearings officer, but that argument will be accepted. A new § 320.40(d) parallels § 260.9(e). Sections 260.10 and 320.49 provide that the date of postmark will be considered the date of filing a document with the Board. Finally, a number of nomenclature changes are made to reflect a recent reorganization.

Sections 260.10 and 320.49 are revised to state that as a general rule a document is filed on the day it is received by the Board but that the date of a postmark or other evidence of the date of mailing will be used to establish a filing date. The current § 320.49 contains a provision that allows the Board and a base-year employer to agree to transmit documents and notices by electronic mail. That sentence was inadvertently omitted from the proposed rule, and has been restored in the final rule as paragraph 320.49(c).

The Board published the proposed rule on March 29, 2002 (67 FR 15127), and invited comments by May 28, 2002. No comments were received. With the exceptions for §§ 320.25(d) and 320.49 noted above, the proposed rule has been redrafted as a final rule without change.

Collection of Information Requirements

Pursuant to the Paperwork Reduction Act of 1995, the information collection associated with this rule, the Form HA–1, used to file appeals to the Bureau of Hearings and Appeals and to the three-member Board, has been approved by the Office of Management and Budget under control number 3220–0007. This collection has been cleared for use through August 31, 2004 by the Office of Management and Budget.

Regulatory Impact Statement

Prior to publication of this final rule, the Board submitted this rule to the Office of Management and Budget for review pursuant to Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for rules that constitute significant regulatory action, including rules that have an economic effect of $100 million or more annually. This final rule is not a major rule in terms of the aggregate costs involved. Specifically, we have determined that this final rule is not a major rule with economically significant effects because it would not result in increases in total expenditures of $100 million or more per year.

The revisions made by this final rule are significant. Parts 260 and 320 explain the procedures for seeking review of and appealing a decision through several levels within the Railroad Retirement Board. The revisions should result in modest savings in administrative costs due to the streamlining of procedures. However, the revisions will benefit the

agency's constituents as a result of the overall additional protections provided.

Both the Regulatory Flexibility Act and the Unfunded Mandates Act of 1995 define ''agency'' by referencing the definition of ''agency'' contained in 5 U.S.C. 551(1). Section 551(1)(E) excludes from the term ''agency'' an agency that is composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them. The Railroad Retirement Board falls within this exclusion (45 U.S.C. 231f(a)) and is therefore exempt from the Regulatory Flexibility Act and the Unfunded Mandates Act.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct compliance costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this final rule under the threshold criteria of Executive Order 13132 and have determined that it would not have a substantial direct effect on the rights, roles, and responsibilities of States or local governments.

In accordance with the provisions of Executive Order 12866, this regulation has been reviewed by the Office of Management and Budget.

List of Subjects

20 CFR Part 260

Administrative practice and procedure, Railroad retirement, Reporting and recordkeeping requirements.

20 CFR Part 320

Administrative practice and procedure, Claims, Railroad unemployment insurance, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Railroad Retirement Board amends title 20, chapter II, parts 260 and 320 of the Code of Federal Regulations as follows:

PART 260—REQUESTS FOR RECONSIDERATION AND APPEALS WITHIN THE BOARD FROM DECISIONS ISSUED BY THE BUREAU OF DISABILITY AND MEDICARE OPERATIONS, BUREAU OF RETIREMENT BENEFITS, BUREAU OF SURVIVOR BENEFITS, OFFICE OF RETIREMENT AND SURVIVOR PROGRAMS, AND THE BUREAU OF RESEARCH AND EMPLOYMENT ACCOUNTS

1. The authority citation for part 260 continues to read as follows:

Authority: 45 U.S.C. 231f; 45 U.S.C. 231g; 45 U.S.C. 355.

2. The heading of part 260 is revised to read as follows:

PART 260—REQUESTS FOR RECONSIDERATION AND APPEALS WITHIN THE BOARD

3. The heading of § 260.1, and introductory paragraph (a) are revised to read as follows:

§ 260.1 Initial decisions.

(a) *General.* Claims for benefits shall be adjudicated and initial decisions made by the Board concerning:

* * * * *

4. In §§ 260.1(b), 260.1(d)(1), and (d)(2), remove the words ''Director of the appropriate bureau or office'' and ''appropriate bureau or office'' wherever they appear, and add in their place the word ''Board''.

5. The heading and § 260.2 are revised to read as follows:

§ 260.2 Initial decisions on the amount of service and compensation credited to an employee.

Within 30 days after receipt of a timely request by an employee for amendment with respect to the number of service months and amount of compensation credited to the employee by the Board under the Railroad Retirement Act and the Railroad Unemployment Insurance Act, the Board shall appoint a qualified employee to make a determination with respect to such matter. The employee appointed by the Board shall promptly render a decision. Written notice of such decision shall be communicated to the employee within 30 days after such decision is made. Such decision shall include notification of the employee's right to reconsideration of the initial decision as provided in § 260.3. For purposes of this section, a timely request to amend an employee's record of service months and compensation maintained under the Railroad Retirement Act shall be filed within four years after the date on which the report of service months and compensation was required to be made to the Board by the employee's employer. See § 211.16 of this chapter.

6. In § 260.3 the heading, paragraph (a) introductory text, paragraphs (b) through (d), and paragraph (f) are revised to read as follows:

§ 260.3 Request for reconsideration of initial decision.

(a) *Right to file request for reconsideration.* Every claimant shall have the right to file a request for reconsideration of an initial decision described in § 260.1(a) or in § 260.2. *Provided, however,* That:

* * * * *

(b) *Written request for reconsideration.* A written request for reconsideration may be filed with any office of the Board within 60 days from the date on which notice of the initial decision is mailed to the claimant. The claimant shall state the basis for the reconsideration request and provide any additional evidence which is available. No hearing will be provided.

(c) *Right to further review of initial decision.* The right to further review of an initial decision shall be forfeited unless a written request for reconsideration is filed within the time period prescribed in this section or good cause is shown by the claimant for failing to file a timely request for reconsideration.

(d) *Timely request for reconsideration.* In determining whether the claimant has good cause for failure to file a timely request for reconsideration the bureau director shall consider the circumstances which kept the claimant from filing the request on time and if any action by the Board misled the claimant. Examples of circumstances where good cause may exist include, but are not limited to:

(1) A serious illness which prevented the claimant from contacting the Board in person, in writing, or through a friend, relative or other person;

(2) A death or serious illness in the claimant's immediate family which prevented him or her from filing;

(3) The destruction of important and relevant records;

(4) A failure to be notified of a decision;

(5) An unusual or unavoidable circumstance existed which demonstrates that the claimant would not have known of the need to file timely or which prevented the claimant from filing in a timely manner; or

(6) The claimant thought that his or her representative had requested reconsideration.

(e) * * *

(f) *Timely review.* The Board shall make every effort to issue a decision upon reconsideration and send a copy of the decision to the claimant within 60 days of the date that the decision for reconsideration is filed.

(g) * * *

7. In § 260.4 the heading is revised, and paragraphs (b) through (i) are revised to read as follows:

§ 260.4 Request for waiver of recovery of an overpayment and/or for reconsideration of an initial erroneous payment decision.

* * * * *

(b) *Request for waiver of recovery and/or reconsideration of an erroneous payment decision and for a personal conference.* A request for reconsideration of an erroneous payment decision must be filed in accordance with § 260.3(b) of this part. A request for waiver of recovery of an overpayment decision and for a personal conference under this section shall be in writing and addressed to the field office of the Board set forth in the initial decision letter or to the Debt Recovery Manager and shall be filed within 60 calendar days from the date on which notice of the overpayment decision was sent to the beneficiary. The beneficiary shall state in the request whether he or she elects to have a personal conference. If the beneficiary does not elect to have a personal conference with respect to his or her request for waiver of recovery or for reconsideration of the overpayment decision, he or she may, along with the request, submit any evidence and argument which he or she would like to present in support of his or her case.

(c) *Right to further review of an initial overpayment decision.* The right to further review of an initial overpayment decision shall be forfeited unless a written request for reconsideration is filed within the time period prescribed in § 260.3(b) of this part (60 days) or good cause, as defined in section 260.3(d) of this part, is shown by the beneficiary for failing to file a timely request for reconsideration. Nothing in this section shall be taken to mean that waiver of recovery will not be considered in these cases where the request for waiver is not filed within 60 days, but action to recover the erroneous payment will not be deferred if such a request is not filed within 60 days. Any amounts recovered prior to the date on which the request for waiver as permitted under the preceding sentence is filed shall not be waived under part 255 of this chapter.

(d) *Delay in commencement of recovery of erroneous payment.* Where a timely request for waiver or reconsideration is filed as provided in this section, the Board shall not commence recovery of the erroneous payment by suspension or reduction of a monthly benefit payable by the Board until a decision with respect to such request for waiver or reconsideration has been made and notice thereof mailed to the claimant.

(e) *Impartial review.* Upon receipt of a timely request for personal conference under this section, the Board shall promptly arrange for the selection of a Board employee to conduct a personal conference in the case. The employee designated to conduct the personal conference under this section shall not have had any prior involvement with the initial erroneous payment decision and shall conduct the personal conference in a fair and impartial manner. The employee designated to conduct the personal conference under this section shall promptly schedule a time and place for the personal conference and promptly notify the beneficiary of such. If the beneficiary agrees, the personal conference may be conducted by telephone.

(f) *Personal conference.* The beneficiary shall upon request have the opportunity to review, prior to the personal conference, his or her claim folder and all documents pertinent to the issues raised. A personal conference conducted under this section shall be informal. At the personal conference the beneficiary shall be afforded the following rights:

(1) To present his or her case orally and to submit evidence, whether through witnesses or documents;

(2) To cross-examine adverse witnesses who appear at the personal conference; and

(3) To be represented by counsel or other person.

(g) *Preparation of recommended decision.* Upon completion of the personal conference the employee who conducts the personal conference shall prepare a summary of the case including a statement of the facts, the employee's findings of fact and law, and a recommended decision.

(h) *Timely review.* The Board shall make every effort to render a decision with respect to the beneficiary's request for reconsideration of the initial erroneous payment determination and/or waiver of recovery and notify the beneficiary of that decision within 60 days of the date that the request for reconsideration and/or waiver is filed or the date that the summary of the case is received from the employee who conducts the personal conference, whichever is later.

(i) *Right to appeal adverse decision.* If the Board renders a decision adverse to the beneficiary, he or she may appeal the decision to the Bureau of Hearings and Appeals, as provided in § 260.5 of this part.

(j) * * *

8. The heading and § 260.5 are revised to read as follows:

§ 260.5 Appeal from a reconsideration decision.

(a) *General.* Every claimant shall have a right to appeal to the Bureau of Hearings and Appeals from any reconsideration decision with which he or she disagrees.

(b) *Appeal from a reconsideration decision.* Appeal from a reconsideration decision shall be made by filing the form prescribed by the Board for such purpose. Such appeal must be filed with the Bureau of Hearings and Appeals within 60 days from the date upon which notice of the reconsideration decision is mailed to the claimant. Any written request stating an intent to appeal which is received within the 60-day period will protect the claimant's right to appeal, provided that the claimant files the appeal form within the later of the 60-day period following the date of the reconsideration decision, or the 30-day period following the date of the letter sending the form to the claimant.

(c) *Right to review of a reconsideration decision.* The right to review of a reconsideration decision shall be forfeited unless an appeal is filed in the manner and within the time prescribed in this section.

However, when a claimant fails to file an appeal with the Bureau of Hearings and Appeals within the time prescribed in this section, the hearings officer may waive this requirement of timeliness. Such waiver shall only occur in cases where the claimant has made a showing of good cause for failure to file a timely appeal. Good cause for failure to file a timely appeal will be determined by a hearings officer in the manner prescribed in § 260.3(d) of this part.

(d) *Delay in the commencement of recovery of erroneous payment.* Where a timely appeal seeking waiver of recovery of an erroneous payment has been filed with the Bureau of Hearings and Appeals, the Board shall not commence recovery of the erroneous payment by suspension or reduction of a monthly benefit payable by the Board until a decision with respect to such appeal seeking waiver has been made and notice thereof has been mailed to the claimant.

(e) *Impartial review.* Within 30 days after the claimant has filed a proper appeal, the Director of Hearings and Appeals shall appoint a hearings officer to act on the appeal. The Director of Hearings andAppeals may, if the Bureau of Hearings and Appeals' caseload dictates, appoint a qualified Board employee, other than a hearings officer assigned to the Bureau of Hearings and Appeals, to act as a hearings officer with respect to a case. Such hearings officer

shall not have any interest in the parties or in the outcome of the proceedings, shall not have directly participated in the initial decision or the reconsideration decision from which the appeal is made, and shall not have any other interest in the matter which might prevent a fair and impartial decision.

(f) *Power of hearings officer to conduct hearings.* In the development of appeals, the hearings officer shall have the power to hold hearings, require and compel the attendance of witnesses by subpoena or otherwise in accordance with the procedures set forth in part 258 of this chapter, administer oaths, rule on motions, take testimony, and make all necessary investigations.

(g) *Evidence presented in support of appeal.* (1) The appellant, or his or her representative, shall be afforded full opportunity to present testimony, or written evidence or exhibits upon any controversial question of fact; to examine and cross-examine witnesses; and to present argument in support of the appeal.

(2) The formal rules of evidence shall not apply; however, the hearings officer may exclude evidence which he or she finds is irrelevant or repetitious. Any evidence excluded by the hearings officer shall be described and that description made part of the record.

(3) If, in the judgment of the hearings officer, evidence not offered by the appellant is available and is relevant and material to the merits of the claim, the hearings officer may obtain such evidence upon his or her own initiative. If new evidence is obtained after an oral hearing, other than evidence submitted by the appellant or his or her representative, the hearings officer shall provide the appellant or his or her representative with a copy of such evidence. In such event, the appellant shall have 30 days to submit rebuttal evidence or argument or to request a supplemental hearing to confront and challenge such new evidence. The appellant may move for an extension of time to submit rebuttal evidence or argument and the hearings officer may grant the motion upon a showing of good cause.

(h) *Submission of written argument in lieu of oral hearings.* Where the hearings officer finds that no factual issues are presented by an appeal, and the only issues raised by the appellant are issues concerning the application or interpretation of law, the appellant or his or her representative shall be afforded full opportunity to submit written argument in support of the claim but no oral hearing shall be held.

(i) *Conduct of oral hearing.* (1) In any case in which an oral hearing is to be held, the hearings officer shall schedule a time and place for the conduct of the hearing. The hearing shall not be open to the public. The hearings officer shall promptly notify by mail the party or parties to the proceeding as to the time and place for the hearing. The notice shall include a statement of the specific issues involved in the case. The hearings officer shall make every effort to hold the hearing within 150 days after the date the appeal is filed.

(2) If the appellant objects to the time or place of the hearing, he or she must notify the hearings officer no later than 5 calendar days before the time set for the hearing. The appellant must state the reason for his or her objection. If at all possible, the request should be in writing. The hearings officer will change the time or place of the hearing if he or she finds there is good cause to do so.

(3) The hearings officer shall rule on any objection timely filed by a party under paragraph (i) of this section and shall notify the party of his or her ruling thereon. The hearings officer may for good cause shown, or upon his or her own motion, reschedule the time and/or place of the hearing. The hearings officer also may limit or expand the issues to be resolved at the hearing.

(4) If neither a party nor his or her representative appears at the time and place scheduled for the hearing, that party shall be deemed to have waived his or her right to an oral hearing unless said party either filed with the hearings officer a notice of objection showing good cause why the hearing should have been rescheduled, which notice was timely filed but not ruled upon, or, within 10 days following the date on which the hearing was scheduled, said party files with the hearings officer a motion to reschedule the hearing showing good cause why neither the party nor his or her representative appeared at the hearing and further showing good cause as to why said party failed to file at the prescribed time any notice of objection to the time and place of the hearing.

(5) If the hearings officer finds either that a notice of objection was timely filed showing good cause to reschedule the hearing, or that the party has within 10 days following the date of the hearing filed a motion showing good cause for failure to appear and to file a notice of objection, the hearings officer shall reschedule the hearing. If the hearings officer finds that the hearing shall not be rescheduled, he or she shall so notify the party in writing.

(j) *Record of evidence considered.* The hearings officer will make a record of the material evidence. The record will include the applications, written statements, reports, and other documents that were used in making the determination under review and any other additional evidence the appellant or any other party to the hearing presents in writing. If a hearing was held in the appeal, the tape recording of the hearing will be part of the record while the appeal is pending. The hearings officer's decision will be based on the record. The entire record at any time during the pendency of the appeal shall be available for examination by the appellant or by his or her duly authorized representative.

(k) *Extension of time to submit evidence.* Except where the hearings officer has determined that additional evidence not offered by the appellant at or prior to the hearing is available, the record shall be closed as of the conclusion of the hearing. The appellant may request an extension of time to submit evidence and the hearings officer will grant the request upon a showing of good cause for failure to have submitted the evidence earlier. The extension shall be for a period not exceeding 30 days.

(l) *Hearing by telephone.* At the discretion of the hearings officer, any hearing required under this part may be conducted by telephone conference. (The information collection requirements contained in paragraph (b) were approved by the Office of Management and Budget under control number 3220-0007)

§ 260.8 [Amended]

9. In § 260.8, remove the word ''bureau'' wherever it appears and add in its place the word ''office''.

10. Section 260.9 is amended by redesignating paragraphs (d) through (g) as paragraphs (e) through (h), by revising paragraph (b), adding a new paragraph (d), and by revising redesignated paragraph (e) and redesignated paragraph (f) to read as follows:

§ 260.9 Final appeal from a decision of the hearings officer.

* * * * *

(b) *Appeal from decision of hearings officer.* Final appeal from a decision of a hearings officer shall be made by the execution and filing of the final appeal form prescribed by the Board. Such appeal must be filed with the Board within 60 days from the date upon which notice of the decision of the hearings officer is mailed to the appellant at the last address furnished by him or her. Any written request stating an intent to appeal which is received within the 60-day period will protect the claimant's right to appeal,

Provided that the claimant files the appeal form within the later of the 60-day period following the date of the reconsideration decision, or the 30-day period following the date of the letter sending the form to the claimant.

(c) * * *

(d) *Delay in the commencement of recovery of erroneous payment.* Where a timely appeal seeking waiver of recovery of an erroneous payment has been filed with the three-member Board, the Board shall not commence recovery of the erroneous payment by suspension or reduction of a monthly benefit payable by the Board until a decision with respect to such appeal seeking waiver has been made and notice thereof has been mailed to the claimant.

(e) *Submission of additional evidence.* Upon final appeal to the Board, the appellant shall not have the right to submit additional evidence. However, the Board may grant a request to submit new evidence where new and material evidence is available that, despite due diligence, was not available before the decision of the hearings officer was issued.

The Board may also obtain new evidence on its own motion. Upon admission of new evidence, the Board, at its discretion, may:

(1) Vacate the decision of the hearings officer and remand the case to the Bureau of Hearings and Appeals for issuance of a new decision. The decision of the hearings officer on remand may be appealed to the Board in the manner described in paragraph (b) of this section; or

(2) Return the case to the hearings officer for further consideration with direction to submit a recommended decision to the Board.

(f) *Decision of the Board.* The decision of the Board shall be made upon the record of evidence developed by the hearings officer and any additional evidence admitted pursuant to paragraph (e) of this section. The appellant may submit additional argument in writing with the appeal to the Board. The appellant shall have no right to an oral presentation before the Board except where the Board so permits. Such presentation shall be limited in form, subject matter, length, and time as the Board may indicate to the appellant.

* * * * *

11. The heading, and § 260.10 are revised to read as follows:

§ 260.10 Determination of date of filing.

(a) *General rule.* Except as otherwise provided in paragraph (b) of this section, for purposes of this part, a document or form is filed on the day it is received by an office of the Board or by an employee of the Board who is authorized to receive it at a place other than one of the Board's offices.

(b) *Other dates of filing.* The Board will also accept as the date of filing the date a document or form is mailed to the Board by the United States mail, if using the date the Board receives it would result in the loss or lessening of rights. The date shown by a U.S. postmark will be used as the date of mailing. If the postmark is unreadable, or there is no postmark, the Board will consider other evidence of when the document or form was mailed to the Board.

PART 320—INITIAL DETERMINATIONS UNDER THE RAILROAD UNEMPLOYMENT INSURANCE ACT AND REVIEWS OF AND APPEALS FROM SUCH DETERMINATIONS

12. The authority citation for part 320 continues to read as follows:

Authority: 45 U.S.C. 355 and 362(1).

§ 320.5 Initial determinations.

13. In § 320.5, following the words ''Director of'', remove the words ''Unemployment and Sickness Insurance'' and add in their place the words ''Policy and Systems''.

14. In § 320.6, the introductory paragraph of § 320.6(b) is revised, a new paragraph (b)(8) is added, paragraphs (d) and (e) are revised, and a new paragraph (f) is added to read as follows:

§ 320.6 Adjudicating office.

* * * * *

(b) *Field offices.* Field offices are authorized to make initial determinations on the following issues relating to eligibility for unemployment or sickness benefits, as the case may be:

* * * * *

(8) Whether a claimant's earnings attributable to days in a period for which he or she has registered for unemployment benefits exceed the amount of the applicable monthly compensation base.

* * * * *

(d) *Director of Operations.* The Director of Operations is authorized to make determinations on all issues of eligibility for unemployment and sickness benefits as set forth in paragraphs (b) and (c) of this section, and on any other issue not reserved to the Director of Policy and Systems by paragraph (e) of this section.

(e) *Director of Policy and Systems.* The Director of Policy and Systems shall adjudicate:

(1) The applicability of the disqualification in section 4(a–2)(iii) of the Railroad Unemployment Insurance Act if the claimant's unemployment results from a strike against a railroad employer by which he or she is employed; and

(2) Whether a plan submitted by an employer or other person or company qualifies as a nongovernmental plan for unemployment or sickness insurance, within the meaning of part 323 of this chapter.

(f) *Debt Recovery Manager.* The Debt Recovery Manager shall adjudicate:

(1) All requests for waiver of recovery of an erroneous payment made under the Railroad Unemployment Insurance Act; and

(2) Offers of compromise of debts arising out of the benefit provisions of the Railroad Unemployment Insurance Act.

15. In § 320.10, paragraph (e) is revised to read as follows:

§ 320.10 Reconsideration of initial determination.

* * * * *

(e) *Timely request for reconsideration.* In determining whether either the claimant or the base-year employer(s) has good cause for failure to file a timely request for reconsideration, the adjudicating office shall consider the circumstances which kept either the claimant or the base-year employer(s) from filing the request on time and whether any action by the Board misled either of them. Examples of circumstances where good cause may exist include, but are not limited to:

(1) A serious illness which prevented the claimant from contacting the Board in person, in writing, or through a friend, relative or other person;

(2) A death or serious illness in the claimant's immediate family which prevented him or her from filing.

(3) The destruction of important and relevant records;

(4) A failure to be notified of a decision;

(5) The existence of an unusual or unavoidable circumstance which demonstrates that either the claimant or the base-year employer(s) would not have known of the need to file timely or which prevented either of them from filing in a timely manner; or

(6) The claimant thought that his or her representative had requested reconsideration.

16. In § 320.11, paragraphs (a) and (f) are revised to read as follows, and in paragraphs (d), (e), and (g), remove the words ''Director of Unemployment and Sickness Insurance'', and add in their place the words ''Debt Recovery Manager''; also, in paragraphs (d) and (g), remove the word ''Director'' and add

in its place the word ''Manager'' wherever it appears.

§ 320.11 Request for waiver of recovery.

(a) *Time limitation.* The claimant shall have 60 days from the date of the notification of the erroneous payment determination in which to file a request for waiver, except that where an erroneous payment is not subject to waiver in accordance with § 340.10(e) of this chapter, waiver may not be requested and recovery will not be stayed. Such requests shall be made in writing and be filed by mail or in person at any Board office. The claimant shall, along with the request, submit any evidence and argument which he or she would like to present in support of his or her case. A request solely for reconsideration of an overpayment shall not be considered a request for waiver under this section but shall be treated as a request for reconsideration under § 320.10 of this part.

* * * * *

(f) *Requests made after 60 days.* Nothing in this section shall be taken to mean that waiver of recovery will not be considered in those cases where the request for waiver is not filed within 60 days, but action to recover the erroneous payment will not be deferred if such request is not filed within 60 days, and any amount of the erroneous payment recovered prior to the date on which the request is filed shall not be subject to waiver under part 340 of this chapter. Further, it shall not be considered that a claimant prejudices his or her request for waiver by tendering all or a portion of an erroneous payment or by selecting a particular method of repaying the debt. However, no waiver consideration shall be given to a debt which is settled by compromise.

* * * * *

17. Section 320.12 is revised to read as follows:

§ 320.12 Appeal to the Bureau of Hearings and Appeals.

(a) Any party aggrieved by a decision under § 320.10 of this part or a claimant aggrieved by a decision under § 320.11 of this part may appeal such decision to the Bureau of Hearings and Appeals. Such an appeal shall be made by filing the form prescribed by the Board for such purpose. The appeal must be filed with the Bureau of Hearings and Appeals within 60 days from the date upon which notice of the decision on reconsideration or waiver of recovery was mailed to either a claimant or the base year employer(s). Any written request stating an intent to appeal which is received within the 60-day period will protect the claimant's or base-year employer's right to appeal, *Provided that* the claimant or base-year employer files the appeal form within the later of the 60-day period from the date of the reconsideration decision, or the 30-day period following the date of the Board's letter sending the appeal form to the claimant or base-year employer.

(b) If no appeal is filed within the time limits specified in paragraph (a) of this section, the decision of the adjudicating office under §§ 320.10 or 320.11 of this part shall be considered final and no further review of such decision shall be available unless the hearings officer finds that there was good cause for the failure to file a timely appeal as described in § 320.10 of this part.

(c) Where a timely appeal seeking waiver of recovery of an erroneous payment has been filed with the Bureau of Hearings and Appeals, the Board shall not commence recovery of the erroneous payment by suspension or reduction of a monthly benefit payable by the Board until a decision with respect to such appeal seeking waiver has been made and notice thereof has been mailed to the claimant.

18. In § 320.25, paragraphs (a), (b), and (d) are revised to read as follows:

§ 320.25 Hearing of appeal.

(a) *Manner of conducting hearing.* The hearing shall be informal, fair, and impartial, and shall be conducted in such manner as to ascertain the substantial rights of the parties. The hearing shall not be open to the public.

(b) *Evidence presented in support of appeal.* (1) Any party, or his or her representative, shall be afforded full opportunity to present evidence upon any controversial question of fact, orally or in writing or by means of exhibits; to examine and cross-examine witnesses; and to present argument in support of the appeal.

(2) The formal rules of evidence shall not apply; however, the hearings officer may exclude evidence which he or she finds is irrelevant or repetitious. Any evidence excluded by the hearings officer shall be described and that description made part of the record.

(3) If, in the judgment of the hearings officer, evidence not offered is available and is relevant and material to the merits of the claim, the hearings officer may obtain such evidence upon his or her own initiative. If new evidence is obtained after an oral hearing, other than evidence submitted by a party or his representative, the hearings officer shall provide the parties or their representatives with a copy of such evidence. In such event, any party shall have 30 days to submit rebuttal evidence or argument or to request a supplemental hearing to confront and challenge such new evidence. Any party may move for an extension of time to submit rebuttal evidence or argument and the hearings officer may grant the motion upon a showing of good cause.

(c) * * *

(d) *Hearing by telephone.* At the discretion of the hearings officer, any hearing required under this part may be conducted by telephone conference.

19. Section 320.28 is revised to read as follows:

§ 320.28 Record of evidence considered.

The hearings officer will make a record of the material evidence. The record will include the applications, written statements, reports, and other documents that were used in making the determination under review and any other additional evidence the appellant or any other party to the hearing presents in writing. If a hearing was held in the appeal, the tape recording of the hearing will be part of the record while the appeal is pending. The hearings officer's decision will be based on the record. The entire record at any time during the pendency of the appeal shall be available for examination by any party or by his or her duly authorized representative.

20. Section 320.39 is revised to read as follows:

§ 320.39 Execution and filing of appeal to Board from decision of hearings officer.

(a) An appeal to the Board from the decision of a hearings officer shall be filed on the form provided by the Board and shall be executed in accordance with the instructions on the form. Such appeal shall be filed within 60 days from the date upon which notice of the decision of the hearings officer was mailed to the parties. The right to further review of a decision of a hearings officer shall be forfeited unless formal final appeal is filed in the manner and within the time prescribed in this section. Any written request stating an intent to appeal which is received within the 60-day period will protect the claimant's right to appeal, *Provided that* the claimant files the appeal form within the later of the 60-day period following the date of the reconsideration decision, or the 30-day period following the date of the letter sending the appeal form to the claimant. However, when a party fails to file an appeal before the Board within the time prescribed in this section, the Board may waive this requirement if along with the final appeal, the party in writing requests an extension of time.

The request for an extension of time must give the reasons why the final appeal form was not filed within the time limit prescribed in this section. If in the judgment of the Board the reasons given establish that the party has good cause for not filing the final appeal form within the time limit prescribed, the Board will consider the appeal to have been filed in a timely manner. The Board will use the standards found in § 320.10(e) of this part in determining if good cause exists.

(b) Where a timely appeal seeking waiver of recovery of an erroneous payment has been filed with the three-member Board, the Board shall not commence recovery of the erroneous payment by suspension or reduction of a monthly benefit payable by the Board until a decision with respect to such appeal seeking waiver has been made and notice thereof has been mailed to the claimant.

21. The heading of § 320.40 is revised, and a new paragraph(d) is added to read as follows:

§ 320.40 Procedure before the Board on appeal from a decision of a hearings officer.

* * * * *

(d) Any party may submit additional argument in writing with the appeal to the Board. No party shall have the right to an oral presentation before the Board except where the Board so permits. Such presentation may be limited in form, subject matter, length, and time as the Board may indicate to the parties.

22. Section 320.49 is revised to read as follows:

§ 320.49 Determination of date of filing.

(a) *General rule.* Except as otherwise provided in paragraph (b) of this section, for purposes of this part, a document or form is filed on the day it is received by an office of the Board or by an employee of the Board who is authorized to receive it at a place other than one of the Board's offices.

(b) *Other dates of filing.* The Board will also accept as the date of filing the date a document or form is mailed to the Board by the United States mail, if using the date the Board receives it would result in the loss or lessening of rights. The date shown by a U.S. postmark will be used as the date of mailing. If the postmark is unreadable, or there is no postmark, the Board will consider other evidence of when the document or form was mailed to the Board.

(c) *Use of electronic mail.* By agreement between a base-year employer and the Board, any document required to be filed with the Board or any notice required to be sent to the employer may be transmitted by electronic mail.

Dated: December 11, 2002.

By Authority of the Board,

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 02–31640 Filed 12–16–02; 8:45 am]

BILLING CODE 7905–01–P

DEPARTMENT OF STATE

22 CFR Part 40

[Public Notice 4218]

Visas: Uncertified Foreign Health-Care Workers

AGENCY: Department of State.

ACTION: Interim rule with request for comments.

SUMMARY: This rule changes the requirements pertaining to the issuance of visas to certain foreign health care workers. It provides that an alien who seek to enter the United States to perform health-care services (other than a physician) is excludable unless the alien presents a certificate establishing the alien's competency in a specific health care field issued by the Commission on Graduates of Foreign Nursing Schools (CGFNS) or another credentialing organization approved by the Attorney General through the Immigration and Naturalization Service (INS). The promulgation of this rule is necessary in order to comply with U.S. laws regarding the inadmissibility of aliens into the United States. The rule will result in the imposition of a requirement for certain visa applicants seeking to enter the United States as health care workers to obtain documentation of their professional credentials and qualifications from approved private credentialing agencies and provide that documentation to a consular officer in order to qualify for visa issuance.

DATES: Effective date: This interim rule is effective on December 17, 2002.

Comment date: The Department will consider comments submitted on or before February 18, 2003.

ADDRESSES: Please submit comments in duplicate to Chief, Legislation and Regulations Division, Visa Services, Department of State, 20520–0106, by e-mail to *VisaRegs@state.gov,* or by fax at 202–663–3898.

FOR FURTHER INFORMATION CONTACT: Penafrancia D. Salas, Legislation and Regulations Division, Visa Services, Department of State, Washington, DC 20520–0106, 202–663–2878.

SUPPLEMENTARY INFORMATION:

What Is the Authority for This Rule?

Section 343 of the Illegal Immigration Reform and Immigrant Responsibility Ac (IIRIRA), Pub. L. 104–208, 110 Stat. 3009, 636–37 (1996), created a new ground of inadmissibility and visa ineligibility now codified as section 212(a)(5)(C) of the Immigration and Nationality Act (INA), 8 U.S.C. 1182(a)(5)(C). It provides that, subject to section 212(r) of the INA, an alien who seeks to enter the United States for the purpose of performing labor as a health care worker, other than as a physician, is excludable (inadmissible) unless the alien presents to the consular officer a certificate from the CGFNS or a certificate from an equivalent independent credentialing organization approved by the Attorney General in consultation with the Secretary of Health and Human Services (HHS) verifying that:

(a) The alien's education, training, license, and experience meet all applicable statutory and regulatory requirements for admission to the United States under the classification specified in the application; are comparable with that required for an American health care worker of the same type; are authentic; and, in the case of a license, unencumbered; and

(b) The alien has the level of competence in oral and written English considered by the Secretary of HHS in consultation with the Secretary of Education, to be appropriate for the health care work of the kind in which the alien will be engaged; as shown by an appropriate score on one or more nationally recognized, commercially available, standardized assessments of the applicant's ability to speak and write; and

(c) If a majority of States licensing the profession in which the alien intends to work recognize a test predicting the success on the profession's licensing or certification examination, that the alien has passed such an examination.

INA section 212(r) mandates separate certification procedures for certain aliens seeking to enter the United States to perform nursing services. In general, such procedures apply to those aliens who already possess a valid State license and who received their nursing training in a country where the quality of education and the English proficiency of nursing graduates have been recognized by the CGFNS as meeting its standards.

How Is the Department Amending Its Regulations?

The Department is adding a new section to its regulations at 22 CFR 40.53 that instructs a consular officer to obtain the appropriate statutorily required certification of competency from an alien seeking to enter the United States to perform services in certain health care occupations, prior to issuing an immigrant or a nonimmigrant visa to the alien.

Does the Department Intend To Continue To Exercise Its Discretion Under Section 212(d)(3)(A) of the INA to Temporarily Waive This Inadmissibility for Nonimmigrant Aliens Seeking To Enter the United States as Health Care Workers Where There May Be Conflict With the North American Free Trade Agreement (NAFTA)?

The Department and INS have exercised their joint discretion under section 212(d)(3)(A) to waive the certification requirement for nonimmigrants due to a possible conflicting obligation of the United States under NAFTA. The Department will continue to use its discretion to temporarily waive this inadmissibility for nonimmigrant health care workers until concerned Executive branch agencies resolve the apparent conflict.

Regulatory Analysis and Notices

Administrative Procedure Act

The Department's implementation of this regulation as an interim rule is based upon the ''good cause'' exceptions set forth at 5 U.S.C. 553(b)(3)(B) and 553(d)(3). The amendment to the regulation simply implements a legislative mandate without interpretation and codifies current practices. Therefore, the Department has determined that it is appropriate to publish this rule as an interim rule. Nevertheless, the Department will solicit comments from the public.

The Regulatory Flexibility Act

The Department of State, pursuant with the Regulatory Flexibility Act (5 U.S.C. 605(b), has assessed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

Although this rule is being promulgated in conjunction with the Immigration and Naturalization Service, a domestic agency, the Department of State does not consider this rule to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. The Department has reviewed the regulation to ensure its consistency with the regulatory philosophy and principles set forth in that Executive Order.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Paperwork Reduction Act

This rule does not impose any new reporting or record-keeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. chapter 35.

List of Subjects in 22 CFR Part 40

Aliens, Nonimmigrants, Immigrants, Documentation, Passports and visas.

For the reasons set forth in the preamble, the Department is amending the regulations at 22 CFR part 40 to read as follows:

PART 40—[AMENDED]

1. The authority citation for part 40 shall continue to read:

Authority: 8 U.S.C. 1104.

2. Section 40.53 is added to read as follows:

§ 40.53 Uncertified Foreign Health-Care Workers.

(a) Subject to paragraph (b) of this section, a consular officer must not issue a visa to any alien seeking admission to the United States for the purpose of performing services in a health care occupation, other than as a physician, unless, in addition to meeting all other requirements of law and regulation, the alien provides to the officer a certification issued by the Commission On Graduates of Foreign Nursing Schools (CGFNS) or another credentialing service that has been approved by the Attorney General for such purpose, which certificate complies with the provisions of sections 212(a)(5)(C) and 212(r) of the Act, 8 U.S.C. 1182(a)(5)(C) and 8 U.S.C. 1182(r), respectively, and the regulations found at 8 CFR 212.15.

(b) Paragraph (a) of this section does not apply to an alien:

1. Seeking to enter the United States in order to perform services in a non-clinical health care occupation as described in 8 CFR 212.15(b)(1); or

2. Who is the immigrant or nonimmigrant spouse or child of a foreign health care worker and who is seeking to accompany or follow to join as a derivative applicant the principal alien to whom this section applies; or

3. Who is applying for an immigrant or a nonimmigrant visa for any purpose other than for the purpose of seeking entry into the United States in order to perform health care services as described in 8 CFR 212.15.

Dated: November 29, 2002.

George C. Lannon,

Acting Assistant Secretary for Consular Affairs, Department of State.

[FR Doc. 02–31603 Filed 12–16–02; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

22 CFR Part 41

[Public Notice 4217]

Exchange Visitor Program; Correction

AGENCY: Department of State.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to a regulation published in the **Federal Register** by the United States Information Agency (USIA) on May 28, 1997 [62 FR 28801]. The regulation relates to requests for a

waiver of the two-year home-country physical presence requirement for exchange visitors who are foreign medical graduates.

EFFECTIVE DATE: December 17, 2002.

FOR FURTHER INFORMATION CONTACT: Pam Chavez, Legislation and Regulations Division, Visa Services, Department of State, Washington, DC 20522–0113.

SUPPLEMENTARY INFORMATION: Regulatory Findings

Background

On May 28, 1997, the USIA (which has now been incorporated by the Department of States) published an amendment to their regulations regarding requests for waivers of the two-year home-country physical presence requirement by interested U.S. Government agencies on behalf of exchange visitors who are foreign medical graduates. The rule amended 514.44 of 22 CFR (now 41.63). Paragraph (c)(4)(iii), as amended, contained an error in the U.S. Code citation.

Correction

The regulation at 41.63(c)(4)(iii) contains a statement to be signed and dated by foreign medical graduate exchange visitors. The statement indicates that the medical graduate will incur penalties, as provided for under the provisions of ''18 U.S.C. 1101,'' for making false or misleading statements. The U.S.C. cite was incorrect, and should have been ''18 U.S.C. 1001''. This rule amends the U.S.C. citation.

List of Subjects in 22 CFR Part 41

Nonimmigrants, Visas and passports.

Accordingly, for the reasons set forth in the preamble, 22 CFR 41 is corrected as follows:

PART 41—VISAS: DOCUMENTATION OF NONIMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED

1. The authority citation for part 41 continues to read as follows:

Authority: 8 U.S.C. 1104, 1181, 1201, 1202; Pub. L. 105–277, 112, Stat. 2681 *et seq.*

§ 41.63 Two-year home-country physical presence requirement.

2. In § 41.63 (c)(4)(iii) change the U.S.C. cite to read ''18 U.S.C. 1001.''

Dated: December 12, 2002.

Maura Harty,

Assistant Secretary for Consular Affairs, Department of State.

[FR Doc. 02–31484 Filed 12–16–02; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

22 CFR Part 42

[Public Notice 4219]

Documentation of Immigrants—Visa Registration

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This rule amends the Department's regulation that defines ''registration'' in connection with an application for an immigrant visa. This change is necessary because the current definition, as written, may be interpreted as being inconsistent with other sections of thisPart concerning the Secretary of State's authority to cancel the registration of an alien who fails to apply for an immigrant visa within a specific one-year time period. When this rule becomes effective the ''registration'' of an immigrant visa applicant will be defined to mean the filing of an immigrant visa form (DS–230), when duly executed, or the transmission by the Department to the alien of a notification of the availability of an immigrant visa, whichever occurs first.

EFFECTIVE DATE: December 17, 2002.

FOR FURTHER INFORMATION CONTACT: Pamela R. Chavez, Legislation andRegulations Division, 202–663–1206.

SUPPLEMENTARY INFORMATION:

What Statutes Require Registration and Termination of Registration?

The registration of every immigrant alien in connection with the alien's visa application is required under Section 221(b) of the Immigration and Nationality Act (INA).Section 203(g) of the INA requires that the Secretary of State terminate an alien's registration if he or she fails to apply for an immigrant visa within one year following notification that a visa is available.

What Procedures Have Been Used To Register An Alien and To Terminate an Alien's Registration?

In order to make its procedures conform to changes in the Immigration Act of 1990 (Pub. L. 101–649), the Department published several amendments to its regulations on October 1, 1991.(*See* 56 FR 49678). The amendments revised, among other things, the regulation to allow a consular officer to begin termination of an alien's registration for an immigrant visa if the alien failed to apply within one year from the date of transmission of the consular officer's notification to the alien that a visa was available (*see* 22 CFR 42.83). In making this revision, however, the Department did not also amend its corresponding definition of ''registration.'' Therefore, the Department is publishing this rule to correct this oversight. TheDepartment has been applying this definition in its daily practice since 1991.

Regulatory Analysis and Findings

Administrative Procedure Act

The Department's implementation of this regulation as a final rule is based upon the ''good cause'' exceptions found at 5 U.S.C. 553(b)(3)(B) and (d)(3). The amendments reflect a change in the Department's procedures rather than a change in policy.

Regulatory Flexibility Act

The Department of State, in accordance with the Regulatory Flexibility Act(5 U.S.C.605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the SmallBusiness RegulatoryEnforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

The Department of State does not consider this rule to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review.Therefore, in accordance with the letter to the Department of State of February 4, 1994 from the Director of the Office of Management and Budget, it does not require review by the Office of Management and Budget.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement.

Paperwork Reduction Act

This rule does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Part 42

Aliens, Immigrants, Passports and visas.

Accordingly, for the reasons set forth in the preamble part 42 is amended as follows:

PART 42—[AMENDED]

1. The authority citation for part 42 continues to read as follows:

Authority: 8 U.S.C. 1104.

2. Revise paragraph (b) of § 42.67 to read as follows:

§ 42.67 Execution of application, registration, and fingerprinting.

* * * * *

(b) *Registration.* The alien shall be considered to be registered for the purposes of INA 221(b) and 203(g) upon the filing of Form DS–230, when duly executed, or the transmission by the Department to the alien of a notification of the availability of an immigrant visa, whichever occurs first.

* * * * *

Dated: December 2, 2002.

Maura Harty,

Assistant Secretary for Consular Affairs, Department of State.

[FR Doc. 02–31686 Filed 12–16–02; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 540

[BOP–1009–F]

RIN 1120–AA15

Incoming Publications: Softcover Materials

AGENCY: Bureau of Prisons, DOJ.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons (Bureau) revises its regulations on incoming publications. The amendment provides that inmates in medium security, high security, and administrative institutions may receive softcover materials only from a publisher, book club, or bookstore. This amendment is necessary to reduce the amount of contraband introduced into Federal prisons through materials sent by mail. The presence of contraband in the prisons, including drugs, weapons, and escape-related materials pose grave dangers to staff, inmates and the public. We considered alternate solutions to the problem of intercepting contraband, such as the use of technological security devices or increased staffing, but determined that these options wereimpracticable. This rule change also allows the Unit Manager to make an exception to this requirement and to the existing similar requirement for hardcover publications and newspapers. We intend this rule change to strengthen security procedures designed to prevent introduction to contraband into Bureau institutions.

EFFECTIVE DATE: January 16, 2003.

ADDRESSES: Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307–2105.

SUPPLEMENTARY INFORMATION: The Bureau amends its regulations on incoming publications (28 CFR part 540, subpart F). Regulations in 28 CFR 540.71 had allowed an inmate to receive paperback books and magazines from any source. A proposed rule was published in the **Federal Register** on January 18, 1994 (59 FR 2668). The proposed rule required that, in medium security, high security, and administrative institutions, only softcover publications from the publisher, book club, or book store would be permitted. Existing regulations already required this restriction on hardcover books and newspapers.

The proposed rule also provided for exceptions when a publication was no longer available from the publisher, book club, or bookstore. In such cases, the Unit Manager may require that the inmate provide written documentation that the publication is no longer available from these sources.

The proposed amendment was intended to simplify, and consequently strengthen, Bureau procedures designed to prevent the introduction of contraband into Bureau institutions. Bureau regulations on inmate legal activities (28 CFR part 543, subpart B) which restated in § 543.11(d) the policy on receipt of incoming publications were also proposed to be revised in a conforming amendment.

The public comment period on the Bureau's proposed rule closed on March 21, 1994. Comments were received from approximately 187 commenters (approximately 176 submitting a form letter response). A summary of the issues raised by these comments and agency response follow.

The form letter stated that the proposed regulation discriminated against all prisoners, indigent prisoners, religious organizations and groups, legal organizations and groups, news organizations and groups, small and independent businesses and employees, and free enterprise. The form letter also claimed that the proposed regulation cut prisoners off from their local, national, and international community contact and ties; impaired First Amendment rights to religious freedom; impaired a right to read, learn, and mentally, emotionally and spiritually grow and progress; and inflicted severe economic additional hardships on the families and friends of inmates, and on the general national and international communities. Finally, the form letter claimed the proposed regulations were in violation of the Constitution (in particular, the First Amendment), and were in violation of the Geneva Convention, international treaties and agreements, and the Universal Declaration of Human Rights. No specifics were provided regarding the latter alleged violations.

As an initial response, the Bureau notes that the rule applies to inmates in medium security, high security, and administrative facilities only. As of September, 2002, approximately 51% of federal inmates were housed in minimum and low security institutions, and would therefore be unaffected by this amendment. Based upon a general reevaluation of security needs at all facilities, the Bureau is considering extending the restriction to minimum and low security level institutions. That amendment will be addressed in a new proposed rule.

In any case, the revised regulations do not stop inmates from maintaining local, national, and international community contact and ties. Rather, the regulations address how the contact may be maintained through the media of softcover materials. Further specific response is provided below in conjunction with responses to other individual commenters (including those

few form letters which contained additional comments).

Some commenters stated that this rule would discriminate against the indigent and create severe economic hardships, not only on indigent inmates, but also on their families, who would not be able to send material which the family had acquired initially for their own use.

The Bureau believes that this concern ignores other resources available to inmates and other avenues of recirculating softcover materials. For example, inmates retain access to a variety of reading materials in the institution's library. Inmates and their families can mitigate the presumed severe economic impact: Books sent to the inmate by family from a publisher, bookstore, or book club could be mailed by the inmate back to family or friends after the inmate has finished with the book. General limitations on inmate personal property preclude an inmate from amassing a large library of reading materials. Ordinarily the inmate would need to dispose of excess personal material such as books. Mailing the books back to family or friends accomplishes both purposes.

Even so, we believe that the Bureau's need to maintain a secure facility free from contraband outweighs any presumed economic hardship or inconvenience experienced by families or by inmates with relation to the minimal cost of mailing materials to family. The Bureau is mandated, in 18 U.S.C. 4042(a)(3), to provide for the protection and discipline of those in our custody. This statutory mandate compels us to limit the introduction of contraband, which may endanger the health, safety, and security of inmates and Bureau employees, despite minimal costs or inconveniences to the inmate, family or friends.

One commenter expressed concern that, because of specific assessments and/or fines, many inmates would not be able to afford magazine subscriptions or would have to make choices in the expenditure of their available funds.

If this is meant to imply that the inmate's only recourse is to solicit magazines from family and friends, the Bureau's response is that the revised regulations do not preclude family and friends from responding to such requests by initiating subscriptions under the inmate's name. With respect to the inmate's having to make choices on the expenditure of his or her funds, the Bureau notes that such decisions are not unique to inmates, but are an ordinary practice for all responsible persons.

With respect to the general comment that the proposed rule was unconstitutional (based on perceived violations of various amendments), the Bureau disagrees, noting that the revised regulations are a rational means of achieving a legitimate correctional management goal (namely, to preserve internal order and discipline and to maintain institutional security) and that the inmate has other means to obtain similar information.

More specifically, one commenter argued that the proposed rule violates the First Amendment rights of non-prisoners to mail what they choose. We believe that security considerations support the proposed restrictions on what inmates may receive in medium security, high security, and administrative facilities. As noted above, the Bureau believes that security needs at minimum and low security institutions may warrant similar restrictions, and that will be the subject of a separate proposed rulemaking.

The same commenter felt that the proposal is unconstitutionally over-inclusive. The restrictions that the proposed amendment creates, however, are not ''unnecessarily broad.'' The amendment does not totally ban incoming softcover materials; it merely restricts the sources that these materials may come from, in the same manner as is done for hardcover materials and newspapers.

With respect to commenters who suggested that the proposed rule impermissibly violated the First Amendment right to religious freedom or discriminated against religious organizations and groups, the Bureau disagrees. The rule is content neutral. Inmates are still entitled to the same publications as before the proposed rule; we only change the means of obtaining these publications.

One commenter suggested that the proposed rule violates the Constitution on equal protection grounds. The commenter felt the ''the proposed rule is discriminatory by denying equal opportunity'' to those low and minimum security inmates who are incarcerated in administrative facilities. The Bureau believes that the nature of administrative facilities requires procedural regulation based on the highest common denominator of inmates at the facility. The dedication of monetary and staff resources to allow for differentiation between security levels of inmates at any one administrative institution would be impracticable. Placement in an administrative facility is ordinarily a temporary assignment.

Other commenters further alleged that the rule is unconstitutional on the grounds of Fifth Amendment due process. However, the amendment poses neither a procedural nor a substantive due process violation. The rulemaking's comment period provided the public, including inmates, with an opportunity to voice their comments and concerns about the proposed rule. The inmate retains further due process protection through use of the administrative remedy program (28 CFR part 542).

Commenters argued that the proposed rule will deny them ''the right to read, learn and mentally, spiritually, and emotionally grow and progress.'' The Bureau disagrees. Inmates still retain the opportunity to obtain the material; the means of access have been limited for security reasons.

As stated above, the goal of the Bureau is to maintain security within the facilities free from contraband. Under the new rule, inmates are still permitted to read the same types of publications that they have been allowed to read before the proposed rule. Additionally, inmates can always ''read, learn and mentally, spiritually and emotionally grow and progress'' in the facility's library, which serves as an additional resource. Inmates are also provided with educational programs within the facility.

Several commenters questioned the Bureau's motives for issuing the amendment. In particular, a commenter suggested that the Bureau may be attempting to control ''the free flow of ideas through prison walls.'' Another commenter felt that ''the rule is aimed more at controlling the political content of the information that inmates receive rather than controlling the introduction of contraband.'' The Bureau emphasizes that this regulation operates in a content-neutral fashion and is not part of any attempt to control the content of the materials coming into Bureau correctional facilities.

A third commenter suggested that the rule is partly motivated by the book publishers ''pushing for the sale of a new book rather than have a used one passed on to prisoners'' from outside sources. The Bureau's action is based on security concerns and has not been spurred by the interests of book publishers.

Some commenters argued that the proposed rule was overly restrictive. One commenter claimed the motivation behind this rule was ''a Bureau desire to re-allocated staff resources'' without regard for the impact upon inmates and the general public. This commenter felt that the interest of the public in allowing inmates to receive softcover publications outweighed the interest of the Bureau to re-allocate staff resources.

The Bureau believes that the revised regulations properly balance security needs of the higher rated institutions and the inmate population, given the limitations of budgetary constraints. The current restrictions on sources for hardcover materials have functioned effectively to reduce the risk of contraband entering the institution. In contrast, the lack of restrictions on softcover materials has become problematic. for example, at one high security institution, over the course of a year approximately 25 softcover materials received at the institution contained contraband. In most instances, the contraband was drug-related.

It is important to note that the presence of even minute quantities of drug contraband pose serious problems to the security, discipline, and good order of a correctional institution. Through this rulemaking, extend to softcover materials procedures that have proven effective for hardcover materials.

As for the question of reallocating staff time, one anticipated benefit is a reduction in the amount of tome taken to process contraband which enters that institution by minimizing the likelihood that contraband will be mailed into the institution. Staff will continue to examine all mail (including softcover materials from a publisher, book store, or book club) for contraband.

Several commenters felt that the threat of contraband from soft cover materials should be addressed through use of ''high tech security features'' or revised mail room procedures. The Bureau believes reliance upon ''high tech security features'' is not practicable in this instance, given the limitations of budget and available technology.

Staff currently examine all mail both manually and with x-ray scanners. While these scanners are effective for identifying metallic contraband, they are not effective for paper contraband or for organic contraband such as drugs. The cost of devices designed to detect drugs ranges from $36,000 to over $100,000 per unit, depending upon the type of device selected. No one type of device is technically suitable for all of the various types of drug contraband. Consequently, an institution may need more than one of these devices. The Bureau currently operates 107 institutions; 54 of these institutions are medium security level or higher and consequently are covered under the revised regulations. The minimum cost to purchase just one of these devices for each of these 54 institutions ranges from 1.9 to 5.4 million dollars. Additional costs for supplies. The appreciable length of time needed to conduct tests with these devices is yet another consideration which leads the Bureau to determine that the proposed restriction of sources is the more reasonable solution for minimizing the possible introduction of contraband to the institution through softcover materials.

One commenter recommended the use of dogs for intercepting drugs. The Bureau notes that extensive use of dogs for this purpose entails costs of maintenance and handling, and even so may not provide adequate security against the wide range of possible contraband.

One commenter speculated that softcover material offered less opportunity than hardbound material for the transmission of contraband. In actuality, softcover material poses different opportunities for such transmission. The presence of numerous advertising or subscription inserts in a magazine complicates a search for certain types of contraband.

One commenter, apparently assuming that the problem cloud be addressed through efficiencies in operation, recommended processing softcover material on alternate days. The daily volume of mail is sufficiently high that efficiencies effected through the suggested change for processing mail would be negligible.

Commenters were also concerned that the new rule would leave institution mail staff with nothing to do. While the revised procedure should greatly reduce the likelihood that contraband will enter the institutions through such mail, staff must continue to monitor incoming publications. As one commenter noted, under the revised provision, Bureau staff would have to verify the legitimacy of the sender. The amount of time saved by the procedure can be devoted to these or other duties.

There are a variety of other concerns raised by commenters regarding perceived inconveniences of the rule. One commenter was concerned that reading materials in foreign languages will be difficult to obtain. Other commenters state that old manuscripts, books, and other publications cannot be readily obtained from publishers. One commenter worried that inmates whose friends and families live in small towns will be especially burdened, because many small towns do not have bookstores that offer a wide variety of reading materials.

While the bureau acknowledges that some inconveniences may result from this rule, book clubs do offer a wide variety of reading material, typically at a reduced cost, and are available to everyone regardless of location. Furthermore, reading material in foreign languages is available in most bookstores. The interests of the Bureau to maintain security and order outweigh the minor inconveniences that some inmates may experience.

Some commenters objected to the rule, stating that it would be too difficult to receive certain publications which they speculated would not be readily available from authorized sources. The Bureau notes that the rule contains an exception provision which allows the Unit Manager to authorize the receipt of publications from other sources if the publication is no longer available from the publisher, book club, or bookstore. One commenter argued that approved exceptions by the Unit Manager would be difficult to obtain. The Bureau expects that the use of the exception provision will be adequate for the purpose, and further adjustments to the exception provision can be made if the need becomes apparent.

One commenter argued that most softcover books, and magazines were purchased by family and friends at stores which do not provide mailing services. The Bureau believes this comment is highly speculative. Regardless, the Bureau contends that adequate choice exists for individuals purchasing softcover material (as is already the case for hardcover material).

Some commenters expressed concern that inmates would not be able to receive books from bookstores which ship by United Parcel Service (UPS) because prison addresses contain post office box numbers. These commenters stated that UPS does not deliver to post office box addresses. This has not proven to be a problem in the past with the delivery of hardcover materials from bookstores. Bureau facilities do receive deliveries from UPS and other package carriers.

One commenter assumed that books purchased from a used bookstore would not be acceptable. This, however, is not the case. A used bookstore could be the agent for mailing softcover material to an inmate.

Several commenters suggest that the proposed rule is inconsistent with the goals of rehabilitation. They feel that the rule impairs inmate education and self-improvement. The Bureau disagrees. While the rule places limitations, for reasons of security, on how certain material may be obtained, it is not intended to cut off total access to such material. Furthermore, the Bureau itself offers educational programs for inmates, including a mandatory literacy program with a GED standard and, in certain circumstances, post-secondary education programs.

The education department of the Bureau is responsive, to the extent that its budget allows, to inmate requests for library materials. The budget for an institution's education department covers education programming and library operations (including acquisitions). The statement by one commenter that institution libraries have no funds for acquisition of books is not generally true. This commenter stated that surplus books are donated by inmates to the institution's library and, based upon the assumption that fewer books would be sent into the institution, the amendment would result in fewer books being donated.

One commenter is concerned that the proposed rule change will adversely affect the inmate's ability to receive legal materials. The new rule will not significantly affect the inmate's ability to receive legal materials. Legal reference materials are available to inmates through the institution's law library. Purchasing legal reference materials from outside sources should not be problematic because they may be procured in the same manner as other softcover or hardcover publications.

The commenter expressed a concern that this rule would prevent his receiving softcover legal materials from his attorney. First, this rule does not govern correspondence and mail sent by attorneys to their clients. We have rules governing legal mail in 28 CFR 540.19. Secondly, this rule would only apply if an inmate receives softcover materials from the attorney. It would not prevent an inmate from receiving legal documents from his/her attorney of record or materials such as books from the institution's law library or directly from a publisher, book club or bookstore.

The proposed conforming amendment to the regulations on inmate legal activities (28 CFR 543.11) which restated the policy on receipt of incoming publications is not longer necessary because those provisions were replaced by a cross-reference in an amendment published on January 31, 1997 (62 FR 4890).

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, ''Regulatory Planning and Review'' section 1(b), Principles of Regulation. The Department of Justice has determined that this rule is a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly this rule has been reviewed by the Office of Management and Budget.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, as required by the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact upon a substantial number of small entities for the following reasons: This rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Direct of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Plain Language Instructions

We try to write clearly. If you can suggest how to improve the clarity of these regulations, call or write Sarah Qureshi, Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First St., NW., Washington, DC 20534; telephone (202) 307–2105.

List of Subjects in 28 CFR Part 540

Prisoners.

Kathleen Hawk Sawyer,

Director, Bureau of Prisons.

Under the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, we revise 28 CFR part 540 as follows:

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 540—CONTACT WITH PERSONS IN THE COMMUNITY

The authority citation for 28 CFR part 540 is revised to read as follows:

Authority: 5 U.S.C. 301, 551, 552a; 18 U.S.C. 1791, 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510.

Revise paragraph (a) of § 540.71 to read as follows:

§ 540.71 Procedures.

(a)(1) At all Bureau institutions, an inmate may receive hardcover publications and newspaper only from the publisher, from a book club, or from a bookstore.

(2) At medium security, high security, and administrative institutions, an inmate may receive softcover publications (for example, paperback books, newspaper, clippings, magazines, and other similar items) only from the publisher, from a book club, or from a bookstore.

(3) At minimum security and low security institutions, an inmate any receive softcover publications (other than newspapers) from any source.

(4) The Unit Manager may make an exception to the provisions of paragraphs (a)(1) and (2) of this section of the publication is no longer available from the publisher, book club, or bookstore. The Unit Manager shall require that the inmate provide written documentation that the publication is no longer available from these sources. The approval or disapproval of any request for an exception is to be documented, in writing, on an Authorization to Receive a Package form which will be used to secure the item.

* * * * *

[FR Doc. 02–31310 Filed 12–11–02; 8:45 am]

BILLING CODE 4410–05–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1904

[Docket No. R–02B]

RIN 1218–AC06

Occupational Injury and Illness Recording and Reporting Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Final rule.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is delaying the effective date of three provisions of the Occupational Injury and Illness Recording and Reporting Requirements rule published January 19, 2001 (66 FR 5916–6135). The provisions being delayed define ''musculoskeletal disorder (MSD)'' and require employers to check the MSD column on the OSHA Log if an employee experiences a work-related musculoskeletal disorder, state that MSDs are not considered privacy concern cases, and require employers to enter a check in the hearing loss column of the OSHA 300 Log for cases involving occupational hearing loss. The effective date of these provisions is delayed from January 1, 2003 until January 1, 2004. OSHA will implement the hearing loss column requirements on January 1, 2004, and will continue to evaluate the MSD provisions over the next year. *See* **SUPPLEMENTARY INFORMATION** for the specific regulatory sections and paragraphs.

DATES: The amendments in this rule will become effective on January 1, 2003. Section 1904.10(b)(7) added on July 1, 2002 (67 FR 44037) and effective on January 1, 2003, is further delayed until January 1, 2004. Section 1904.12, revised on January 19, 2001 (66 FR 5916), effective on January 1, 2002, and delayed on October 12, 2001 (66 FR 52031), is further delayed until January 1, 2004. The second sentence of 1904.29(b)(7)(vi), revised on January 19, 2001, effective on January 1, 2002, and delayed on October 12, 2001 (66 FR 52031), is further delayed until January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Jim Maddux, Occupational Safety and Health Administration, U.S. Department of Labor, Directorate of Standards and Guidance, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. The MSD Provisions

In January, 2001 OSHA published revisions to its rule on recording and reporting occupational injuries and illnesses (66 FR 5916–6135) to take effect on January 1, 2002. A more complete discussion of the MSD definition issue is contained in the preamble to the January 19, 2001 rule. On July 3, 2001, OSHA proposed to delay the effective date until January 1, 2003, of 29 CFR 1904.12, recording criteria for cases involving work-related musculoskeletal disorders. OSHA explained that it was reconsidering the requirement in 29 CFR 1904.12 that employers check the MSD column on the OSHA Log for a case involving a ''musculoskeletal disorder'' as defined in that section. This action was taken in light of the Secretary of Labor's decision to develop a comprehensive plan to address ergonomic hazards, and to schedule a series of forums to consider key issues relating to the plan, including the approach to defining ergonomic injuries (66 FR 35113–35115).

After considering the views of interested parties, OSHA published a final rule on October 12, 2001 delaying the effective date of 29 CFR 1904.12 until January 1, 2003. OSHA also added a note to 29 CFR 1904.29(b)(7)(vi) explaining that the second sentence of that section, which provides that MSDs are not ''privacy concern cases,'' would not become effective until January 1, 2003.

OSHA concluded that delaying the effective date of the MSD definition in Section 1904.12 was appropriate because the Secretary was considering a related definitional question in the context of her comprehensive ergonomics plan. The Agency found that it would be premature to implement § 1904.12 before considering the views of business, labor and the public health community on the problem of ergonomic hazards. It also found that it would create confusion and uncertainty to require employers to implement the new definition of MSD contained in § 1904.12 while the Secretary was considering how to define an ergonomic injury under the comprehensive plan (66 FR 52031–52034).

On April 5, 2002, OSHA announced a comprehensive plan to address ergonomic injuries through a combination of industry-targeted guidelines, enforcement measures, workplace outreach, research, and dedicated efforts to protect Hispanic and other immigrant workers. In that announcement, OSHA found that no single definition of ''ergonomic injury'' was appropriate for all contexts, stating that, as OSHA develops guidance material for specific industries, the Agency may narrow the definition as appropriate to address the specific workplace hazards covered. (OSHA Press Release USDL 02–201 and associated Frequently Asked Questions).

On July 1, 2002, OSHA proposed to delay the effective date of Section 1904.12 for an additional year until January 1, 2004 to give the agency the time needed to resolve whether and how MSDs should be defined for recordkeeping purposes. This proposed delay had no effect on the employer's obligation to record all workplace injuries and illnesses that meet the criteria established in Sections 1904.4 through 1904.7, including those related to ergonomic stressors. The July 1, 2002 **Federal Register** document also requested public comment on various issues related to the MSD definition and column requirement. These issues included the following: ''Is an MSD column needed on the OSHA 300 Log? Should the column be reinstated in § 1904.12 or should § 1904.12 be deleted? Would the statistics generated by an additional column be superior to the statistics now generated by the BLS?'' (67 FR 44127)

The period for submission of comments on the proposed rule closed on August 30, 2002. After considering the views of interested parties, OSHA has determined that the effective date of Sections 1904.12 and 1904.29(b)(7)(vi) should be delayed until January 1, 2004. This **Federal Register** document addresses only the delayed effective date of these provisions. OSHA is still considering the need for an MSD column and other substantive issues related to § 1904.12 on which comment has been requested. OSHA will announce its decision on these issues in a subsequent **Federal Register** document.

A. Comments on MSD Delay

Many commenters supported the delay, citing reasons similar to those in the July 1, 2002 proposal, or urged OSHA to rescind Section 1904.12 altogether (Exs. 2–2, 2–3, 2–5, 2–6, 2–7, 2–8, 2–9, 2–12, 2–13, 2–14, 2–15, 2–16, 2–21, 2–23, 2–27, 2–28, 2–29, 2–30, 2–31, 2–32, 2–33, 2–35, 3–3, 3–4, 3–5, 3–12, 3–13, 3–14, 3–16, 3–17). In a representative comment, the American Dental Association stated that:

> The proposal demonstrates the Agency's understanding of the complexity of defining MSDs and the potential consequences of adopting a hastily developed standardized definition. It is likely that once a MSD

definition is adopted by OSHA it would be difficult to alter or change it in future rulemakings, so it is important that the Agency not act precipitously (Ex. 2–15)

Commenters suggested that additional delay was appropriate to allow for consideration of relevant comment (*See, e.g.,* Exs. 2–2, 2–5, 3–14), to avoid confusion (*See, e.g.*, Exs. 2–2, 2–3, 2–5, 2–16, 2–33), to avoid unnecessary training and computer programming costs (*See, e.g.*, Exs. 2–7, 2–12, 2–21). Two commenters argued that delay was not harmful because there is no effect on the recording of MSD cases (*See, e.g.,* Exs. 2–3, 2–30) and one stated that the delays would not affect safety because MSD cases would be recorded even when the MSD column was not checked (*See, e.g.*, Ex. 3–13). Several commenters suggested that OSHA should delay the MSD definition for recordkeeping purposes until a common definition is adopted for ergonomic purposes (*See, e.g.*, Exs. 2–13, 2–16, 2–30).

Other commenters recommended deletion of the § 1904.12 requirements, including the MSD column and the MSD definition (*See, e.g.*, Exs. 2–2, 2–3, 2–5, 2–6, 2–7, 2–8, 2–9, 2–12, 2–13, 2–14, 2–16, 2–21, 2–23, 2–27, 2–28, 2–29, 2–30, 2–31, 2–32, 2–35, 3–5, 3–12, 3–13, 3–14, 3–16, 3–17), arguing that it is an unnecessary paperwork burden (*See, e.g.*, Exs. 2–2, 2–5, 2–9, 2–12, 2–21, 2–23), that a column is not needed (*See, e.g.*, Exs. 2–7, 2–9, 2–14, 2–21, 2–23, 2–27, 2–30, 3–5, 3–12, 3–16), that OSHA's comprehensive ergonomics plan found that no single definition is appropriate (*See, e.g.*, Exs. 2–3, 2–12, 2–13, 2–16, 2–28, 2–29, 2–32, 2–35), that the § 1904.12 MSD definition was inappropriate (*See, e.g.*, Exs. 2–3, 2–6, 2–7, 2–8, 2–9, 2–12, 2–13, 2–16, 2–23, 2–27, 2–28, 2–29, 2–30, 2–31, 2–32, 2–35, 3–3, 3–14, 3–16), and that controversy and lack of consensus in the scientific and medical communities on the MSD issue makes it premature for OSHA to include a regulatory definition (*See, e.g.*, Exs. 2–8, 2–12, 2–13, 2–14, 2–31, 2–32, 2–35, 3–17).

Several commenters opposed a delay in implementing the recordkeeping rule's definition of MSD and the requirement to check the MSD column (*See, e.g.*, Exs. 2–10, 2–11, 2–18, 2–19, 2–20, 2–22, 2–24, 2–25, 2–26, 2–34, 2–35, 2–36, 2–37, 2–39, 3–2, 3–7, 3–9, 3–15). The United Food & Commercial Workers International Union (UFCW) stated:

> The UFCW believes strongly that OSHA should utilize the broadest definition for recording musculoskeletal disorders on the OSHA Form 300. As well, columns for recording MSDs and hearing loss are absolutely necessary for accurate surveillance as well as utilization of the logs for prevention purposes of these two significant safety and health problems facing UFCW members (Ex. 2–39)

Commenters argued against further delay because delay will make it difficult to collect information on these disorders and make it difficult to take future action (*See, e.g.*, Exs. 2–10, 2–22, 2–24, 2–35, 3–9), delay will make it more difficult to track MSD (*See, e.g.*, Exs. 2–19, 2–20, 2–24, 2–35, 2–36, 2–39, 3–7, 3–9, 3–15), an MSD column can be used to identify injuries and develop prevention strategies (*See, e.g.*, Exs. 2–10, 2–11, 2–18, 2–19, 2–20, 2–22, 2–24, 2–25, 2–34, 2–35, 2–36, 2–39, 3–9, 3–15), an MSD column is needed to develop more complete and consistent statistics by BLS (*See, e.g.*, Exs. 2–11, 2–18, 2–20, 2–24, 2–25, 2–26, 2–35, 2–36, 3–7), an MSD column helps OSHA and NIOSH during workplace interventions (*See, e.g.*, Exs. 2–20, 2–24, 2–25, 2–26), and lack of an MSD column may lead to under-recording of MSD injuries (*See, e.g.*, Ex. 2–25).

Many commenters supported the broad definition of MSD in § 1904.12 to promote a complete capture of MSD cases regardless of risk factor, to produce more complete statistics on MSD, to protect workers from MSD injury by identifying ergonomic problems, and because it is difficult to ascertain one-time versus ongoing exposure (*See, e.g.*, Exs. 2–4, 2–10, 2–11, 2–18, 2–20, 2–22, 2–24, 2–26, 2–34, 2–35, 2–36, 2–39, 3–6). Commenters also expressed their support of the MSD definition in the Section 1904.12 regulation, noting its similarity to definitions used in many other contexts, such as industrial hygiene practice, OSHA's guidelines for meatpacking plants, the National Academy of Sciences reports on ergonomics, NIOSH, employers with effective ergonomics programs, OSHA's settlement agreements, the former recordkeeping system, other government agencies, and other countries (*See, e.g.*, Exs. 2–10, 2–11, 2–19, 2–20, 2–22, 2–24, 2–25, 2–26, 2–35, 2–36, 2–39, 3–9, 3–15). Several commenters observed that the definition is the same as the MSD definition used by the Bureau of Labor Statistics for the last three years (*See, e.g.*, Exs. 2–10, 2–11, 2–19, 2–20, 2–22, 2–24, 2–35, 2–36, 2–39, 3–15).

The AFL–CIO (Ex. 2–24–1) supported these comments, and also argued that, without an MSD definition it would be difficult for DOL to take enforcement actions on ergonomics hazards under the general duty clause. The AFL–CIO also argued that the January 2001 revised OSHA recordkeeping rule included provisions that would assist employers, unions, workers and the government in identifying and addressing MSDs. The AFL–CIO recommended that the Department of Labor maintain the provisions of the 2001 recordkeeping rule and move immediately to implement the rule in its entirety.

B. OSHA's Decision on MSD Delay

OSHA does not believe that a MSD definition should be implemented now, for the same reasons outlined in the July 1, 2002 proposal to delay § 1904.12. While the Agency has not yet decided on the correct approach for dealing with the Part 1904 MSD definition, OSHA plans to publish a final rule in 2003 to resolve the MSD definition issue for the year 2004 and beyond.

OSHA does not agree that delayed implementation of Section 1904.12 will make it more difficult for employers, workers and OSHA to address workplace ergonomic hazards, or undermine OSHA's ability to enforce the general duty clause for ergonomic hazards. Employers are required to record all injuries and illnesses meeting the criteria established in Sections 1904.4 through 1904.7 of the recordkeeping rule regardless of whether a particular injury or illness meets the definition of MSD in Section 1904.12. Thus, the delay in implementing Section 1904.12 will not reduce the number of cases recorded or affect the narrative description of the injury or illness that must be provided for each case. Employers who use the Log and injury reports to discover ergonomic hazards will be able to continue to do so, relying on the description-of-injury information and other data to identify MSDs in their workplaces. Employees will continue to have access to the information provided in the Log and, under the new rule, to the information in the part of the Incident Report explaining how the incident occurred. Employers and employees will be able to categorize this injury and illness information in any manner they find useful.

The delay will not affect the quality or availability of useful statistical data on MSDs. At the facility level, employers, employees and government workers will continue to estimate MSD incidents by analyzing individual injury and illness entries, just as they have done in the past.

Finally, OSHA notes that the delay in the implementation of Section 1904.12 will have no effect on the Department's enforcement of the general duty clause. The definition of MSD in that section has never been in effect, and has not

been a factor in enforcement of the clause. The sole effect of the delay is that employers need not use the definition to categorize cases on the OSHA Recordkeeping Log for calendar year 2003. This recordkeeping issue does not affect an employer's obligation under the general duty clause. The employer remains obligated to free its workplace from recognized hazards that are likely to cause serious physical harm.

OSHA is modifying the note following the introduction to Section 1904.12 to inform employers of the policy that will be in effect during 2003. The note also informs the employer that, instead of checking the column on the 300 Log for musculoskeletal disorders (since this column has been removed from the log), the employer is to check the column for ''injury'' or ''all other illness,'' depending on the circumstances of the case.

In a related matter, the privacy provisions of Part 1904 use the MSD definition from § 1904.12. Specifically, paragraph 1904.29(b)(7)(vi) of the rule states that employers must consider an illness case to be a privacy concern case, and withhold the employee's name from the forms, if the employee independently and voluntarily requests that his or her name not be entered on the Log. The second sentence of the paragraph states ''[m]usculoskeletal disorders (MSDs) are not considered privacy concern cases.'' Because the effective date of the § 1904.12 MSD definition is being delayed, OSHA will be unable to implement the § 1904.29(b)(7)(vi) requirement during 2003. Accordingly, OSHA is modifying the note to Section 1904.29(b)(7)(vi) stating that the second sentence takes effect on January 1, 2004.

II. The Hearing Loss Column Provisions

In January, 2001 OSHA published revisions to its rule on recording and reporting occupational injuries and illnesses (66 FR 5916–6135) to take effect on January 1, 2002, including provisions for recording occupational hearing loss when an employee experienced a standard threshold shift (STS). An STS is defined in OSHA's § 1910.95 noise standard as a change in hearing threshold, relative to the baseline audiogram for that employee, of an average of 10 decibels (dB) or more at 2000, 3000, and 4000 hertz (Hz) in one or both ears. On July 3, 2001, OSHA proposed to delay the effective date of 29 CFR 1904.10 Recording criteria for cases involving occupational hearing loss until January 1, 2003. OSHA explained that it was reconsidering the requirement in 29 CFR § 1904.10 due to ongoing concerns about the level of hearing loss that should be considered a significant health condition, asked for comment on whether or not to delay the provisions while reconsidering the issue, and asked the public to submit substantive comments on the hearing loss recording issue (66 FR 35113–35115).

After considering the views of interested parties, OSHA published a final rule on October 12, 2001 delaying the effective date of 29 CFR 1904.10 until January 1, 2003, and setting forth interim hearing loss recording criteria for 2002 (66 FR 52031–52034). The Agency then issued a final rule on July 1, 2002 establishing new recording criteria for occupational hearing loss that captured STS cases when the employee's overall hearing level exceeded 25 dB from audiometric zero. (67 FR 44037–44048). In a separate proposed rule published that same date, OSHA proposed to delay the requirement to check a hearing loss column on the OSHA 300 Log, and asked for substantive comment on the utility of the column, the usefulness of the data that would be produced, and any costs or burdens associated with implementing a hearing loss column (67 FR 44124–44127).

The period for submission of comments on the proposed rule closed on August 30, 2002. After considering the views of interested parties, OSHA has determined that the effective date of Section 1904.10(b)(7) should be delayed until January 1, 2004. OSHA will implement the provisions at that time, and does not see any need for further delay on the hearing loss column issue.

A. Comments on the Need for and Whether To Delay the Hearing Loss Column

A number of commenters either supported OSHA's proposed one-year delay of § 1904.10(b)(7), or recommended deleting the requirement to identify hearing loss cases in a separate column of the OSHA 300 Log (*See, e.g.*, Exs. 2–3, 2–6, 2–7, 2–14, 2–28, 2–29, 2–30, 2–33, 2–35, 3–1, 3–3, 3–4, 3–5, 3–12, 3–13, 3–14, 3–17). Commenters argued that delay will reduce the cost and burden associated with revising and reissuing the form (*See, e.g.*, Exs. 2–3, 2–7, 2–28, 2–29, 3–13), will provide time to update and distribute the forms (*See, e.g.*, Exs. 2–28, 2–29, 3–13), will allow employers enough time to update computer software used to comply with Part 1904 (*See, e.g.*, Exs. 2–28, 2–29), provide time for employee training (*See, e.g.*, Ex. 3–13), minimize confusion due to the inflated number of hearing loss cases recorded in the first year (*See, e.g.*, Exs. 2–28, 2–29), and allow OSHA to work with BLS to work out an alternative methods for collecting statistics (*See, e.g.*, Ex. 2–35).

Commenters also supported a delay until the MSD column issue is resolved (*See, e.g.*, Exs. 2–3, 2–26, 3–13) so the forms would only be revised once. For example, NIOSH stated that it ''[r]ecognizes that multiple year revisions in the OSHA 300 form may cause confusion among employers and can jeopardize the accuracy of survey data based on a sample of 300 Logs. Therefore, NIOSH believes that OSHA should make every effort to consolidate any revisions to the OSHA 300 Log decides to make at one point in time'' (Ex. 2–26).

A number of commenters recommended OSHA delete the hearing loss column altogether (*See, e.g.*, Exs. 2–6, 2–7, 2–14, 2–30, 2–35, 3–3, 3–5, 3–12, 3–14, 3–17). Commenters objected to the column with statements that a separate column for hearing loss is not needed (*See, e.g.*, Exs. 2–6, 2–7, 2–14, 2–30, 2–35, 3–5), because it is unclear how the column would be used to improve the effectiveness of an employer's hearing conservation program, given the follow-up actions required by 1910.95 (*See, e.g.*, Exs. 2–7, 2–35), because the data will not shed light on causes or provide value in determining prevention strategies (*See, e.g.*, Ex. 2–30), because work relatedness determinations are subject to error and a column is subject to more error than a survey that accounts for non-occupational hearing loss (*See, e.g.*, Ex. 2–35), because statistics can be generated from the descriptions on the 300 Log (*See, e.g.*, Ex. 2–6), and that it would be better to conduct a BLS survey with real life examples, questions and practical definitions with input from industry, medical professions, and statisticians (*See, e.g.*, Ex. 3–14). The National Grain and Feed Association argued that the column would have no protective value, stating that:

> It is unclear how a separate hearing loss column on the 300 Log could be used to further improve the effectiveness of an employer's hearing conservation program. For example OSHA's Occupational Noise Exposure Standard (29 CFR 1910.95) already requires employers to monitor employees' exposure to noise and take certain actions if workplace noise exceeds specific levels, including implementing a hearing conservation program, employee audiograms, administrative and engineering controls and employee training (Ex. 3–14).

Other commenters opposed further delay of the hearing loss column and urged OSHA to implement the

§ 1904.10(b)(7) requirements in 2003 (*See, e.g.*, Exs. 2–4, 2–10, 2–11, 2–17, 2–18, 2–19, 2–22, 2–24, 2–25, 2–26, 2–34, 2–36, 2–37, 2–39, 3–9, 3–15). These commenters argued that a hearing loss column is needed to provide a basis for prevention efforts (*See, e.g.*, Exs. 2–11, 2–17, 2–19, 2–20, 2–24, 2–36, 2–37, 3–7, 3–15), that there is little or no burden to adding a hearing loss column (*See, e.g.*, Exs. 2–4, 2–11, 2–24, 2–34, 2–37, 2–39), and that waiting for resolution of the MSD column issue is unnecessary and inappropriate and causes unnecessary delay with collection and analysis of the data, (*See, e.g.*, Exs. 2–4, 2–24, 2–34). The International Chemical Workers Union Council stated that delay will condemn more workers and even supervisors to unnecessary hearing loss, and that a column would provide information to employees because ''There are no requirements for employers to post or even develop a summary of hearing loss by workplace, department, or job type. As such, the only way that workers and their representatives can learn what areas of the plant and how many workers are experiencing significant hearing loss is by these being posted on the 300 Log, by word of mouth, or by convincing the employer to develop a summary of hearing loss on a yearly basis'' (Ex. 2–34).

Commenters also cited statistical reasons for a hearing loss column, stating that a column will improve the BLS data as current BLS data on hearing loss is limited and includes only cases resulting in days away from work (*See, e.g.*, Exs. 2–10, 2–11, 2–17, 2–18, 2–19, 2–20, 2–24, 2–26, 2–34, 2–36, 2–37, 2–39), that there are no other credible sources of national statistics on hearing loss (*See, e.g.*, Ex. 2–20), that no alternative data collection methods are as effective (*See, e.g.*, Ex. 2–10), and that there is no other cost effective method for collecting occupational hearing loss statistics (*See, e.g.*, Exs. 2–24, 2–26). The Coalition to Protect Workers' Hearing (Ex. 2–4), which includes the American Academy of Audiology, the American Association of Occupational Health Nurses, the American Industrial Hygiene Association, the American Speech-Language-Hearing Association, the Council for Accreditation in Occupational Hearing Conservation, the Institute of Noise Control Engineering, The National Hearing Conservation Association, and Self Help for Hard of Hearing People, Inc., argued that:

> The inability to quantify with reasonable accuracy rather than estimate the effects of noise on the U.S. workforce has significant ramifications. While we understand the effects of noise on hearing reasonably well, we are unable to address such issues as the efficacy of hearing protection devices, strengths or deficiencies in hearing conservation programs, and benchmarking standards for comparable employers and industries without comprehensive data on prevalence of noise induced hearing loss.

B. OSHA's Reasons for Retaining the Hearing Loss Column

OSHA has decided to retain the hearing loss column. Doing so will improve the Nation's statistical information on occupational hearing loss, facilitate analysis of hearing loss data at individual workplaces, and improve the Agency's ability to assess this common occupational disorder. One of the major functions of the Part 1904 regulation is to produce national statistics for occupational injury and illness (29 U.S.C. 657.(c)(1)). The data will clearly improve the Nation's statistics on occupational hearing loss. The current data published by the Bureau of Labor Statistics for injuries and illnesses occurring in year 2000 reveal that the category entitled ''Disorders of the ear, mastoid process, hearing'' provided estimates of 316 cases, and the subcategory of ''deafness, hearing loss'' provided estimates of 146 cases (*http://www.bls.gov/iif/oshwc/osh/case/ostb1047.txt*.

Because the BLS statistics on case characteristics only reflect injuries and illnesses that result in days away from work, and workers commonly suffer hearing loss and never require a day away from work, the BLS estimates represent only a minor fraction of the total hearing loss experienced by U.S. workers and do not reflect the incidence of occupational hearing loss. A discussion of the BLS data systems and how they function may be found at *http://www.bls.gov/bls/safety.htm*. By providing a separate 300 Log column for this disorder, the data for hearing loss will be summarized by the employer at the end of the year, and will be captured by the BLS when sampled employers submit their summary injury and illness information. Thus, national statistics will be available, for the first time, that include cases that result in days away from work and those that do not. Since OSHA recently published new criteria for recording occupational hearing loss that will result in consistent data capture of significant hearing loss cases (67 FR 44037–44048), the column can be used by BLS to generate useful, consistent, and accurate statistics for the Nation.

The resulting statistics will be of value to several groups. The data will have value on their own as a public information resource that can be accessed by students, hearing loss professionals, researchers, and others. The data can be used by policy makers to prioritize hearing loss prevention efforts and measure the performance of those efforts, whether they are enforcement, guidance, outreach or consultation. OSHA believes that the greatest value of the data will be realized by employers and employees at individual workplaces. These individuals have always had the ability to determine the incidence of hearing loss cases in their workplace via analysis of the individual case descriptions on the OSHA 300 Logs; the hearing loss column will only make this task easier. The greater value of the column lies in the new ability to benchmark the hearing loss statistics of an individual workplace to the hearing loss statistics for industry as a whole, or to hearing loss statistics for a comparable industry classification. This will allow employers and employees to compare their hearing loss prevention performance to the performance of their peers and know whether or not their efforts are succeeding. This is a function that is not required under the § 1910.95 noise standard, and is a useful purpose of the Part 1904 records.

OSHA disagrees with the arguments against a hearing loss column. In response to the criticism that the data will not shed light on causes or provide value in determining preventive strategies (*See, e.g.*, Ex. 2–30), a mere entry on the Log does not, by itself, show an employer or employee how to prevent hearing loss. That is the function of further analysis of the hearing loss cases, the workplace, and the employer's hearing conservation program. In this matter, hearing loss is no different than any other type of injury or illness. The Log provides descriptive data about occupational injuries and illnesses and some of the circumstances surrounding them. It does not replace the need for causal analysis of occupational injuries and illnesses. One commenter also raised the error rate for determining the work relatedness of hearing loss cases (Ex. 2–35). OSHA notes that the data only reflect work-related hearing loss cases. Part 1904 requires the employer to consider the case to be work-related only when exposure at work either causes or contributes to a hearing loss, or significantly aggravates a pre-existing hearing loss (§ 1904.5). Section 1904.10(b)(6) allows the employer to consider the case non work-related if a physician or other licensed health care professional determines the hearing loss is not work related.

Finally, the column is not burdensome. Although the rule does not require employers to use computer software to track injuries and illnesses, many employers do so voluntarily, and these employers will have some minimal initial costs to revise their software. Employers will also experience a small training cost to familiarize the employees who maintain the records with the new column. However, once these tasks are completed, it is no more burdensome to check a hearing loss column than one of the other columns on the form.

C. OSHA's Reasons for Delaying the Hearing Loss Column

OSHA has decided to delay the § 1904.10(b)(7) requirements until January 1, 2004. While the Agency has now received comment on the hearing loss column and has collected adequate information to evaluate the issue, there is not enough time to implement the requirement for use in 2003. As the American Petroleum Institute remarked, the one year delay would ''[p]rovide adequate time for OSHA to update and distribute the form 300 and 300S; provide adequate time for employers to update their recordkeeping software and retrain those responsible for recordkeeping; provide OSHA with valuable input from stakeholders; minimize confusion, including the inflated number of hearing loss cases that would be expected during the first (changeover) year of the new criteria for hearing loss; and make more efficient use of resources'' (Ex. 2–29).

OSHA agrees with the API. In order to implement the hearing loss column in 2003, the Agency would need to redesign the forms, print them in sufficient quantity, and distribute them for employers use. The states with OSHA Approved State Plans would need to modify their regulations and any state-specific forms they use to obtain equivalent data. Employers would need to implement the new forms, change any software they might be using to keep their records, and make any other changes they deem necessary. While none of these tasks are particularly difficult or burdensome, there is clearly insufficient time available to accomplish these tasks before January 1 of 2003. Waiting until January 2004 will provide all affected parties with more than adequate time to implement the new forms in a methodical, planned fashion.

D. Other Hearing Loss Issues

OSHA would like to clarify three matters in relation to recording occupational hearing loss in conjunction with the Section 1904.10 final rule issued July 1, 2002. First, the preamble to the final rule stated that employers in the shipbuilding industries are not covered by OSHA's noise standard § 1910.95 and are therefore not required to perform audiometric tests. (67 FR 44038, 44040). This statement was an error. OSHA Directive STD 0.2 Identification of General Industry Safety and Health Standards (29 CFR 1910) Applicable to Shipyard Work specifically states that employers in the shipbuilding industry that are covered by the 29 CFR part 1915 Standards are required to comply with a number of 29 CFR Part 1910 standards, including the § 1910.95 requirements for occupational noise.

The second issue involves the computation of a Standard Threshold Shift (STS), which is one part of the two-part recording criteria recently published (67 FR 44037–44048). (The case must also reflect a 25 dB hearing level compared to audiometric zero.) The STS computation is to be made in accordance with the Occupational Noise Exposure Standard 1910.95. As OSHA stated in the preamble to the July 1, 2002 rulemaking, the Section 1904.10 regulation ''[u]ses existing measurements employers are already using to comply with the OSHA noise standard, resulting in less paperwork burden for employers covered by both rules'' (67 FR 44040). Under 1910.95, the employee's current audiogram is compared to the employee's baseline audiogram, which may be the original audiogram taken when the employee was first placed in a hearing conservation program, or the revised baseline audiogram allowed by the Occupational Noise Exposure standard. Paragraph 1910.95(g)(9) of the noise rule states:

(9) Revised baseline. An annual audiogram may be substituted for the baseline audiogram when, in the judgment of the audiologist, otolaryngologist, or physician who is evaluating the audiogram:

(i) The standard threshold shift revealed by the audiogram is persistent, or

(ii) The hearing threshold shown in the annual audiogram indicates significant improvement over the baseline audiogram.

OSHA's former recording criteria required the employer to track separate baselines for recording and hearing conservation purposes. However, the new Part 1904 hearing loss recording system relies on the existing 1910.95 calculations, and separate baselines will no longer be required. In short, under the new Part 1904, a recordable hearing loss case occurs when an employee experiences an STS (as defined in 29 CFR 1910.95), the STS is work-related, and the employee's aggregate hearing loss exceeds 25dB from audio metric zero.

Third, OSHA has noted concern among employers because the application of the new two-part test in the new § 1904.10 recording criteria will result in an increase in recorded hearing loss cases. As noted in the July 1, 2002 rulemaking, the new criteria will capture more hearing loss cases. Employers will experience an increase in recorded hearing loss cases in 2003 and future years. Caution must be used when comparing the 2003 and future data to prior years, when the 25 dB criteria for recordkeeping was used. OSHA recognizes this increase, and will take the changes in the recordkeeping rule into account when evaluating an employer's injury and illness experience.

Agency Determination of Good Cause for an Accelerated Effective Date

The Administrative Procedure Act generally requires a thirty-day period between the publication date and the effective date of a final substantive rule. 5 U.S.C. 553(d) provides, in relevant part, as follows:

The required publication or service of a substantive rule shall be made not less than thirty days before its effective date, except—

(1) a substantive rule which grants or recognizes an exemption or relieves a restriction; [or]

* * *

(3) as otherwise provided by the agency for good cause found and published with the rule.

There will not be thirty days between the publication of this final rule and its effective date of January 1, 2003. However, the exemptions from the thirty-day requirement recognized in 5 U.S.C. 553(d)(1) and (3) apply here. First, this final rule grants an exemption by delaying certain regulatory requirements that would otherwise take effect for the year 2003. The requirements to check the MSD column and the hearing loss column are effective on January 1, 2003 as a matter of law unless this rule takes effect before that date. Therefore, the rule grants an exemption to a legal requirement, and is excepted from the thirty-day effective date requirement.

Moreover, OSHA also finds that there is good cause to make the rule effective on January 1, 2003, even if that date is less than thirty days from publication. The effective date for the requirements to check the MSD and hearing loss

columns was delayed during 2002 while OSHA considered comment on issues related to these requirements. This rule merely continues the status quo during 2003; it does not require any change in recordkeeping procedures.

If this rule cannot be made effective until thirty days from publication, employers will be required to comply with the new MSD and hearing loss column requirements for a brief time during 2003, only to revert back to the existing requirements. This would impose burdensome requirements on employers to quickly train their employees and modify their recordkeeping software in time to accommodate the new requirements on January 1. These extraordinary efforts would be wasted since the columns would be in effect for only a short time, and would produce no worthwhile data. Moreover, there would be a substantial degree of confusion about compliance responsibilities since the current recordkeeping forms do not contain the columns or the MSD definition, and OSHA could not produce and distribute new forms in time. For these reasons, OSHA believes that this final rule must take effect on January 1, 2003.

Paperwork Reduction Act

The final rule will continue OSHA's current policies regarding the recording of hearing loss and musculoskeletal tissue disorders during 2003 and will not impose any new paperwork requirements during that year. The addition of a new hearing loss column in 2004 will result in minor paperwork burdens associated with the addition of a new column, involving training of recordkeeping staff, obtaining new forms, and conversion of non-mandatory computer programs. The forms will be made available free of charge in 2003, before they are required for use in 2004. These burdens are already taken into account in the paperwork estimates for this rule.

Regulatory Flexibility Certification

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601), the Assistant Secretary certifies that the final rule will not have a significant economic impact on a substantial number of small entities. The rule does not add any new requirements, merely delaying the effective date of two sections of the rule, and allowing a previously delayed section to go into effect in 2004.

State Plans

The 26 States and territories with their own OSHA-approved occupational safety and health plans must adopt a comparable regulation within six months of the publication date of this final regulation. These states and territories are: Alaska, Arizona, California, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming. Connecticut, New Jersey, and New York have OSHA approved State Plans that apply to state and local government employees only.

Due to the short amount of time remaining in 2002, some of the states may not complete their rulemaking actions by January 1, 2003. However, the states will complete rulemaking to delay the effective dates of their equivalent regulations shortly thereafter. In the meantime, employers in these states will use the same forms used in federal jurisdiction states (which as noted above do not currently contain the columns or MSD definition) to ensure the uniformity of national data per Section 1904.37.

Executive Order

This document has been deemed significant under Executive Order 12866 and has been reviewed by OMB.

Authority

This document was prepared under the direction of John Henshaw, Assistant Secretary for Occupational Safety and Health. It is issued under Section 8 of the Occupational Safety and Health Act (29 U.S.C. 657) and 5 U.S.C. 553.

Signed at Washington, DC this 11th day of December, 2002.

John Henshaw,

Assistant Secretary of Labor.

For the reasons stated in the preamble, OSHA hereby amends 29 CFR Part 1904 as set forth below:

PART 1904—[AMENDED]

1. The authority citation for part 1904 continues to read as follows:

Authority: 29 U.S.C. 657, 658, 660, 666, 669, 673, Secretary of Labor's Order No. 3–2000 (65 FR 50017), and 5 U.S.C. 533.

2. Revise § 1904.10(b)(7) to read as follows:

§ 1904.10 Recording criteria for cases involving occupational hearing loss.

* * * * *

(b) * * *

(7) *How do I complete the 300 Log for a hearing loss case?*

When you enter a recordable hearing loss case on the OSHA 300 Log, you must check the 300 Log column for hearing loss. (Note: § 1904.10(b)(7) is effective beginning January 1, 2004.)

* * * * *

3. Revise the note to § 1904.12 to read as follows:

§ 1904.12 Recording criteria for cases involving work-related musculoskeletal disorders.

* * * * *

Note to §§ 1904.12: This section is effective January 1, 2004. From January 1, 2002 until December 31, 2003, you are required to record work-related injuries and illnesses involving muscles, nerves, tendons, ligaments, joints, cartilage and spinal discs in accordance with the requirements applicable to any injury or illness under §§ 1904.5, §§ 1904.6, §§ 1904.7, and §§ 1904.29. For entry (M) on the OSHA 300 Log, you must check either the entry for ''injury'' or ''all other illnesses.''

4. Revise § 1904.29(b)(7)(vi) to read as follows:

§ 1904.29 Forms.

* * * * *

(b) * * *

(7) * * *

(vi) Other illnesses, if the employee independently and voluntarily requests that his or her name not be entered on the log. Musculoskeletal disorders (MSDs) are not considered privacy concern cases. (Note: The first sentence of this §§ 1904.29(b)(7)(vi) is effective on January 1, 2002. The second sentence is effective beginning on January 1, 2004.)

* * * * *

[FR Doc. 02–31619 Filed 12–16–02; 8:45 am]

BILLING CODE 4510–26–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 253

[Docket No. 2002–4 CARP NCBRA]

Noncommercial Educational Broadcasting Compulsory License

AGENCY: Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: The Copyright Office of the Library of Congress is publishing final regulations adjusting the royalty rates and terms under the Copyright Act for the noncommercial educational broadcasting compulsory license for the period 2003 through 2007.

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or

William J. Roberts, Jr., Senior Attorney, Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone (202) 707–8380. Telefax: (202) 252–3423

SUPPLEMENTARY INFORMATION:

Background

Section 118 of the Copyright Act, 17 U.S.C., creates a compulsory license for the use of certain copyrighted works in connection with noncommercial broadcasting. Terms and rates for this compulsory license applicable to parties who are not subject to privately negotiated licenses are published in 37 CFR part 253 and are subject to adjustment at five-year intervals. This is a window year for such an adjustment.

After extended negotiations initiated by the Library of Congress, the parties in this docket submitted proposals for adjustment of the rates and terms contained in part 253. Section 251.63(b) of the Copyright Arbitration Royalty Panel (''CARP'') rules, 37 CFR, provides that terms and rates for a statutory license may be adopted by the Librarian of Congress in lieu of a CARP proceeding if all parties reach a settlement, and the Librarian publishes the negotiated terms and rates in the **Federal Register** for notice and comment. If no one objects to the proposed rates and terms and submits a Notice of Intent to Participate in a CARP proceeding, then the Librarian may adopt the negotiated rates and terms as final.

On October 30, 2002, the Library published a Notice of Proposed Rulemaking (''NPRM'') setting forth the rates and terms negotiated by the parties in this proceeding for the period 2003–2007. 67 FR 66090 (October 30, 2002). The NPRM specified that objecting parties must submit their objections and Notices of Intent to Participate by December 2, 2002. No filings were received. Consequently, pursuant to 37 CFR 252.63(b), the Librarian moves to final rules.

Effective Date

The final section 118 royalty terms and rates are effective on January 1, 2003. January 1, 2003, is less than 30 days from publication of the notice of the final rule. Section 553 of the Administrative Procedure Act, 5 U.S.C., provides that final rules shall not be effective less than 30 days from their publication unless, *inter alia,* the agency finds good cause, a description of which must be published with the rule. 5 U.S.C. 553(d)(3). Good cause exists in this case.

The final rules are the product of negotiations between representatives of copyright owners and copyright users. All owners and users affected by these rates have already had the opportunity to participate in the process, and any additional interested parties were afforded further opportunity to participate when the Copyright Office published them as proposed rules in the **Federal Register**. 67 FR 66090 (October 30, 2002). The copyright owners and users who negotiated the final rules have the expectation that they will become effective on January 1, 2003. Even those parties affected by the rules who did not participate in their negotiation are aware that 2002 is a window year for new rates and terms for the 2003–2007 period, beginning on January 1, 2003. *See* 67 FR at 66092.

The negotiations that produced these final rules took a considerable amount of time to orchestrate and did not result in final agreements until late this year. In addition, some of the rates are dependent upon changes in the Consumer Price Index, information which was not known until the end of November. This resulted in a delay in publishing the final rules until now. Because of these circumstances, and because no parties affected by these rules are prejudiced, good cause exists that they become effective less than 30 days from date of publication of this Notice.

List of Subjects in 37 CFR Part 253

Copyright, Music, Radio, Television, Rates.

Final Regulations

For the reasons set out in the preamble, the Library of Congress amends part 253 of 37 CFR as follows:

PART 253—USE OF CERTAIN COPYRIGHTED WORKS IN CONNECTION WITH NONCOMMERCIAL EDUCATIONAL BROADCASTING

1. The authority citation for part 253 continues to read as follows:

Authority: 17 U.S.C. 118, 801(b)(1) and 803.

2. Section 253.1 is amended by removing the phrase ''January 1, 1998 and ending on December 31, 2002'' and adding ''January 1, 2003 and ending on December 31, 2007'' in its place.

§ 253.3 [Removed and Reserved]

3. Section 253.3 is removed and reserved.

4. Section 253.4 is amended as follows:

a. In the introductory text, by removing '', or compositions in the repertories of ASCAP, BMI, or SESAC which are licensed on terms and conditions established by a duly empowered Copyright Arbitration Royalty Panel pursuant to the procedures set forth in subchapter B of 37 CFR, part 251.'';

b. By revising paragraph (a);

c. in paragraph (c), by removing the phrase ''January 1, 1998, to December 31, 2002'' and adding ''January 1, 2003, to December 31, 2007'' in its place; and

d. in paragraph (d), by removing ''three'' and adding ''four'' in its place.

The revisions to § 253.4 read as follows:

§ 253.4 Performance of musical compositions by PBS, NPR and other public broadcasting entities engaged in the activities set forth in 17 U.S.C. 118(d).

* * * * *

(a) Determination of royalty rate. (1) For performance of such work in a feature presentation of PBS:
2003–2007 ..... $224.22
(2) For performance of such a work as background or theme music in a PBS program:
2003–2007 ..... $56.81
(3) For performance of such a work in a feature presentation of a station of PBS:
2003–2007 ..... $19.16
(4) For performance of such a work as background or theme music in a program of a station of PBS:
2003–2007 ..... $4.04
(5) For the performance of such a work in a feature presentation of NPR:
2003–2007 ..... $22.73
(6) For the performance of such a work as background or theme music in an NPR program:
2003–2007 ..... $5.51
(7) For the performance of such a work in a feature presentation of a station of NPR:
2003–2007 ..... $1.61
(8) For the performance of such a work as background or theme music in a program of a station of NPR:
2003–2007 ..... $.57
(9) For purposes of this schedule the rate for the performance of theme music in an entire series shall be double the single program theme rate.
(10) In the event the work is first performed in a program of a station of PBS or NPR, and such program is subsequently distributed by PBS or NPR, an additional royalty payment shall be made equal to the difference between the rate specified in this section for a program of a station of PBS or NPR, respectively, and the rate specified in this section for a PBS or NPR program, respectively.

* * * * *

§ 253.5 [Amended]

5. Section 253.5(c)(3) is amended by removing ''$66'' and adding ''$80'' in its place.

6. Section 253.6(c) is revised to read as follows:

§ 253.6 Performance of musical compositions by other public broadcasting entities.

* * * * *

(c) Royalty rate. A public broadcasting entity within the scope of this section may perform published nondramatic musical compositions subject to the following schedule of royalty rates:

(1) For all such compositions in the repertory of ASCAP, in 2003, $460; in 2004, $475; in 2005, $495; in 2006, $515; in 2007, $535.

(2) For all such compositions in the repertory of BMI, in 2003, $460; in 2004, $475; in 2005, $495; in 2006, $515; in $2007, $535.

(3) For all such compositions in the repertory of SESAC, in 2003, $98; in 2004, $100; in 2005, $102; in 2006, $104; in 2007, $106.

(4) For the performance of any other such compositions, in 2003 through 2007, $1.

* * * * *

7. Section 253.7 is amended as follows:

a. In paragraph (a), by removing ''or compositions represented by the Harry Fox Agency, Inc., SESAC, and/or the National Music Publishers Association and which are licensed on terms and conditions established by a duly empowered Copyright Arbitration Royalty Panel pursuant to the procedures set forth in this subchapter,''; and

b. By revising paragraph (b).

The revisions to § 253.7 read as follows:

§ 253.7 Recording rights, rates and terms.

* * * * *

(b) Royalty rate. (1)(i) For uses described in paragraph (a) of this section of a musical work in a PBS-distributed program, the royalty fees shall be calculated by multiplying the following per-composition rates by the number of different compositions in that PBS-distributed program:

	2003–2007
Feature	$112.40
Concert feature (per minute)	33.75
Background	56.81
Theme:	
Single program or first series program	56.81
Other series program	23.06

(ii) For such uses other than in a PBS-distributed television program, the royalty fee shall be calculated by multiplying the following per-composition rates by the number of different compositions in that program:

	2003–2007
Feature	$9.29
Concert feature (per minute)	2.44
Background	4.04
Theme:	
Single program or first series program	4.04
Other series program	1.61

(iii) In the event the work is first recorded other than in a PBS-distributed program, and such program is subsequently distributed by PBS, an additional royalty payment shall be made equal to the difference between the rate specified in this section for other than a PBS-distributed program and the rate specified in this section for a PBS-distributed program.

(2) For uses licensed herein of a musical work in a NPR program, the royalty fees shall be calculated by multiplying the following per-composition rates by the number of different compositions in any NPR program distributed by NPR. For purposes of this schedule ''National Public Radio'' programs include all programs produced in whole or in part by NPR, or by any NPR station or organization under contract with NPR.

	2003–2007
Feature	$12.17
Concert feature (per minute)	17.86
Background	6.10
Theme:	
Single program or first series program	6.10
Other series program	2.43

(3) For purposes of this schedule, a ''Concert Feature'' shall be deemed to be the nondramatic presentation in a program of all or part of a symphony, concerto, or other serious work originally written for concert performance or the nondramatic presentation in a program of portions of a serious work originally written for opera performance.

(4) For such uses other than in an NPR-produced radio program:

	2003–2007
Feature	$.78
Feature (concert)(per half hour)	1.63
Background	.39

(5) The schedule of fees covers use for a period of three years following the first use. Succeeding use periods will require the following additional payment: additional one-year period—25 percent of the initial three-year fee; second three-year period—50 percent of the initial three-year fee; each three-year fee thereafter—25 percent of the initial three-year fee; provided that a 100 percent additional payment prior to the expiration of the first three-year period will cover use during all subsequent use periods without limitation. Such succeeding uses which are subsequent to December 31, 2007, shall be subject to the royalty rates established in this schedule.

* * * * *

8. Section 253.8 is amended by revising paragraphs (b)(1) and (f)(1) to read as follows (the undesignated paragraph following (b)(1) is unchanged):

§ 253.8 Terms and rates of royalty payments for the use of published pictorial, graphic, and sculptural works.

* * * * *

(b) * * *

(1) The following schedule of rates shall apply to the use of works within the scope of this section:

(i) For such uses in a PBS-distributed program:

	2003–2007
(A) For featured display of a work	$68.67
(B) For background and montage display	33.49
(C) For use of a work for program identification or for thematic use	135.37
(D) For the display of an art reproduction copyrighted separately from the work of fine art from which the work was reproduced irrespective of whether the reproduced work of fine art is copyrighted so as to be subject also to payment of a display fee under the terms of the schedule	44.47

(ii) For such uses in other than PBS-distributed programs:

	2003–2007
(A) For featured display of a work	$44.47
(B) For background and montage display	22.80
(C) For use of a work for a program identification or for thematic use	90.91
(D) For the display of an art reproduction copyrighted separately from the work of fine art from which the work was reproduced irrespective of whether the reproduced work of fine art is copyrighted so as to be subject also to payment of a display fee under the terms of this schedule	22.80

* * * * *

(f) * * *

(1) The rates of this schedule are for unlimited use for a period of three years from the date of the first use of the work under this schedule. Succeeding use periods will require the following additional payment: Additional one-year period—25 percent of the initial three-year fee; second three-year period—50 percent of the initial three-year fee; each three-year period thereafter—25 percent of the initial three-year fee; provided that a 100 percent additional payment prior to the expiration of the first three-year period will cover use during all subsequent use periods without limitation. Such succeeding uses which are subsequent to December 31, 2007, shall be subject to the rates established in this schedule.

* * * * *

9. In § 253.10, the first sentence in paragraph (a) is revised to read:

§ 253.10 Cost of living adjustment.

(a) On December 1, 2003, the Librarian of Congress shall publish in the **Federal Register** a notice of the change in the cost of living as determined by the Consumer Price Index (all consumers, all items) during the period from the most recent Index published prior to December 1, 2002, to the most recent Index published prior to December 1, 2003. * * *

* * * * *

Dated: December 3, 2002.

Marybeth Peters,

Register of Copyrights.

James H. Billington,

The Librarian of Congress.

[FR Doc. 02–31620 Filed 12–16–02; 8:45 am]

BILLING CODE 1410–31–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket No. 01–76; FCC 02–320]

Assessment and Collection of Regulatory Fees for Fiscal Year 2001

AGENCY: Federal Communications Commission.

ACTION: Final rule; denial of petition for reconsideration.

SUMMARY: In this document, the Commission denies the petition for reconsideration of Bennet & Bennet, PLLC, on behalf of its local multipoint distribution service (LMDS) clients, filed August 10, 2001.

FOR FURTHER INFORMATION CONTACT: Rob Fream, Office of Managing Director at (202) 418–0408 or Roland Helvajian, Office of Managing Director at (202) 418–0444.

SUPPLEMENTARY INFORMATION: Adopted: November 21, 2002; Released December 4, 2002.

I. Introduction

1. By this order we deny the petition for reconsideration of Bennet & Bennet, PLLC, on behalf of its LMDS clients, filed August 10, 2001.[1] Bennet seeks reconsideration of *Assessment of Regulatory Fees for Fiscal Year 2001*, 16 FCC Rcd 13525 (2001), 66 FR 36177, July 11, 2001, (2001 Fee Order), to the extent that order reaffirmed the classification of the LMDS within the category of MDS services for purposes of assessing regulatory fees for FY 2001. As a result of this determination, LMDS facilities are subject to an annual fee of $450 per call sign. Bennet asserts that LMDS should be classified as a microwave service, which would subject it to a $5 annual fee payable for an entire ten year license term at the time of renewal (total payment $50). Bennet also argues that the FY 2001 MDS fee is excessive.

II. Background

2. In the 2001 Fee Order, the Commission rejected the arguments of Winstar Communications, Inc. that LMDS should be reclassified as a microwave service. Fee Order, 16 FCC Rcd 13532 paragraph 22. Winstar justified its proposal by arguing that there had been increased administrative activity associated with part 21 MDS this year, whereas there had been little activity associated with LMDS. It also noted generally that it could think of no similarity between LMDS and MDS and no reason why LMDS should be treated differently than other part 101 fixed Microwave services. Sprint opposed the proposal, noting that the LMDS administrative burden had been higher in the year 2000 and had been supported by fee contributions by MDS users. Further, Sprint argued that there were many similarities between the services, including that they both provided the same high speed voice and data services, although LMDS focused on large business users and MMDS focused on residential consumers. The Commission held that although LMDS and microwave services may utilize the same equipment, LMDS is operationally similar to MDS. The Commission concluded that this functional classification had proven adequate for more than 2 years and there was no reason to change it. Additionally, the Commission rejected the arguments of Worldcom, Inc. that the increase in the MDS fee from $275 in FY 2000 to $450 was excessive. Fee Order, 16 FCC Rcd at 13531–32 paragraphs 18–20. The Commission found that the $450 figure reflected the best accounting methods and the most accurate data available.

III. Bennet's Petition for Reconsideration

3. Bennet, who did not file comments earlier in this proceeding, now seeks reconsideration of the Commission's decision to continue to include LMDS in the MDS category for assessing regulatory fees. Bennet contends that LMDS should be included in the microwave category for purposes of assessing fees. In support of its contention, Bennet posits that significant differences exist between the LMDS and MDS services. According to Bennet, these differences include: That MDS uses site based licenses and individually licensed station hub sites, while LMDS uses geographically based licenses and generally does not use individually licensed hubs; that MDS is primarily a one-way video service, while LMDS is primarily a two-way service; and that LMDS and MDS use different equipment and network configurations and have different propagation characteristics, with LMDS and microwave services having more propagation limitations. It further states that the services serve different markets. In this regard, it notes that LMDS and other part 101 microwave services compete against each other in the same target markets and that the Commission's regulatory fee scheme unjustifiably places LMDS at a competitive disadvantage because the other part 101 services pay only a nominal regulatory fee. It also notes that licensing and rulemaking actions for MDS require more administrative resources than the resources required for LMDS. As to the size of the MDS fee, Bennet maintains that the increase from $275 to $450 is burdensome and not supported by any corresponding increase in regulatory costs.

4. Sprint responds that MDS and LMDS are operationally, competitively, and legally similar, both providing high speed wireless voice and data services, but noting that MDS serves primarily residential users and LMDS primarily serves large business users. Sprint contends that differences in the cost of licensing LMDS and MDS are irrelevant since the cost of licensing is not included in calculating annual fees. Fee Order, 16 FCC Rcd at 13595. In Sprint's view, reclassifying LMDS would

[1] Sprint Corp. filed an opposition on August 27, 2001.

unfairly increase the fees for other MDS operators.

IV. Discussion

5. Based on our review of the record in this proceeding, we find that Bennet's petition fails to provide sufficient grounds for us to depart summarily from the Commission's previous analysis regarding this matter. The Commission's decision to subject LMDS and MDS to identical regulatory fees stemmed largely from the fact that LMDS was operationally similar to MDS and MMDS.[2] In this regard, we note, for example, that we have previously noted that LMDS is competitive with MMDS.[3] Moreover, as the Commission has permitted licensees increasing flexibility in the use of their spectrum, the pattern has been for distinctions between LMDS and MMDS to erode.[4] While Bennet attempts to illustrate that LMDS more closely parallels certain microwave services, it does not dispute the similarities which we have previously noted between LMDS and MMDS. We also concur with Sprint's argument that licensing costs, which are covered by application fees assessed under section 8 of the Act, 47 U.S.C. 158, are not recovered through section 9 regulatory fees of the Act, 47 U.S.C. 159, and, therefore, have no bearing on our decision. We note, moreover, that, pending changes to the statutory schedule of fees in section 8, LMDS services have not been assessed any section 8 application fees. Consequently, we continue to believe, based on the record before us, that LMDS should be included in the MDS category for regulatory fees for FY 2001. As to the increase in the MDS fee, we believe that we have thoroughly explained this matter in the 2001 Fee Order. No further discussion of this point is warranted. Moreover, the public interest would not be served by disrupting the current fee process, which has been completed by numerous entities, pending resolution of this matter, particularly given that many of Bennet's arguments were raised for the first time on reconsideration.

6. While an insufficient record exists to lead us to modify our decision with respect to LMDS services in FY 2001, we plan to develop a more complete record on these issues in the next regulatory fee proceeding. In addition, in light of continuing technological convergence, innovation, and evolving service offerings in the marketplace, we will provide parties in an upcoming wireless bureau proceeding the opportunity to address our existing fixed wireless regulatory fee assessments and their application to similarly situated service providers. The development of a comprehensive record on these issues will enable us to review our existing classifications for certain services and identify the need, if any, for modifications in the regulatory fee amounts assessed for particular service categories.

7. *Accordingly, it is ordered,* that the petition for reconsideration of Bennet & Bennet, PLLC on behalf of its LMDS clients, filed August 10, 2001, is denied.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–31711 Filed 12–16–02; 8:45 am]

BILLING CODE 6712–01–P

[2] *Assessment of Regulatory Fees for Fiscal Year 2001,* 16 FCC Rcd 13525, 13532 para. 22 (2001).

[3] *Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5–29.5 GHz Frequency Band, to Reallocate the 29.5–30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services,* 15 FCC Rcd 11857, 11868 para. 25 (2000).

[4] For example, the Commission has authorized MMDS providers, like LMDS licensees, to offer two-way communications. *Amendments of Parts 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions,* MM Docket No. 97–217, 13 FCC Rcd 19112 (1998), *recon.* 14 FCC Rcd 12764 (1999), *further recon.,* 15 FCC Rcd 14566 (2000). Moreover, as a result of the Commission's reorganization, MMDS matters, like LMDS matters, now are handled by the Wireless Telecommunications Bureau. *Wireless Bureau to Assume All Regulatory Duties Associated with ITFS and MDS/MMDS Services,* Public Notice (Mar. 18, 2002).

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 11

[EB Docket No. 01–66]

Emergency Alert System

AGENCY: Federal Communications Commission.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final regulations which were published in the **Federal Register** of Tuesday, April 16, 2002 (67 FR 18502). The regulations related to the technical and operational requirements for the Emergency Alert System (EAS) contained in part 11 of the rules.

DATES: Effective December 17, 2002.

FOR FURTHER INFORMATION CONTACT: Kathy Berthot, Enforcement Bureau, Technical and Public Safety Division, at (202) 418–7454.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections revised the technical and operational requirements for the EAS. The revisions were intended to enhance the capabilities and performance of the EAS during state and local emergencies, thereby promoting public safety.

Need for Correction

As published, the final regulations inadvertently omitted the existing State and Territory FIPS number codes used in transmitting EAS messages.

List of Subjects in 47 CFR Part 11

Radio, Television

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Accordingly, 47 CFR part 11 is corrected by making the following corrective amendments:

PART 11—EMERGENCY ALERT SYSTEM (EAS)

1. The authority citation for part 11 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i) and (o), 303(r), 544(g) and 606.

2. Section 11.31 is amended by revising paragraph (f) as follows:

§ 11.31 EAS Protocol.

* * * * *

(f) The State, Territory and Offshore (Marine Area) FIPS number codes (SS) are as follows. County FIPS numbers (CCC) are contained in the State EAS Mapbook.

	FIPS#
State:	
AL	01
AK	02
AZ	04
AR	05
CA	06
CO	08
CT	09
DE	10
DC	11
FL	12
GA	13
HI	15
ID	16
IL	17
IN	18
IA	19
KS	20
KY	21
LA	22
ME	23
MD	24
MA	25
MI	26
MN	27
MS	28

	FIPS#
MO	29
MT	30
NE	31
NV	32
NH	33
NJ	34
NM	35
NY	36
NC	37
ND	38
OH	39
OK	40
OR	41
PA	42
RI	44
SC	45
SD	46
TN	47
TX	48
UT	49
VT	50
VA	51
WA	53
WV	54
WI	55
WY	56
Terr.:	
AS	60
FM	64
GU	66
MH	68
MH	68
PR	72
PW	70
UM	74
VI	78
Offshore (Marine Areas) [1]:	
Eastern North Pacific Ocean, and along U.S. West Coast from Canadian border to Mexican border	57
North Pacific Ocean near Alaska, and along Alaska coastline, including the Bering Sea and the Gulf of Alaska	58
Central Pacific Ocean, including Hawaiian waters	59
South Central Pacific Ocean, including American Samoa waters	61
Western Pacific Ocean, including Mariana Island waters	65
Western North Atlantic Ocean, and along U.S. East Coast, from Canadian border south to Currituck Beach Light, N.C	73
Western North Atlantic Ocean, and along U.S. East Coast, south of Currituck Beach Light, N.C., following the coastline into Gulf of Mexico to Bonita Beach, FL., including the Caribbean	75
Gulf of Mexico, and along the U.S. Gulf Coast from the Mexican border to Bonita Beach, FL	77
Lake Superior	91
Lake Michigan	92
Lake Huron	93
Lake St. Clair	94
Lake Erie	96
Lake Ontario	97
St. Lawrence River above St. Regis	98

[1] Effective May 16, 2002, broadcast stations, cable systems and wireless cable systems may upgrade their existing EAS equipment to add these marine area location codes on a voluntary basis until the equipment is replaced. All models of EAS equipment manufactured after August 1, 2003, must be capable of receiving and transmitting these marine area location codes. Broadcast stations, cable systems and wireless cable systems which replace their EAS equipment after February 1, 2004, must install equipment that is capable of receiving and transmitting these location codes.

[FR Doc. 02–31712 Filed 12–16–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 22 and 24

[WT Docket No. 01–108; FCC 02–229 and FCC 02–247]

Public Mobile Services and Personal Communications Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this *Report and Order* and *Second Report and Order*, the Commission makes significant modifications to its rules that cover the Cellular Radiotelephone and other services as part of its Biennial Review of rules. The Commission modifies or eliminates various rules that have become outdated due to supervening rules, technological change, or increased competition among providers of Commercial Mobile Radio Services (CMRS). The actions that the Commission takes in these items amends its rules to modify the requirement that cellular carriers provide analog service compatible with Advanced Mobile Phone Service (AMPS) specifications by establishing a five-year transition period after which the analog standard will not be required, but may still be provided.

DATES: Effective February 18, 2003. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **FEDERAL REGISTER** as of February 18, 2003.

FOR FURTHER INFORMATION CONTACT: Roger Noel or Linda Chang, Wireless Telecommunications Bureau, at (202) 418–0620.

SUPPLEMENTARY INFORMATION: This is a consolidated summary of the Federal Communications Commission's *Report and Order* (*R&O*), FCC 02–229, adopted August 8, 2002, and released September 24, 2002, and *Second Report and Order* (*2nd R&O*), FCC 02–247, adopted September 10, 2002, and released September 24, 2002. The full text of the R&O and 2nd R&O is available for public inspection during regular business hours at the FCC Reference Information Center, 445 12th St., SW., Room CY–A257, Washington, DC 20554. The complete text may be purchased from the Commission's duplicating contractor: Qualex International, 445 12th Street, SW, Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail at *qualexint@aol.com.*

Synopsis of Report and Order

I. Background

1. In June 2001, the Commission issued a *Notice of Proposed Rulemaking* seeking to identify and address outdated rule sections of part 22. *See* Year 2000 Biennial Regulatory Review—Amendment of part 22 of the Commission's Rules to Modify or Eliminate Outdated Rules Affecting the Cellular Radiotelephone Service and other Commercial Mobile Radio Services, *Notice of Proposed Rulemaking*, 66 FR 31589 (June 12, 2001) (*NPRM*). As the Commission observed in the *NPRM*, technological advances have allowed cellular carriers to increase the capacity of their systems, and to provide advanced services to their customers in the form of enhanced service quality and advanced calling features. Moreover, the mobile telephony industry has become much more competitive with the entry of CMRS providers using technologies other than analog cellular into the market. Many of the Commission's cellular rules, however, do not reflect these developments, and continue to be more applicable to the earlier forms of cellular than the more advanced digital services available today. Accordingly, the Commission concluded in the *NPRM* that it is appropriate to re-examine its original cellular rules to determine whether certain rules should be eliminated or modified.

II. Discussion

A. Section 11 of the Communications Act

2. In 1996, Congress anticipated that the development of competition would lead market forces to reduce the need for regulation and amended the Communications Act of 1934 to permit and encourage competition in various communications markets. *See* Telecommunications Act of 1996, Pub.

Law No. 104–104, 110 Stat. 56 (1996) (''1996 Act''), introductory statement (the 1996 Act was intended ''[t]o promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.''); Joint Managers' Statement, S. Conf. Rep. No. 104–230, 104th Cong., 2d Sess. 113 (1996) at 1 (stating that the 1996 Act would establish a ''pro-competitive, deregulatory national policy framework''). Section 11 of the 1996 Act requires the Commission to review biennially all of its regulations ''that apply to the operations or activities of any provider of telecommunications service'' and to ''determine whether any such regulation is no longer necessary in the public interest as a result of meaningful economic competition between providers of such service.'' *See* 47 U.S.C. 161. In the past, the Commission has looked to the plain meaning of the text for guidance in exercising its obligation pursuant to section 11. *See* In the Matter of 2000 Biennial Regulatory Review Spectrum Aggregation Limits for Commercial Mobile Radio Services, WT Docket No. 01–14, Report and Order, 67 FR 1626 (Jan. 14, 2002). The Commission has stated that ''the language places an obligation on the Commission to 'determine' if the regulation in question 'is no longer necessary in the public interest as the result of meaningful economic competition.' '' *Id.* at 1617. Further, section 11 explicitly provides that ''the Commission shall repeal or modify'' any regulation that it determines is no longer necessary in the public interest as a result of meaningful economic competition. 47 U.S.C. 161(b). The Commission notes that section 11 places the burden on the Commission to make the requisite determinations; no particular burden is placed on the opponents or proponents of a given rule. The Commission has previously interpreted the language of section 11 as directing it to examine why a rule originally was ''necessary'' and whether it continues to be necessary. The Commission has found that in making the determination whether a rule remains ''necessary'' in the public interest once meaningful economic competition exists, the Commission must consider whether the concerns that led to the rule or the rule's original purposes may be achieved without the rule or with a modified rule. *Id.* at 1628.

B. Analog Cellular Compatibility Standard

3. In establishing the Cellular Radiotelephone Service in the early 1980s, the Commission found that a single technology—analog—should be mandated to accomplish two goals: (1) To enable subscribers of one cellular system to be able to use their existing terminal equipment (*i.e.*, mobile handset) in a cellular market in a different part of the country (roaming); and (2) to facilitate competition by eliminating the need for cellular consumers to acquire different handset equipment in order to switch between the two competing carriers within the consumers' home market (thus ensuring reasonable consumer costs.). To facilitate these goals, all carriers were required to provide service exclusively in accordance with the then-existing compatibility standard for analog systems, known as Advanced Mobile Phone Service (AMPS). The detailed technical standards for AMPS were set out in the Office of Engineering and Technology Bulletin No. 53 (OET 53) in April 1981. The OET 53 specifications established technical operational parameters and descriptions of call processing algorithms and protocols to be used by analog cellular systems. Pursuant to § 22.901, a carrier must provide service to any subscriber within the carrier's CGSA, including both the carrier's subscribers and roaming customers that are using technically compatible equipment. 47 CFR 22.901. Section 22.901(d) specifically requires that carriers make mobile services available to subscribers whose mobile equipment conforms to the AMPS compatibility standard. 47 CFR 22.901(d). The Commission's cellular rules, in effect, continue to obligate carriers to provide analog service consistent with the standard identified two decades ago in OET 53.

4. After reviewing the record, the Commission concludes that in light of the present competitive state of mobile telephony, the nationwide coverage achieved by cellular carriers, and the clear market demand for nationwide, ubiquitous coverage by carriers, the analog requirement has substantially achieved its purpose of ensuring that the public has access to low-cost, compatible equipment and to nationwide roaming. Not only does the Commission determine that the rule is no longer necessary to achieve its purposes, it concludes that it imposes costs and impedes spectral efficiency. The development of the mobile telephony industry further leads the Commission to find that these objectives can largely be accomplished by market forces without the need for regulation. The Commission therefore concludes that the analog requirement should be removed. However, eliminating the rule immediately without a reasonable transition period would be extremely disruptive to certain consumers, particularly those with hearing disabilities as well as emergency-only consumers, who currently continue to rely on the availability of analog service and lack digital alternatives. Accordingly, the Commission modifies its rules requiring application of the analog compatibility standard to include a sunset period of five years, during which time the Commission anticipates that problems regarding access will likely be resolved. In order to enable the Commission to monitor the adequacy of access to mobile telephony by those currently reliant on analog service, certain CMRS carriers will be required to file reports prior to the sunset, describing the extent to which hearing aid-compatible digital devices are available to and usable by consumers with hearing disabilities, and the progress made in informing their customers of the impact of the 5-year sunset date on 911-only phones and analog-only phones, as well as the availability of digital replacements for donated analog phones.

1. Indefinite Retention of the Analog Requirement is not Warranted

5. The Commission finds that it is not necessary to retain the analog requirement in order to ensure competition. Indeed, the Commission concludes that continuing to require carriers to operate consistent with the AMPS standard may hinder competition by causing spectral inefficiencies and increased costs to those carriers who would prefer to concentrate on digital technology. Additionally, the robust mobile telephony market leads the Commission to conclude that the analog requirement is no longer necessary to ensure reasonable costs, as well as the continued availability of roaming to the vast majority of consumers. Removal of the requirement is consistent with its desire to move toward a less regulatory approach, as well as a congressional directive to treat similarly-situated CMRS in a like manner.

6. *The analog requirement is no longer needed to foster competition.* The Commission sought to ensure that there was competition, albeit limited, within any given market by compelling carriers to operate consistent with AMPS specifications as well as requiring that carriers serve all consumers using AMPS-compatible handsets. The mobile

telephony industry, however, has changed immensely in the two decades since the establishment of the cellular service. The market for mobile telephony service now includes the Personal Communications Services (PCS) and the Specialized Mobile Radio (SMR) service in addition to cellular. The Commission noted in its *Seventh CMRS Competition Report* that 268 million people, or 94 percent of the total U.S. population, currently reside in areas in which three or more different operators (cellular, broadband PCS, and/or digital SMR providers) offer mobile telephony service in the counties in which they live. Over 229 million people, or 80 percent of the U.S. population, live in counties with five or more mobile telephony operators offering service, while 151 million people, or 53 percent of the population live in counties with at least six different mobile telephony operators.

7. Rather than encouraging competition, the Commission concludes that, in many instances, the analog requirement harms competition by imposing unnecessary operating costs and impeding the spectral efficiency of the two cellular providers in the market. First, the analog requirement places a financial burden on cellular licensees who would prefer to use their spectrum and other resources on digital technology rather than setting aside a portion to support their analog facilities. Cellular licensees that deploy digital technologies must also maintain a minimum scale analog network. These cellular licensees incur operation and maintenance costs for two mobile telephony networks in order to comply with Commission rules. Also, by maintaining two networks, operation and maintenance costs associated with the digital network may be higher because the carrier is not able to optimize the system as efficiently as it would if there was only one network. Second, the Commission also agrees with commenters who argue that imposition of the analog requirement impedes spectral efficiency. Digital technologies are more efficient than analog, use less bandwidth, and give consumers access to advanced services not feasible with analog. The analog requirement prevents cellular licensees from choosing to efficiently utilize their spectrum by installing an all-digital network and potentially providing additional advanced services. Further, the analog requirement may result in certain carriers being capacity constrained in certain geographic markets depending on the amount of spectrum dedicated to AMPS, usage by AMPS customers, type of digital technology, and how intensively their digital customers utilize their services. Thus, to the extent that a cellular carrier incurs costs to operate an analog network that it would not maintain but for the analog requirement, the Commission concludes that the rule imposes unnecessary financial burdens and hinders spectral efficiency. These factors in turn impede the ability of the cellular carrier to compete vis-à-vis other mobile telephony providers who are not subject to the requirement.

8. *Access to reasonably priced equipment is not dependent on the continued imposition of the analog requirement.* It is no longer the case that the analog requirement is needed to ensure reasonably priced equipment, and, as a result, increased competition. Because early cellular mobile equipment was expensive, the Commission concluded that it was cost-prohibitive for consumers to switch providers in the event the two carriers in the market utilized different technical standards. The Commission found that consumers would be discouraged from switching cellular providers if they had to purchase additional equipment in order to be served by the second carrier. The Commission found that mandating a specific technology would enable consumers to choose between carriers without regard to cost of equipment, thereby encouraging competition between the carriers. Today, however, mobile handsets are much less expensive. The declining cost of such equipment as well as the frequent carrier subsidy of the cost of the telephones have diminished the handset disincentives for consumers switching between providers (whether cellular or other CMRS). Consumers are now able to easily choose from a panoply of carriers and technologies.

9. *Roaming is not dependent on the analog requirement.* The Commission continues to consider the existence of a nationwide, compatible service to be a major goal for the cellular service. However, given the current competitive state of mobile telephony, the Commission concludes that consumers will continue to have the ability to roam outside of their home markets even in the absence of the analog requirement. In the years since the cellular service was established, many CMRS providers using digital technology, particularly broadband PCS and SMR services, have developed and established a strong market presence. When the rules for market-based PCS and SMR services were established, the Commission declined to impose technological compatibility rules, and allowed carriers the flexibility to implement air interface technologies of their own choosing. In the absence of a Commission-mandated standard for PCS and SMR, carriers have nonetheless established systems providing seamless nationwide service in response to customer demand. Service providers have been successful in establishing nationwide systems, even though they employ different air interface technologies, by acquiring licenses in as many markets as possible, establishing roaming agreements with other carriers who have implemented the same digital technology, and providing multimode handsets that allow customers to roam using analog cellular service where interoperable digital service is not available.

10. The Commission does not find persuasive arguments that elimination of the analog requirement will force small and regional carriers to convert to digital earlier than they would otherwise in order to ensure seamless service to their customers and other consumers, or that such a transition will be cost-prohibitive for such service providers or their customers. The choice to switch from analog to digital technology, as well as the rate at which the transition occurs, are business decisions made by the individual carrier. Indeed, the Commission concludes that market forces are already at work with respect to small and regional carriers. After reviewing current and future market trends in mobile telephony, the Commission finds that many small and regional carriers are or will be shifting their systems towards digital technology. The Commission expects that construction by PCS licensees in rural areas will continue to increase, thereby providing digital services to customers in rural areas. With the introduction of digital services by PCS providers, cellular licensees are likely to find it competitively necessary to install or expand their digital network, regardless of whether or not the analog requirement is retained. Moreover, the Commission expects that the increasing presence of multimode handsets will minimize the necessity for small and regional carriers to completely switch to a digital system. Accordingly, the Commission concludes that roaming and interoperability concerns held by small and regional carriers are not a sufficient basis to require the continued application of the analog requirement.

11. The Commission notes that the five-year sunset period it is establishing for other reasons should mitigate the concerns of small or regional carriers, such as the disruptions to operations that an immediate elimination of the

analog requirement might cause. For example, a transition period permits carriers to evaluate their current and future technology choices as well as those of their current roaming partners. Carriers will have the opportunity to negotiate new contracts where needed to ensure the availability of roaming services to their customers. Also, the elimination of the cellular analog requirement will increase the demand for the development and commercial implementation of multimode/multiband handsets, a process that is already occurring. By the end of the transition period, these handsets should be widely available and customers may choose to migrate to these new handsets depending on their roaming needs. Further, the transition period provides additional time for PCS licensees in both Rural Service Areas (RSAs) and Metropolitan Statistical Areas (MSAs) to further build out their licensed service areas in order to enhance opportunities for roaming for all consumers.

12. *The possible impact on telematics providers does not justify retention of the analog requirement.* Telematics providers argue that the elimination of the rule will significantly impair their ability to provide service because these systems require analog technology due to its ubiquitous coverage, and that there is currently no other widely-deployed technology available to adequately support telematics services. While digital service providers are continuing to expand their service area footprint, commenters argue that there are still large gaps in coverage, and note that the various digital standards are not interoperable. Commenters argue that digital systems cannot yet transmit both voice and data on the same call, a feature that commenters argue is important for telematics providers. Commenters assert that the interoperability problem is particularly difficult for telematics devices because manufacturers must choose a technology that is embedded in a vehicle that will have a useful life of ten or more years. Telematics providers contend that, unlike the typical cellular subscriber who can readily switch to digital handsets if necessary, the development cycle (the length of time necessary to design, test, and install equipment in vehicles) and hardware basis of telematics-equipped vehicles prevents users of such services from quickly and easily migrating to a new technology. Commenters argue that, in evaluating this issue, the Commission should take into account the useful life of the vehicle, the vehicle development cycle, as well as investments made by owners of vehicles with embedded telematics systems.

13. The Commission concludes that arguments advanced by telematics providers do not constitute sufficient basis to warrant the indefinite imposition of an outdated technical standard. Each of the factors identified by telematics providers—*e.g.* development cycles of vehicles, choice of hardware and technology platforms—are considerations within the control of the individual provider or the original equipment manufacturer with whom it partners. However, as in the case of regional carriers, the Commission finds that the sunset period it is establishing for other reasons should also mitigate any significant impacts that might affect telematics providers. During the transition period, the Commission anticipates that telematics providers will be able to partner with cellular, PCS, and SMR carriers in order to secure service on the carriers' digital networks. Based on the record, the Commission concludes that within the next five years, the telematics industry will make great strides towards developing multimode devices that will provide interoperability and facilitate roaming on digital networks. Moreover, the majority of commenters concede that a reasonable transition period would ease any concerns regarding the elimination of the analog requirement.

14. *Modification of the rule is supported by section 332 of the Communications Act.* Another factor supporting the modification of the analog requirement to include a five-year sunset is section 332 of the Act, which directs the Commission to regulate CMRS providers to technical and operational rules comparable to those that apply to providers of substantially similar common carrier services. Section 332 requires that differences between rules governing competing services should be conformed if the Commission determines that the differences distort competition by placing unequal regulatory burdens on different types of CMRS providers. Over the years, the Commission has shifted towards taking a less regulatory approach in setting out technical standards for the various wireless services. Yet in the case of cellular, while the Commission has afforded carriers the flexibility to deploy new technologies and to offer digital services similar to that offered by PCS providers, cellular carriers must nonetheless continue to provide analog service. The analog standard forces cellular carriers to incur costs and burdens not assumed by other CMRS licensees despite the similarity of services provided by cellular carriers as compared with other providers.

2. Sunset of the Analog Requirement

a. 911-Only Phones and Unsubscribed Emergency Phones

15. A primary reason for the growth of mobile telephony is the safety and security functions of wireless telephones. Indeed, some consumers acquire wireless telephones that can only make 911 calls. These 911-only consumers can be categorized as: (1) ''Unsubscribed'' consumers of recycled phones that were previously, but are no longer, service-initialized by a wireless carrier, and have been reissued under some type of donor program, such as phones donated to victims of domestic violence, and (2) subscribers of newly manufactured 911-only phones that can only make 911 calls but are incapable of receiving any incoming calls. Consumers of the latter are often elderly persons who cannot afford basic wireless service or do not want typical wireless service, but desire immediate access to emergency services. The Commission concludes that a transition period is warranted in order to mitigate possible negative effects to emergency-only consumers that might otherwise occur with an immediate elimination of the analog requirement. Also, in some geographic areas in which digital coverage is currently insufficient, a transition period will allow carriers time to enhance coverage. The transition period will allow for the continued expansion of digital networks and further conversion of analog networks to digital, thereby providing for a more extensive network of digital technologies. During the transition period, service providers can conduct customer outreach in order to educate consumers that analog services may be discontinued on a certain date, thereby providing emergency-only consumers with time to migrate from analog to digital handsets.

16. Although there is currently a sizable number of unsubscribed analog and 911-only consumers, it can be assumed that the total number of such users will decline in the future, as digital networks expand and carriers migrate current analog customers to digital services. The Commission expects that unsubscribed consumers will have access to digital equipment as digital handsets are being donated as well as analog handsets. It is reasonable to assume that the number of digital handsets will increase over time because the number of digital subscribers is approximately three times that of analog subscribers, and a

consumer uses a handset on average for 1.5 to 2.5 years before acquiring a new one. Because handsets are recycled every 18 to 30 months, the Commission concludes that a transition period should ensure that recipients of donated mobile telephones have access to digital equipment.

b. Accessibility Issues

17. The Commission has for some time been cognizant of the concerns held by persons with hearing disabilities regarding their ability to access wireless technologies and services. Although most consumers have a variety of mobile technologies and services available to them, persons with hearing disabilities desiring to use wireless devices must currently rely on analog service or the small number of digital phones that are currently compatible with hearing aids—a compatibility that is limited to certain types of hearing aids. Unlike analog handsets, digital technologies have been shown to cause interference to hearing aids and cochlear implants. For the most part, analog wireless equipment does not pose interference problems for hearing aid wearers because they transmit signals at a steady rate; no extraneous audible noise is produced because these signals are not demodulated by the handset and in turn amplified by the hearing aid. Unlike analog equipment, however, digital wireless telephones do not transmit electromagnetic energy at a steady rate, and the fluctuations can cause disruptive interference to hearing aids or cochlear implants. Currently, nearly all digital equipment can cause some interference to many types of hearing aids and cochlear implants.

18. The Commission's review of the record leads it to conclude that immediately removing the requirement that cellular carriers operate consistent with the analog compatibility standard would indeed be detrimental to persons with hearing disabilities. Because persons with hearing disabilities must continue to rely on analog technology for access to wireless service at this time, the Commission finds that the record supports implementing a transition period during which time it anticipates that digital solutions to the hearing aid-compatibility problem will be developed and made widely available. In order to ensure that analog service remains available to persons with hearing disabilities while industry seeks to develop accessible digital technologies, the Commission provides for a five-year transition period before the elimination of the analog requirement. The Commission concludes that a five-year period provides a reasonable time frame for the development of solutions to hearing aid-compatibility issues. The progress made in developing digital TTY solutions leads it to determine that the industry will also likely be able to develop digital solutions for telephones within a five-year period. Moreover, mandating a shorter timeframe may result in persons with hearing disabilities gaining access to digital handsets more quickly than if the Commission sets out a longer period. Because the Commission is reserving the right to extend the sunset period in the event that solutions to hearing aid-compatibility problems are unsatisfactory, the industry has an incentive to develop digital solutions to the access problem.

19. The Commission notes that it is establishing a transition period to safeguard the ability of persons with hearing disabilities to access mobile telephony services even though carriers are otherwise obligated to ensure that telecommunications service is accessible to persons with disabilities. Section 255 of the Communications Act requires that ''[a] provider of telecommunications service shall ensure that the service is accessible to and usable by individuals with disabilities, if readily achievable.'' *See* 47 U.S.C. 255(c). In the *NPRM*, the Commission observed that if the analog requirement was eliminated, section 255 would still require that carriers to make digital services compatible with hearing aid devices. Although a few commenters argue that mobile telephony providers and manufacturers can circumvent the provisions of section 255, the Commission concludes that section 255 requires providers to ensure that their services remain accessible to persons with hearing disabilities. However, the independent requirements of section 255 notwithstanding, the Commission finds that it is appropriate to also establish a five-year transition period in order to address the particular current problem of hearing aid-compatibility with digital handsets, and ensure access to mobile telephony service for persons with hearing disabilities.

20. *Reporting requirement.* In order to monitor the progress made by the wireless and hearing aid industries in developing solutions, and to ensure that wireless services are continuing to be made available to persons with hearing disabilities as well as 911-only consumers, the Commission will require that, no later than the third and fourth anniversary of the effective date of this order, certain CMRS licensees and other entities file reports with the Commission. The reports will be required from all cellular licensees providing nationwide coverage. In addition, the reports must inform the Commission whether each carrier intends to discontinue analog service, identify the markets in which it plans to discontinue analog service, and for how long it plans to continue analog service and in which markets. If a carrier intends to discontinue analog service, the carrier must certify and provide information in its report that there are hearing aid-compatible digital devices available to persons with hearing disabilities at the time of filing, or, if no such equipment is available at the time of filing, describe the extent to which, by the end of the fifth year, digital equipment will be available to persons with hearing disabilities in market(s) where the carrier intends to discontinue analog service. Carriers may also be required to show in their reports that they are in compliance with the provisions of section 255 of the Act, as well as with any other obligations required of them by the Commission. Such carriers, in their reports, may also be required to describe their plan for informing its subscribers, the public and other interested parties regarding plans to discontinue analog service. Finally, other interested parties will be able to file reports or comments as appropriate, and the Commission encourages joint efforts. Such Reports will be made publicly available to all interested parties who may file supplemental information as appropriate to ensure that the Commission has a full record. The information contained in the reports will be used to determine whether or not the Commission will initiate a proceeding to extend the sunset date or take appropriate enforcement action under section 255.

21. Further, the Hearing Aid Compatibility Act of 1988 (HAC Act) requires almost all new telephones to ''provide internal means for effective use with hearing aids that are designed to be compatible with telephones which meet established technical standards for hearing aid compatibility,'' but provides an exemption for certain categories of phones including those used with CMRS and the private mobile radio services (or PMRS). 47 U.S.C. 610(b)(1); *see* 47 CFR 68.4(a). In November 2001, the Commission initiated a proceeding to examine whether this exemption continues to remain necessary, or whether the statutory criteria for revocation or limitation of the exemption have been satisfied. *See* In the Matter of Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, WT Docket

No. 01–309, *Notice of Proposed Rulemaking*, 16 FCC Rcd 20558 (2001) (*HAC Proceeding*). The action taken here does not preclude the Commission from independently requiring carriers to comply with HAC requirements, even during the 5-year transition period, in the event that the Commission determines in the *HAC Proceeding* that the statutory criteria for revocation or limitation of the exemption have been satisfied. Finally, the Wireless Telecommunications Bureau, in conjunction with the Consumer & Governmental Affairs Bureau, will work closely with the Food and Drug Administration and the Commission's Office of Engineering and Technology in the development of standards for hearing aid design that alleviate interference.

C. Electronic Serial Number Rule

22. In the *NPRM*, the Commission proposed to remove § 22.919 of its rules, which sets forth electronic serial number (ESN) design requirements for manufacturers of cellular telephones. The purpose of this rule was to address the problem of cellular ''cloning'' fraud that was prevalent in the mid-1990s. Over the years, however, other measures have developed to combat cloning fraud. For example, Congress enacted the Wireless Telephone Protection Act of 1998 to address fraudulent and unauthorized use of wireless telecommunications services. Further, the cellular industry has developed a more secure access protocol, known as authentication. Other anti-fraud countermeasures developed by the industry include ''radio frequency fingerprinting,'' which identifies a mobile handset by its unique radio transmission characteristics, as well as ''call profiling,'' which enables carriers to monitor for unusual, sudden changes in calling patterns.

23. After reviewing the original purpose of the rule, the anti-fraud techniques that have been developed since the adoption of the rule, as well as the comments in this proceeding, the Commission concludes that the ESN rule is no longer necessary in the public interest and adopts its proposal to eliminate § 22.919. The concerns that led to the adoption of this rule have been addressed and no longer require retention of this rule. The Commission finds that it is unnecessary to continue to mandate detailed hardware design requirements given the success the wireless industry has had in developing other more effective anti-fraud measures.

D. Channelization Requirements

24. Section 22.905 identifies the part of the electromagnetic spectrum that is allocated to the Cellular Radiotelephone Service and divides it into two blocks, labeled A and B. *See* 47 CFR 22.905. It also sets forth a channelization plan that sub-divides each block into 416 paired 30 kHz channels and designates 21 of these paired channels as control channels. Alternative technologies, including the principal digital technologies many cellular licensees have overlaid on top of their analog networks, are exempt from this channelization plan rule. The Commission proposed in the *NPRM* to remove the channelization plan for compatible AMPS cellular systems from § 22.905 of its rules, and to rephrase the remainder of that section such that it specifies only the portions of the electromagnetic spectrum allocated to the Cellular Radiotelephone Service and which frequency ranges make up the two initial blocks. The Commission reasoned that the analog technology to which the channelization plan is applicable is well-established nationwide, and thus removing the plan would not pose any risk of decreased cellular technical compatibility.

25. Given the number of standard analog base stations and handsets in use today and the efficiencies to be gained by implementing alternative digital (not analog) technologies, it appears highly unlikely that any carrier would have the incentive to deploy an alternative analog technology during the five-year sunset adopted in this proceeding. Further, carriers will continue to be bound by existing roaming agreements for at least some portion of the sunset, again making it highly unlikely that there would be any incentive to deploy an alternative analog technology. The Commission notes that the AMPS channelization plan is the current industry standard for AMPS and will presumably continue to provide guidance to licensees through the sunset of the analog requirement.

E. Modulation Requirements and In-band Emissions Limitations

26. In the *NPRM,* the Commission sought comment on its proposal to modify § 22.915 of its rules, which sets out a number of technical specifications for, *inter alia,* the performance of audio filter and deviation limiter circuitry in analog cellular telephones, and adjustment of the modulation levels in analog cellular telephones. Consistent with its less regulatory approach with PCS and other CMRS, as well as its proposal to eliminate the analog requirement, the Commission proposed to eliminate the provision set out in § 22.915 requiring cellular systems to have the capability to provide service using the modulation types specified in OET 53 (analog compatibility standard). The Commission also proposed to remove all rules governing audio filter and deviation limiter performance, modulation levels, and in-band radio frequency emission limits.

27. The Commission also proposed changes to § 22.917 of its rules, which prescribes emission masks limiting both in-band and out-of-band radio frequency emissions. As with the proposal to remove the channelization requirements, the Commission proposed changes to the introductory paragraph of § 22.917, which requires that analog modulated emissions be transmitted only on the communication channels. Further, the Commission sought comment regarding how it should define the out-of-band emission limit in order to provide an adequate measure of interference protection to other licensees and service, while also allowing licensees the flexibility to establish a different limit where appropriate. Specifically, the Commission asked whether licensees should be permitted to operate transmitters on frequencies closer to the edge of their authorized spectrum than full compliance with § 22.917 would normally allow, as long as all potentially affected parties (*i.e.* adjacent licensees) agree to such a provision. The Commission also noted that its Wireless Communications Service (WCS) rules provide this flexibility, and it indicated that cellular and broadband PCS licensees would also benefit from such flexibility. Accordingly, the Commission sought to conform the language and provisions of the out-of-band emission limit rules specific to the cellular service and broadband PCS with those applicable to WCS.

28. As the Commission is moving toward a less regulatory approach with respect to its service rules and is permitting carriers to deploy technologies that best fit the needs of the market, the Commission adopts its proposal with certain modifcations. Further, the Commission concludes that, because it seeks to ensure regulatory conformity wherever practical, its rules regarding out-of-band emissions limits for the various services should be similar.

29. However, certain commenters to the proceeding point out that implementation of the measurement resolution bandwidth specified in the proposed rule would have the effect of imposing a stricter out-of-band emission

limit than that which currently applies. Specifically, the commenters object to the proposed rule's specification that compliance with the out-of-band emissions limit should be measured by using instrumentation employing a resolution bandwidth of 1 MHz or more from the center of the band. In proposing the rule change, the Commission sought only to harmonize certain procedures in the WCS, PCS and cellular services, and did not intend to make the out-of-band emission limits more restrictive. Accordingly, the Commission modifies the proposed rule by substituting in language that is more consistent with recently adopted International Telecommunications Union (ITU) standards for emissions. *See* ITU–R SM.329.

F. Vertical Wave Polarization Requirement

30. Section 22.367(a)(4) of the Commission's rules provides that electromagnetic waves radiated by base, mobile, and auxiliary test transmitters in the Cellular Radiotelephone Service must be vertically polarized. 47 CFR 22.367(a)(4). This rule was originally adopted in order to promote technical compatibility for cellular systems, as well as to reduce the likelihood of interference from cellular transmitters to broadcast television (TV) reception on the upper UHF TV channels. *See* In the Matter of Revision of part 22 of the Commission's Rules Governing the Public Mobile Services, CC Docket No. 92–115, *Report and Order,* 9 FCC Rcd 6513 (1994). The Commission tentatively concluded in the *NPRM* to relax § 22.367 of its rules to provide that cellular stations no longer be limited as to the polarization of the transmitted waves. The Commission specifically sought comment on what interference or adverse effects might be caused to mobile, fixed, and broadcast services operating in the cellular service spectrum or adjacent spectrum.

31. The original purposes of the rule no longer warrant this requirement on cellular carriers. The Commission is persuaded that relaxation of this requirement will have little effect on interoperability or UHF television channels. Even if a base station's transmissions are vertically polarized, many hand-held mobile units may not benefit from vertical polarization because they are either held in a manner such that their antenna is not vertical, or because the transmission's polarization will be shifted due to reflections from man-made structures. Accordingly, a vertically polarized transmission generally will provide little interoperability benefit to users of hand-held mobile phones. Furthermore, cellular base stations transmit on frequencies above 869 MHz (a minimum separation of 63 MHz from the closest UHF television frequency), thereby reducing the likelihood of interference with upper-band UHF television channels.

32. The Commission is not persuaded by arguments that the vertical polarization requirement should not be removed because it could result in reduced RF coverage for its end users, and impair telematics' ability to provide geographic location information for emergency services. The Commission notes that such concerns are limited to rural areas, where cellular carriers are unlikely to use other than vertical polarization because they have little incentive to do so. In addition, it is anticipated that cellular carriers will make the appropriate technical adjustments to account for varying polarization of transmit and receive antennas, and thereby obtain equivalent analog cellular performance at the boundaries of a rural cell site when using alternative technologies. The Commission notes that cellular carriers already have the flexibility to reduce coverage or turn off their systems for short or long periods without seeking prior approval of the Commission or notifying customers of their intended action. Further, telematics carriers may negotiate with cellular carriers and may enter into voluntary contractual relationships to accommodate specific coverage needs. Finally, the Commission believes that the industry and not regulation should dictate technical specifications wherever possible. Given these reasons, the Commission is not persuaded that it is necessary to retain this rule simply to ensure coverage for telematics subscribers attempting calls on the fringe of rural cell sites.

G. Assignment of System Identification Numbers

33. Section 22.941 of the Commission's rules sets forth the procedure by which the Commission assigns system identification numbers (SIDs) to systems in the Cellular Radiotelephone Service. SIDs are used by cellular systems to identify the home system of a cellular telephone and by cellular telephones to determine their roaming status. 47 CFR 22.941. In the *NPRM,* the Commission proposed to no longer consider SIDs as a term of the cellular license and to remove the requirement in § 22.941 of its rules that cellular licensees notify the Commission of the use of additional SIDs. The Commission proposed to retain portions of that rule that provide that a cellular system may transmit another system's SID only if that system consents to such use.

34. The Commission concludes that it is not necessary in the public interest to retain the current cellular SID rules as set out in § 22.941 of its rules as there is no public policy rationale that SIDs must be a term of cellular authorizations. There are no SID rules for PCS, SMR, or other CMRS, and this administrative function is carried out successfully within those radio services by the private sector without Commission involvement. Further, the Commission removes the SID rule in its entirety, including the ''consent for use'' portion of the rule (*i.e.* allowing the usage of another system's SID only pursuant to consent). The Commission finds no reason to retain a portion of the rule or intervene when the private sector has shown, as in the case of PCS, for example, that it is capable of coordinating these types of administrative functions on its own. For the reasons stated above, the Commission is eliminating the SID rule in favor of administration of this function by the private sector. In eliminating this rule, the Commission must take certain steps to provide a smooth transition of the SID administration function to the private sector. These steps include identifying a party or parties to administer the function, transitioning the Commission's SID database to the party(s), and publicizing the change to the cellular industry. Therefore, the Commission authorizes and directs the Wireless Telecommunications Bureau to take all necessary steps to privatize this function.

H. Determination of Cellular Geographic Service Area

35. Section 22.911(a) of the Commission's rules sets forth a standardized method for determining the CGSA of a cellular system. A system's CGSA is defined as the geographic area served by the system, within which that system is entitled to protection and adverse effects are recognized for the purpose of determining whether a petitioner has standing. *See* 47 CFR 22.99. Cellular licensees must provide the Commission with certain technical parameters describing each cell site that makes up the external boundary of its system. These technical parameters (latitude, longitude, height above average terrain, and power), or in some cases, an alternative study, are used to determine the service area boundary (SAB) for each cell site. In this vein, the

geographic area within the aggregated SAB contours of a system (excluding areas outside the market boundary) is its CGSA. The method for determining the CGSA uses a general mathematical formula to calculate distances from the cell site along the cardinal radials to the SAB of each cell in the system. *See* 47 CFR 22.911, 22.912.

36. Section 22.911(b) provides, however, that any cellular licensee may apply for a modification of its licensed CGSA if it believes that the standard method produces a CGSA that is substantially different from the actual coverage of its system. In adopting this alternative approach for calculating the CGSA, the Commission stated that alternative showings would only be accepted where the change to the CGSA is substantial and justified by unique or unusual circumstances, or where the SAB formula is clearly inapplicable. When preparing to file an application requesting such a modification, the licensee must employ alternative methods (actual measurements, more accurate prediction models or a combination of the two) to determine the location of the median 32 dBuV/m field strength contour and the distances along cardinal radials to that contour. In describing how these distances to the median 32 dBuV/m contours must be used to determine the CGSA, paragraphs (b)(1) and (b)(3) of § 22.911 use the term SAB in several places. In the Commission's experience, this occasionally leads licensees to believe that they may employ the alternative methods to determine an SAB, as opposed to the CGSA, and then to use that ''alternate'' SAB in connection with various other rules such as the SAB extension rule or the traffic capture protection rule. In the *NPRM,* the Commission sought to clarify that the SAB of a cell derived using the standard method and the 32 dBuV/m contour that is used when preparing an alternative CGSA determination are different and not interchangeable. Accordingly, the Commission proposed to reword paragraphs (b)(1) and (b)(3) of § 22.911 to replace the word ''SAB'' with ''32 dBuV/m contour.''

37. The Commission adopts the rule clarification as proposed. In setting out the standard method, the Commission sought to establish a method that would simplify and remove a measure of uncertainty from the process of calculating and plotting CGSAs. The Commission sought to prevent disagreements between parties and the Commission regarding the accuracy of methods used by parties to predict or measure actual coverage for a particular location or terrain. Although there may be certain situations in which it may not represent actual coverage as closely as other methods, the standard formula provides a simple and consistent method by which to calculate cellular system coverage. The Commission's decision to clarify § 22.911(a) is consistent with its original intent in limiting the scope of alternate CGSA showings, *i.e.*, to expedite Commission processing of applications, thereby avoiding delays in the provision of cellular service to the public. The Commission does not foreclose, however, the ability of carriers in adjacent markets to agree to the use of an alternative propagation method, or to enter into contract agreements, pursuant to § 22.912, to allow SAB extensions calculated using the standard method into the other carrier's CGSA. The Commission believes that a process that affords carriers flexibility and permits parties to enter into contractual agreements will expedite service to subscribers, in comparison to a more protracted process whereby parties must present and argue the merits of conflicting engineering studies before the Commission.

I. Service Commencement and Construction Periods

38. Section 22.946, which sets out construction requirements relating to the deployment of new cellular systems, was previously amended in the Commission's *Universal Licensing System* proceeding. *See* In the Matter of Biennial Regulatory Review—Amendment of parts 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System, WT Docket No. 98–20, Report and Order, 63 FR 6894 (Dec. 14, 1998) (*ULS Report and Order*). In implementing the *ULS Report and Order,* however, a table entitled ''H–1—Commencement of Service,'' was inadvertently deleted from § 22.946. Because certain information in the table was out-dated, the Commission proposed to correct § 22.946 by re-inserting the table, and to reflect updated information. The Commission also proposed to delete the final phrase of § 22.946(b), which prohibits cellular system licensees from ''intentionally serv[ing] only roamer stations.''

39. As consumers now have numerous mobile telephony offerings from which to choose, the concern regarding lack of competition no longer exists. Accordingly, the Commission will remove the provision that prohibits service only to roamer stations. Further, after the Commission adopted the *NPRM,* it issued a *Report and Order* in WT Docket No. 97–112 regarding cellular service in the Gulf of Mexico. *See* In the Matter of Cellular Service and Other Commercial Mobile Radio Services in the Gulf of Mexico, WT Docket No. 97–112, Amendment of part 22 of the Commission's Rules to Provide for Filing and Processing of Applications for Unserved Areas in the Cellular Service and to Modify Other Cellular Rules, CC Docket No. 90–6, *Report and Order,* 67 FR 9596 (March 4, 2002). In that proceeding, the Commission amended § 22.946 to reflect construction requirements for licensees in the Gulf of Mexico. Because it was necessary to amend § 22.946 to add the Gulf of Mexico construction requirements, the Commission decided to re-insert the inadvertently omitted Table H–1 at that time. The Commission notes that § 22.946 was amended to re-insert Table H–1 after the comment period in this proceeding had run, and that no one filed comments opposing that correction to this rule section.

J. Incidental Services Rule

40. Section 22.323 of the Commission's rules authorizes carriers to provide other communications services incidental to the primary public mobile service, provided certain conditions are met. In general, § 22.323 requires carriers providing incidental services to protect mobile subscribers by ensuring that: (1) The costs and charges of subscribers not wishing to use incidental services are not increased as a result of the carrier's provision of incidental services to other subscribers; (2) the quality and availability of primary public mobile service does not materially deteriorate; and (3) provision of such incidental services is not inconsistent with the Communications Act of 1934 or the Commission's rules and policies. 47 CFR 22.323. In the *NPRM,* the Commission proposed to eliminate these conditions, and sought comment on whether it should also remove the remaining provision (*i.e.*, the statement that incidental services are permitted) as it applies to some or all part 22 services.

41. In a related matter, the *NPRM* also sought comment on FreePage Corporation's (FreePage) request that § 22.323 be amended to include the ''Limited Program Distribution Service'' (LPDS) service proposed by FreePage as an ''incidental service.'' In February 2000, the Wireless Telecommunications Bureau sought comment on a petition for rulemaking filed by FreePage requesting that the Commission amend § 22.323 to permit paging licensees to use their assigned channels to transmit audio programming of interest to a

narrow or specialized audience. Possible services cited by FreePage included, without limitation, children's programming, foreign language programming, and reading services for persons who have sight disabilities.

42. In the *NPRM,* the Commission invited comments on whether spectrum assigned to CMRS licensees could be used for the LPDS service proposed by FreePage. In particular, the Commission sought comments addressing whether the service proposed by FreePage is in fact a broadcast service, and, therefore, whether it would need to change existing spectrum allocation and service rules to permit LPDS service in spectrum assigned to CMRS licensees. More generally, the Commission also requested comments on what effects, if any, the implementation of FreePage's LPDS proposal would have on other authorized service offerings or services proposed in pending Commission rulemaking proceedings. Finally, the Commission solicited comments from members of the disability community regarding how they might benefit from a revision of the Commission's rules that would permit use of the spectrum for programming to narrow or specialized audiences.

43. The Commission agrees with commenters that the imposing of conditions on the provision of incidental services by part 22 licensees is no longer necessary. Section 22.323(a) imposes the condition that the costs and charges to subscribers not wishing to receive incidental services may not be increased as a result of the provision of incidental services to other subscribers. Because of the competitive wireless environment, however, CMRS licensees are not subject to federal rate regulation and are not permitted to file tariffs with the Commission. Under these circumstances, the Commission concludes that this rate restriction is unnecessary, as any dissatisfied subscriber will have the option of switching to a competing carrier. The Commission further concludes that there is no reason to retain the remainder of the rule in the absence of those conditions. The Commission recognizes that some commenters advocated that it retain this portion of the rule on the grounds that having an express provision for incidental services codified in the rules is helpful in demonstrating to state commissions that certain services must be treated as CMRS exempt from state and local regulation of rates and entry.

44. With respect to FreePage's request to include a provision in § 22.323 that LPDS is an incidental service within the meaning of the rule, the Commission denies the request but grants alternative relief as follows. First, the Commission finds that it is unnecessary to determine whether FreePage's LPDS service constitutes an incidental service because FreePage may provide any form of fixed or mobile service under a part 22 authorization, provided only that its service does not constitute broadcasting. Second, to the extent FreePage's intended service offering constitutes broadcast service, the Commission finds that it is in the public interest to provide FreePage with the flexibility to provide its LPDS service pursuant to the terms of a developmental authorization. The Commission therefore directs Commission staff to waive the allocation if necessary in order to process the developmental license. Accordingly, FreePage may file an application for developmental authority with the Commission, which will be processed by the Wireless Telecommunications Bureau pursuant to the regulations set forth in § 22.401 of the Commission's rules. The Commission believes that a developmental license will afford FreePage the opportunity to assess consumer demand for its LPDS service offering.

K. Cellular Anti-Trafficking Rules

45. In the *NPRM,* the Commission noted that §§ 22.937, 22.943, and 22.945 were originally adopted to prevent speculation and trafficking in cellular licenses that were awarded by random selection. Because the Commission is now required to resolve mutually exclusive applications for initial cellular licenses through competitive bidding, it proposed to eliminate or substantially modify rule §§ 22.937, 22.943, and 22.945 as they are now unnecessary and no longer serve the public interest.

46. In adopting § 22.937, the Commission stated that it was requiring applicants to show financial qualification because of the large capital investment required to finance the complex and sophisticated technology associated with cellular operations. The Commission noted that cellular service was viewed as a relatively high-cost business venture because the service was still at an early stage of development. The Commission concludes that § 22.937 is no longer necessary as a general matter because the cellular radiotelephone service has matured and there are two authorized cellular carriers in all MSAs and virtually all RSAs. The Commission's cellular rules have been amended to permit interested parties to file applications for any areas not serviced by cellular carriers after the expiration of the applicable build-out period, and such applications are now subject to competitive bidding. Although it proposed to retain § 22.937 in the context of comparative renewal proceedings, the Commission finds that the rule is not necessary. The Commission has the authority to seek financial qualification information in a comparative renewal proceeding if it so chooses. The Commission therefore eliminates § 22.937 in its entirety.

47. The Commission similarly concludes that § 22.943 should be removed as unnecessary. The Commission's anti-trafficking rules were developed to deter speculation on cellular licenses. In setting out the anti-trafficking rules, the Commission sought to balance the public interest in liberal transferability of licenses with a means to deter insincere applicants from speculating on unbuilt facilities. Accordingly, the Commission proposed to eliminate § 22.943 to the extent that it prohibits trafficking in cellular licenses and precludes unserved area licensees from assigning or transferring an authorization until they have provided service to subscribers for at least one year. The Commission noted that the cellular service-specific anti-trafficking rule set out in § 22.943 may be unnecessary and duplicative as there are similar provisions in part 1 of its rules that are applicable to all wireless services.

48. While § 22.943 was useful in deterring speculation during the time period in which it used lotteries to select licensees, the Commission now uses competitive bidding to resolve mutual exclusivity. Mutually exclusive applications for licenses in other CMRS are also required to be resolved through the use of competitive bidding. Yet in those cases, the Commission does not impose service-specific anti-trafficking rules, or mandate specific holding periods prior to assignment or transfer of licenses acquired through competitive bidding. Accordingly, the Commission eliminates the portions of § 22.943 that prohibit trafficking in cellular licenses, and that require carriers who acquired unserved area licenses to provide service to subscribers for at least one year before such licenses may be assigned or transferred. The Commission further finds that the cellular service-specific anti-trafficking rule set out in § 22.943 is unnecessary, given the presence of the anti-trafficking provisions of § 1.948(i), which is applicable to all services. *See* 47 CFR 1.948(i).

49. The Commission's conclusion to remove service-specific anti-trafficking provisions of § 22.943 extends to § 22.943(c), which states that it will not

accept applications for consent to assign or transfer a cellular authorization acquired by a current licensee for the first time as a result of a comparative renewal proceeding until the system has provided service to subscribers for at least three years. *See* 47 CFR 22.943(c). The Commission noted in the *NPRM* that it would leave intact portions of § 22.937 relating cellular renewal proceedings, but requested comment on whether to retain § 22.943(c). Although § 22.943(c) also relates to cellular renewals, it is nonetheless an anti-trafficking provision and should be removed as duplicative of rule § 1.948(i).

50. Similarly, because § 22.945 was adopted for the sole purpose of preventing lottery system abuses, the Commission's obligation to resolve mutual exclusivity through competitive bidding also makes this rule unnecessary. An applicant filing more than one application for a specific unserved area under the current rules would have no advantage over other applicants seeking authorization to serve the same geographic area.

L. Other Rule Changes Recommended by Commenters

51. In the *NPRM,* the Commission not only sought comment on its specific proposals, but also invited comment on whether it should modify any additional provisions of its part 22 rules as a result of competitive or technological developments.

1. Overhaul of the Unserved Area Licensing Rules

52. Section 22.941 sets forth the ''unserved area'' licensing process for the cellular service. Certain carriers recommend that the Commission replace the unserved area licensing process. 47 CFR 22.941. In general, the commenters point out that the current site-by-site approach requires pre-approval each time a licensee wishes to expand its system. Proposals by two of the commenters favor a one-time process that licenses the remaining unserved areas, so that pre-approval of future expansions is no longer necessary. One recommendation proposes that the Commission abandon the per-application approach of the unserved area rules and instead: (1) Automatically incorporate areas of 50 square miles or less into the CGSAs of the first-authorized incumbent adjoining the unserved area; and (2) open a filing window for all unserved areas exceeding 50 square miles, resulting in either the incorporation of the unserved area into the incumbent carrier's CGSA, or an auction among mutually exclusive applicants. Another proposal recommends eliminating filings for unserved areas of less than 50 square miles that are completely surrounded by an incumbent's CGSA (*i.e.*, the incumbent is the only one eligible under the rules to file an application), while another recommends that incumbents should be able to cover unserved areas of less than 50 square miles on a secondary basis without having to obtain prior Commission approval.

53. The Commission declines to adopt such changes. Suggestions made by commenters constitute a fundamental change to its cellular service licensing model, and, as such, are beyond the scope of this proceeding. The Commission also notes that under its current process, the Commission receives approximately 40 unserved area applications each month, disposing of each usually within 45–60 days. Given that so few unserved area applications are filed with the Commission today and are processed quickly, it questions whether the burdens on all licensees of a major overhaul at this point warrants any corresponding benefits. In considering the wisdom of making significant changes within the cellular unserved licensing context, the Commission would need to identify an alternative approach that is administratively efficient, less complicated than the current approach, represents an improvement over the status quo in terms of speed of licensing and convenience for licensees, and continues to provide small as well as large carriers with reasonable opportunities to serve currently unserved areas. Given that the current system results in little administrative delay, the Commission does not find that commenters have done so. Moreover, commenters have failed to adequately address construction, interference protection, and market structure issues that would need to be addressed under a new processing regime. The Commission believes that a more complete record must be developed before any Commission action is warranted.

2. CGSA Expansion Notifications

54. One commenter seeks to remove the requirement that licensees notify the Commission of each CGSA expansion for markets within the initial five-year construction period. Currently, § 22.165(e) requires licensees to notify the Commission within 15 days of expanding their CGSAs, even during the initial five-year construction period. Cellular licensees are free to construct facilities anywhere within their markets without the possibility of competing applications during the initial construction period. The proposal would have the Commission require the licensee to file a system information update at the end of the five-year period, *i.e.*, identify the areas that are served and unserved in preparation for the unserved area Phase I process.

55. The Commission agrees that generally it and other licensees have no interest in knowing the precise location of an initial licensee's CGSA until the end of the initial five-year period. At that point, the CGSA must be a matter of record available to potential Phase I unserved area applicants as well as the Commission's staff in order to process the unserved area applications. Presently, there are only eleven cellular markets that are still within the initial five-year construction period. In addition, the Commission will soon issue initial licenses in three of the remaining RSAs. Even though very few licensees will be in a position to take advantage of this change, the Commission will revise the rule substantially as requested. Therefore, the Commission will revise § 22.165(e) to require licensees in their initial five-year build-out period to notify the Commission of cell sites making up their CGSAs once yearly on the anniversary of license grant, rather than requiring licensees to file notifications within 15 days of initiating service at each site. The Commission concludes that revising this requirement to provide for an annual reporting obligation will minimize unnecessary regulatory burdens for initial cellular licensees while providing a reasonably up-to-date source of data for other cellular licensees and Commission staff.

3. Contract Extension Clarification

56. Section 22.912 of the Commission's rules provides that any SAB extensions into an adjacent carrier's CGSA requires the consent of the adjacent carrier. One commeter requested the Commission to clarify that, in the case where an adjacent carrier has already consented to analog SAB extensions into its CGSA, a separate agreement is not required in order to extend the SAB of a digital signal into the CGSA so long as it does not exceed boundary established by the initial analog agreement. The Commission clarifies that its rules do not limit the scope of private, contractual agreements between cellular licensees in this case. To the extent that a carrier enters into an agreement that provides for extensions of both analog and digital signals into an adjacent carrier's CGSA, the Commission's rules

do not require separate notification to the Commission of such extensions; a single notification of the scope of that extension will be adequate notice.

III. Administrative Matters

A. Paperwork Reduction Act Analysis

57. The actions taken in this *Report and Order* have been analyzed with respect to the Paperwork Reduction Act of 1995, Public Law No. 104–13, and found to impose no new or modified recordkeeping requirements or burdens on the public.

B. Final Regulatory Flexibility Analysis

58. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *NPRM*. The Commission sought written public comment on the proposals in the *NPRM*, including comment on the IRFA. The comments received are discussed below. The Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

Need for, and Objectives of, the Order

59. In the Telecommunications Act of 1996, Congress added sections 11 and 202(h) to the Communications Act of 1934, as amended, requiring the Commission to (1) review biennially its regulations that pertain to the operations or activities of telecommunications service providers, and (2) determine whether those regulations are no longer necessary in the public interest as a result of meaningful economic competition. 47 U.S.C. 11(b). Following such review, the Commission is required to modify or repeal any such regulations that are no longer in the public interest. Accordingly, as part of the Commission's year 2000 Biennial Review of regulations, the *Report and Order* amends part 22 of the Commission's rules by modifying or eliminating various rules that have become outdated due to technological change, increased competition in the Commercial Mobile Radio Services (CMRS) market, or supervening rules.

60. In particular, the *Report and Order* removes the cellular analog requirement after a five-year transition period and requires reports by certain CMRS licensees and other entities showing the level of access to mobile telephony had by persons with hearing disabilities or those using emergency-only phones. The *Report and Order* also removes the manufacturing requirements governing Electronic Serial Numbers (ESNs) in cellular telephones, as well as modifying several other technical rules. In the same vein, the Commission found some of the cellular anti-trafficking rules to be outdated because they were adopted during a period when the Commission resolved mutually exclusive applications for initial cellular services through lottery, rather than the current system of resolving such mutually exclusive applications through competitive bidding. The Commission also reevaluated certain other part 22 rules that apply both to cellular and to other CMRS, specifically § 22.323, which imposes conditions on the provision of ''incidental'' services by Public Mobile Services providers.

Summary of Significant Issues Raised by Public Comments in Response to the IRFA

61. Although the Commission received numerous comments in response to the *NPRM*, it received no comments in response to the IRFA. However, as described below, the Commission nonetheless considered potential significant economic impacts of the rules on small entities.

62. Analog Compatibility Requirement. Although the comments suggest that elimination of the analog requirement would not affect the majority of wireless consumers that are already using digital service, some commenters contend that there are particular classes of consumers and service providers that would be harmed by elimination of the rule. These commenters focus particularly on the possibility that, if the rule were eliminated, cellular carriers in major markets would be likely to drop analog service in those markets to provide more capacity for their digital systems. Commenters argue that, at the very least, the requirement should be eliminated only after a transition period. The unavailability of analog service in these markets, commenters contend, would have an adverse impact on the following groups:

63. *Small and regional carriers.* Small and regional carriers argue that, if the analog requirement is eliminated, they will be forced to transition from solely analog services to digital in order to ensure that their customers will have service outside of their home market, as well as to continue to provide roaming service to customers of the large nationwide carriers. They argue that eliminating the analog requirement will force them to bear the financial burden of immediately converting to digital, regardless of consumer demand within their particular markets. Further, these commenters assert that a decision to adopt any particular digital technology will be dictated by a small/regional carrier's larger roaming partner. Moreover, commenters argue that, in certain areas, a small or regional licensee may be positioned between major markets whose licensees have chosen incompatible digital technologies, forcing it to choose between roaming partners and multiple digital standards in the absence of analog technology. These commenters argue that, in the absence of interoperable digital technology, the analog requirement should not be eliminated.

64. *Analog-only consumers.* It is estimated that there are approximately 26 million analog-only subscribers. These include consumers who use analog-only handsets because their carriers do not provide digital service (mainly rural cellular carriers) as well as subscribers who have purchased 911-only mobile phones. Remaining analog-only users are non-subscribers, such as certain elderly or victims of domestic violence, who have received recycled analog equipment for use for emergency purposes. Presently, a customer using analog-only equipment can roam on other cellular networks in the event the consumer is outside of his/her home market. Commenters argue that these cellular customers would lose the ability to roam with their current analog-only handset if the analog standard is eliminated and both carriers within a given area shut down their analog networks.

65. *Telematics.* Telematics services providers have, for the most part, relied on analog technology to ensure interoperable communications nationwide. Telematics advocates assert that analog service is vital, due to the ambulant nationwide nature of telematics technology. It is argued that digital systems cannot yet transmit both voice and data on the same call, a feature that commenters argue is important for telematics providers. These commenters assert that the interoperability problem is particularly difficult for telematics devices because manufacturers must choose a technology that is embedded in a vehicle that will have a useful life of ten or more years. Moreover, these providers assert that, unlike the typical cellular subscriber who can readily switch to digital handsets if necessary, the development cycle (the length of time necessary to design equipment, test, and install in compatible vehicles) and hardware basis of telematics-equipped vehicles prevents users of such services from quickly and easily migrating to a new technology. These providers argue that telematics devices are imbedded into vehicles in such a

way as to make it cost prohibitive to retrofit legacy vehicles with analog-based equipment. Given the development cycles and life spans of such vehicles (often longer than ten years), commenters argue that the immediate elimination of the analog rule would be a setback for telematics providers and their customers. Instead, certain telematics providers argue that if the analog requirement must be eliminated, the industry must be given a reasonable transition period, and suggest that such a transition period would be ten years.

66. *Persons with hearing disabilities.* Persons with hearing disabilities desiring to use wireless devices must currently rely on analog service or the small number of digital phones that are currently compatible with only certain hearing aids. Unlike analog handsets, digital technologies have been shown to cause interference to hearing aids and cochlear implants. Accessibility advocates and those with hearing disabilities note that market forces (*e.g.* need for spectrum efficiency, enhanced services such as wireless data) make a shift to digital technology inevitable. These commenters argue that at this point, however, due to the lack of hearing aid-compatible digital equipment, persons with hearing disabilities must rely on analog equipment to access mobile telephony, thereby settling for inferior sound quality, fewer service options, and higher prices. Commenters argue that, because persons with hearing disabilities account for only a small percentage of mobile telephony users, there are not sufficient economic incentives for carriers to expend resources to ensure that these individuals have access to wireless service. Accessibility advocacy groups maintain that the analog requirement should not be eliminated (if at all) until new digital services are accessible and readily available to persons with hearing disabilities.

67. Electronic Serial Number. Numerous commenters support the proposal to remove § 22.919. Commenters agree that the industry is capable of developing anti-fraud measures on its own and that the rule prevents carriers from deploying advanced technologies such as smart cards. One commenter, however, supports elimination of the detailed design requirements in the rule, but would keep the requirement that cellular telephones have a unique ESN. Further, two other commenters argue that removing the ESN rule would be disruptive to other aspects of cellular service. Alternatively, another commenter supports the Commission's proposal, but does so because it believes that it should be legal to clone cellular telephones (in particular, as a small business activity) for customers who are already legitimate cellular subscribers, as opposed to those who are not subscribers.

68. Channelization Requirements. A majority of the commenters addressing this issue support the Commission's proposal. One commenter, however, opposes the elimination of the channelization plan rule prior to the elimination of the analog service requirement, stating that some cellular carriers might start providing analog service using a different and incompatible analog channel plan, which would leave some subscribers without roamer service. Another commenter also opposes removal of the channelization plan because it believes that the rule provides a legal basis for ''frequency protection'' from adjacent systems using digital technologies.

69. Modulation Requirements and In-band Emissions Limitations. The Commission received a number of comments supporting various aspects of its proposal to a number of technical specifications for, *inter alia,* the performance of audio filter and deviation limiter circuitry in analog cellular telephones, and adjustment of the modulation levels in analog cellular telephones. One commenter states that § 22.915 should be eliminated because the rule's requirements are specific to the AMPS analog compatibility standard, and, as such, are contrary to the goal of allowing carriers to implement the technologies of their choice, and stifles the development of technologically advanced systems. Certain commenters, however, object to the specific language the Commission proposed for the out-of-band emission limit measurement rule in § 22.917. These parties point out that implementation of the measurement resolution bandwidth specified in the proposed rule would have the effect of imposing a stricter out-of-band emission limit than that which currently applies. A few commenters submitted alternative language which more accurately reflect the Commission's intended goal of harmonizing certain procedures in the wireless communications services (WCS), personal communications services (PCS) and cellular services.

70. Wave Polarization Requirement. A majority of the commenters addressing this issue generally support relaxation of the rule requiring electromagnetic waves radiated by transmitters to be vertically polarized because of the technical flexibility it will provide cellular carriers. One commenter notes that flexibility in polarization is beneficial in order to reduce multipath fading and to improve signal quality, while another points out that eliminating the vertical polarization requirement will permit carriers to reduce the antenna space needed on towers, thereby benefiting carriers as well as the public by fostering more aesthetically pleasing antenna sites, reducing the number of antennas required at a particular site (thereby reducing the need for local zoning clearance in many cases), permitting collocation of multiple carriers' facilities on the same tower, and reducing site deployment costs.

71. One commenter, however, objects to relaxing the rule on the basis that non-vertical antenna polarization could result in reduced RF coverage for its end users and impair telematics' ability to provide geographic location information for emergency services. Specifically, the commenter notes that it utilizes analog cellular technology to provide location-based telematics service offerings, such as automatic crash notification, through systems embedded in vehicles of certain automobile manufacturers. Likewise, another commenter objects to relaxing the requirement because of the ''isolation'' it provides to cellular systems from co-channel and adjacent-channel transmitters.

72. Assignment of System Identification Numbers. Commenters generally support the proposal to eliminate the procedures and rules set forth in § 22.941 by which the Commission administers cellular system identification numbers (SIDs). The commenters agree that there is no regulatory purpose in retaining SIDs as a term of cellular licenses. As commenters point out, there are no SID rules for PCS, SMR, or other CMRS, and this administrative function is carried out successfully within those radio services by the private sector without Commission involvement.

73. Determination of Cellular Geographic Service Area. Several cellular carriers oppose the Commission's intent to clarify the language in § 22.911(b) regarding the term ''SAB'' (service area boundary) in situations in which a carrier employs alternative methods to calculate the CGSA of its system. One commenter advocates that the Commission in fact allow alternative propagation methods to be used for evaluating signal extensions into adjacent systems, in lieu of the formula in § 22.911(a), and another commenter argues that when a carrier has determined its CGSA by use of an alternative method, it is ''illogical

and inconsistent'' to require that cell SABs be used for all other purposes.

74. Incidental Services Rule. Commenters generally agree that the Commission should modify § 22.323 of its rules that permits carriers to provide other communications services incidental to the primary public mobile service. Commenters, on the other hand, believe that the provision in § 22.323 that states that incidental services are permitted should be retained. Several of the carriers addressing this issue point out that an express provision for incidental services is helpful in demonstrating to state commissions that certain services must be treated as CMRS exempt from state and local regulation of rates and entry.

Description and Estimate of the Number of Small Entities to which the Rules Will Apply

75. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. 5 U.S.C. 603(b)(3). The RFA generally defines the term ''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. 5 U.S.C. 601(3). A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). 15 U.S.C. 632.

76. This *Report and Order* results in rule changes that could affect small businesses that currently are or may become Cellular Radiotelephone Service providers that are regulated under subpart H of part 22 of the Commission's rules. In addition, changes to § 22.323 of the Commission's rules could affect service providers that are regulated under any provisions of part 22 of the Commission's rules. These include, in addition to Cellular Radiotelephone Service providers, providers of Paging and Radiotelephone (Common Carrier Paging), Air-Ground Radiotelephone, Offshore Radiotelephone, and Rural Radiotelephone services. In addition, pursuant to § 90.493(b) of the Commission's rules, paging licensees on exclusive channels in the 929–930 MHz bands are subject to the licensing, construction, and operation rules set forth in part 22. *See* 47 CFR 90.493(b). As this rulemaking proceeding may apply to multiple services, the Commission analyzes the number of small entities affected on a service-by-service basis. In addition to service providers, some of the proposed rule changes may also affect manufacturers of cellular telecommunications equipment. The Commission will include a separate discussion regarding the number of small cellular equipment manufacturing entities that are potentially affected by the proposed rule changes.

77. Cellular Radiotelephone Service. The SBA has developed a small business size standard for small businesses in the category ''Cellular and Other Wireless Telecommunications.'' 13 CFR 121.201, North American Industry Classification System (NAICS) code 513322. Under that SBA category, a business is small if it has 1,500 or fewer employees. According to the Bureau of the Census, only twelve firms from a total of 1,238 cellular and other wireless telecommunications firms operating during 1997 had 1,000 or more employees. Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. In addition, the Commision notes that there are 1,807 cellular licenses; however, a cellular licensee may own several licenses. According to the most recent *Trends in Telephone Service* data, 806 carriers reported that they were engaged in the provision of either cellular service, PCS, or SMR telephony services, which are placed together in that data. *See Trends in Telephone Service,* Industry Analysis Division, Common Carrier Bureau, Table 5.3—Number of Telecommunications Service Providers that are Small Businesses (August 2001). The Commission has estimated that 323 of these are small under the SBA small business size standard. Accordingly, based on this data, the Commission estimates that not more than 323 cellular service providers will be affected by these revised rules.

78. Paging. The Commission has adopted, and the SBA has approved, a two-tier definition of small businesses in the context of auctioning licenses in the paging services. Under this definition, a small business is defined as either (1) an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $3 million, or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than $15 million. *See* Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, *Third Report,* FCC 98–91(rel. June 11, 1998). The Commission has estimated that as of January 1998, there were more than 600 paging companies in the United States. In the August 2001 *Trends in Telephone Service* data, 427 carriers reported that they were engaged in the provision of paging and messaging service; 407 of these firms identified themselves as having 1,500 or fewer employees. The Commission does not have data specifying the number of these carriers that are not independently owned and operated or meet the small business thresholds set forth above, or the number of these carriers that are regulated under part 22 of the Commission's rules, and thus is unable at this time to estimate with precision the number of affected paging carriers that would qualify as small business concerns under its definition. However, the Commission estimates that the majority of existing paging providers qualify as small entities under its definition. Consequently, the Commission estimates that there are up to approximately 600 currently licensed small paging carriers that may be affected by the rule changes set out in the *Report and Order.* Further in December 2001, 182 bidders placed high bids for 5,323 geographic area paging licenses in Auction No. 40. Applications remain pending as of the release of this *Report and Order.* Thus, in addition to existing licensees, the rule changes adopted in the *Report and Order* could affect paging licenses won in Auction No. 40.

79. Air-Ground Radiotelephone Service. The Commission has not adopted a definition of small business specific to the Air-Ground radiotelephone service. Accordingly, the Commission uses the SBA definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. There are approximately 24 licensees in the Air-Ground radiotelephone service, and the Commission estimates that almost all of them qualify as small entities under the SBA definition.

80. Offshore Radiotelephone Service. This service operates on several ultra high frequency (UHF) TV broadcast channels that are not used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico. At present, there are less than ten licensees in this service. The Commission has not adopted a definition of small business specific to the Offshore Radiotelephone Service. Accordingly, the Commission uses the SBA definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500

persons. The Commission assumes that all licensees in this service are small entities, as that term is defined by the SBA.

81. Rural Radiotelephone Service. The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS). The Commission therefore uses the SBA definition applicable to radiotelephone companies; *i.e.*, an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Rural Radiotelephone Service, and the Commission estimates that almost all of them qualify as small entities under the SBA definition.

82. Cellular Equipment Manufacturers. Some of the actions adopted in the *Report and Order* will also affect manufacturers of cellular equipment. The Commission does not know how many cellular equipment manufacturers are in the current market. The 1997 Economic Census provides that there were 1,089 communications-related equipment manufacturing companies as of 1997. This category includes not only cellular equipment manufacturers, but television and AM/FM radio manufacturers as well. Under SBA regulations, a ''radio and television broadcasting and wireless communications equipment manufacturing'' company, which includes not only U.S. cellular equipment manufacturers but also firms that manufacture radio and television broadcasting and other communications equipment as well as electronic components, must have a total of 750 or fewer employees in order to qualify as a small business concern. 13 CFR 121.201, NAICS code 334220. Although the exact number is unknown, the number of cellular equipment manufacturers is considerably lower than 1,089. U.S. Census Bureau, *1997 Economic Census, Manufacturing Subject Series,* at Table 3—Detailed Statistics by Industry: 1997, NAICS code 334220 (October 2000).

83. Broadband Personal Communications Service. The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission has created a small business size standard for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years. For Block F, an additional small business size standard for ''very small business'' was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA. 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% of the 1,479 licenses for Blocks D, E, and F. On March 23, 1999, the Commission reauctioned 347 C, D, E, and F Block licenses; there were 48 small business winning bidders. Based on this information, the Commission concludes that the number of small broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks plus the 48 winning bidders in the re-auction, for a total of 231 small entity PCS providers as defined by the SBA small business standards and the Commission's auction rules. 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.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

84. The Commission will require that, (1) three years from the effective date of this order and (2) four years from the effective date of this order, certain CMRS licensees and other entities file reports with the Commission. In the reports, the carrier must either certify that, within their own markets, there are, at the time of filing, hearing aid-compatible digital devices available to and usable by persons with hearing disabilities for use with that carrier's digital network, or, if no such equipment is available at the time of filing, describe the extent to which, by the end of the fifth year, digital equipment will be available to and usable by persons with hearing disabilities, and describe how the public is being informed of their availability. If upon review of the filings, the Commission determines that significant problems remain regarding access to mobile telephony by persons with hearing disabilities, the Commission may find that the analog requirement will be removed only for technologies where hearing aid-compatibility solutions are available, or that the sunset period will be extended for all carriers. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered.

85. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. *See* 5 U.S.C. 603.

86. Because several commenters argued that certain entities, such as persons with hearing disabilities and small and regional carriers, may be harmed by the immediate removal of the analog requirement, the Commission instituted a five-year transition period to ease the transition to digital technology. By establishing this five-year transition period, the Commission takes account of the potentially smaller resources available to small entities.

87. The *Report and Order* concluded that several of the Commission's technical and anti-trafficking cellular rules are outdated. Therefore, modifying or eliminating these rules should decrease the costs associated with regulatory compliance for cellular service providers, provide additional flexibility in manufacturing cellular equipment, and also enhance the market demand for some products. Also, amending the incidental services rules will allow licensees in the part 22 services greater flexibility in the types of services they offer. The Commission notes that the intent underlying its actions is to lessen the levels of regulation, consistent with its mandate for undertaking biennial reviews. The Commission has therefore described, supra, actions intended to lessen the regulatory burden on carriers and equipment manufacturers, including small entities.

88. *Report to Congress:* The Commission will send a copy of the *Report and Order,* including the associated FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *Report and Order*, including the associated FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Report*

and Order and associated FRFA (or summaries thereof) will also be published in the **Federal Register**. *See* 5 U.S.C. 604(b).

IV. Ordering Clauses

89. Pursuant to the authority of sections 4(i), 7, 303(c), 303(f), 303(g), 303(r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(c), 303(f), 303(g), 303(r), and 332, the rule changes specified below are adopted.

90. The rule changes set forth below *will become effective* February 18, 2003.

91. Certain commercial mobile radio service carriers and other entities must submit reports regarding access to mobile telephony services by emergency-only consumers and persons with hearing disabilities at one and two years prior to the sunset of the rules requiring cellular carriers to provide analog service compatible with Advanced Mobile Phone Service (AMPS) specifications.

92. The Wireless Telecommunications Bureau is authorized to carry out such actions necessary to transfer the administration of cellular system identification numbers as identified herein.

Synopsis of the Second Report and Order

I. Background

93. In the *NPRM,* the Commission proposed to modify various general cellular service requirements set out in § 22.901 of the Commission's rules. First, the Commission proposed deleting current § 22.901(d), which addresses alternative cellular technologies. Because the rule is drafted as though the principal cellular technology is analog technology, the Commission therefore proposed deleting current § 22.901(d) and adding the following language to the introductory paragraph of the rule: ''In providing cellular services, each cellular system may incorporate any technology that meets all applicable technical requirements in this part.''

94. The Commission also proposed deleting certain §§ 22.901(a) and 22.901(b) of its rules. Section 22.901(a) requires that cellular licensees provide subscribers with information regarding the service area of the cellular provider. The Commission sought comment on whether there is any material difference between the service-area-related information provided by cellular providers in comparison with other providers of CMRS services. The *NPRM* also requested comment on whether, in light of the current level of competition in the provision of CMRS services, such a requirement is still necessary to ensure that consumers have access to service-area-related information. Section 22.901(b) requires the cellular licensee to notify the Commission in the event that a subscriber's request for service is denied due to lack of cellular system capacity. *See* 47 CFR 22.901(b). The Commission proposed removing this requirement, noting that the rule does not provide any mechanism for ameliorating any instance of a lack of system capacity. The Commission also explained that, given the current level of competition, consumers who are denied service by a particular provider due to lack of capacity will be very likely to have other service options.

95. Further, the Commission proposed deleting the first sentence of the introductory paragraph, which provides that ''Cellular system licensees must provide cellular mobile radiotelephone service upon request to all cellular subscribers in good standing . . . .'' 47 CFR 22.901. The Commission also proposed removing the specific reference in the introductory paragraph that provides that a cellular system may terminate service when a subscriber ''operates a cellular telephone in an airborne aircraft.''

II. Discussion

96. First, the Commission concludes that the competitive state of the mobile telephony market renders unnecessary both § 22.901(d) to the extent it characterizes certain technologies as ''primary'' or ''alternative'' as well as the first sentence in the introductory paragraph of § 22.901 to the extent it requires licensees to ''provide cellular mobile radiotelephone service upon request to all cellular subscribers in good standing.'' The Commission deletes the existing text of § 22.201(d) (which implies that analog is the principal technology in use). The Commission adds a technologically-neutral statement to § 22.901: ''In providing cellular services, each cellular system may incorporate any technology that meets all applicable technical requirements of this part.'' Further, the Commission finds that the statement in the introductory paragraph about provision of service to ''cellular subscribers in good standing'' is unnecessary because, even in the absence of this rule, cellular service providers, like all common carriers, are required to comply with sections 201 and 202 of Title II of the Act. Those sections require cellular carriers to provide service upon reasonable request, to have charges, practices, classifications, and regulations that are just and reasonable, and to avoid unjust or unreasonable discrimination in their charges, practices, classifications, regulations, facilities, or services. Further, the Commission notes that there are no other comparable rule requirements placed on other CMRS licensees.

97. Second, the Commission finds that it is no longer necessary to require cellular carriers to provide subscribers with information regarding the service area of the provider and therefore delete § 22.901(a). While the Commission agrees that consumers should have access to information about carriers' service areas prior to purchasing wireless services, as well as while using the services, it finds that cellular carriers, as well as PCS and digital SMR carriers are already making this information available at retail outlets, as well as via the internet. The Commission notes that PCS and digital SMR providers are doing so without any comparable regulatory requirement, presumably because consumers demand this information. Notably, the Commission believes the rule is no longer necessary because, even in the absence of the rule, cellular carriers will continue to make this information available while marketing their services in today's competitive marketplace.

98. Third, the Commission finds that the current level of competition renders unnecessary the provision in § 22.901(b) that carriers must notify the Commission in the event that a subscriber's request for service is denied due to lack of capacity. As a threshold matter, the Commission is unaware of any cellular licensee having filed such a notification with the Commission. The Commission notes that carriers must provide sufficient capacity for analog service in instances where it is required. In fact, revised § 22.901(b)(2) states in part that ''[c]ellular licensees must allot sufficient system resources such that the quality of AMPS provided, in terms of geographic coverage and traffic capacity, is fully adequate to satisfy the concurrent need for AMPS availability.'' The Commission believes that this rule provision, combined with the choices of wireless services available to consumers today, will ensure that consumers of analog services will continue to receive adequate service even in the absence of the notification requirement.

99. Finally, the Commission concludes that it is unnecessary to retain the provision in the introductory paragraph to § 22.901 stating that a carrier may terminate service to a customer who operates a cellular telephone while on board an airborne aircraft. The Commission finds that there is no basis to retain this provision

because its rules already explicitly prohibit operation of cellular telephones on board airborne aircraft, and a cellular licensee would be within its obligations under sections 201 and 202 of the Act in terminating the service of customers who violate the Commission's rules. Further, such a rule could be misinterpreted to limit a cellular or other CMRS licensee's ability to terminate service to customers in the case of other types of rule violations. Therefore, the Commission finds that an express condition regarding airborne operation is unnecessary and potentially confusing to licensees.

III. Administrative Matters

A. Paperwork Reduction Act Analysis

100. The actions taken in the *Second Report and Order* have been analyzed with respect to the Paperwork Reduction Act of 1995, Public Law No. 104–13, and found to impose no new or modified recordkeeping requirements or burdens on the public.

B. Final Regulatory Flexibility Analysis

101. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *NPRM*. The Commission sought written public comment on the proposals in the *NPRM,* including comment on the IRFA. The comments received are discussed below. The Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

Need for, and Objectives of, the Order

102. As part of the Commission's year 2000 Biennial Review of regulations, the *Second Report and Order* amends part 22 of the Commission's rules by modifying or eliminating various rules that have become outdated due to technological change, increased competition in the Commercial Mobile Radio Services (CMRS) market, or supervening rules.

Summary of Significant Issues Raised by Public Comments in Response to the IRFA

103. A number of commenters argue that certain portions of § 22.901 should be removed as outdated, duplicative, and unnecessary. Other commenters, however, argued that the Commission should retain the requirement in § 22.901(a) requiring cellular licensees to provide service area a information to potential customers. They argue that consumers require access to this information in order to make sound choices when purchasing wireless services. Likewise, other commenters urge the Commission to retain the requirement in § 22.901(b) requiring cellular licensees to notify the Commission in the event a consumer's request for service is denied due to lack of capacity. They argue that eliminating the rule may lead to cellular carriers not providing sufficient capacity for analog services going forward.

Description and Estimate of the Number of Small Entities To Which the Rules Will Apply

104. Cellular Radiotelephone Service. The SBA has developed a small business size standard for small businesses in the category ''Cellular and Other Wireless Telecommunications.'' 13 CFR 121.201, North American Industry Classification System (NAICS) code 513322. Under that SBA category, a business is small if it has 1,500 or fewer employees. According to the Bureau of the Census, only twelve firms from a total of 1,238 cellular and other wireless telecommunications firms operating during 1997 had 1,000 or more employees. Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. In addition, the Commision notes that there are 1,807 cellular licenses; however, a cellular licensee may own several licenses. According to the most recent *Trends in Telephone Service* data, 806 carriers reported that they were engaged in the provision of either cellular service, PCS, or SMR telephony services, which are placed together in that data. *See Trends in Telephone Service*, Industry Analysis Division, Common Carrier Bureau, Table 5.3—Number of Telecommunications Service Providers that are Small Businesses (August 2001). The Commission has estimated that 323 of these are small under the SBA small business size standard. Accordingly, based on this data, the Commission estimates that not more than 323 cellular service providers will be affected by these revised rules.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

105. None.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

106. The *Second Report and Order* concluded that certain provisions of § 22.901 are unnecessary in light of meaningful economic competition or technological advances. Therefore, modifying or eliminating these provisions should decrease the costs associated with regulatory compliance for cellular service providers, provide additional flexibility in manufacturing cellular equipment, and also enhance the market demand for some products.

Federal Rules That May Duplicate, Overlap or Conflict With the Proposed Rules

107. None.

108. *Report to Congress:* The Commission will send a copy of the *Second Report and Order,* including the associated FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *Second Report and Order,* including the associated FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Second Report and Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**. *See* 5 U.S.C. 604(b).

List of Subjects

47 CFR part 22

Communications common carriers, Communications equipment , Incorporation by reference, Reporting and recordkeeping requirements.

47 CFR part 24

Communications common carriers.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

For the reasons discussed in the Preamble, the Federal Communications Commission amends 47 CFR part 22 as follows:

PART 22—PUBLIC MOBILE SERVICES

1. The authority citation for part 22 continues to read as follows:

Authority: 47 U.S.C. 154, 222, 303, 309 and 332.

2. Section 22.165 is amended by revising paragraph (e) to read, as follows:

§ 22.165 Additional transmitters for existing systems.

* * * * *

(e) *Cellular radiotelephone service.* During the five-year build-out period, the service area boundaries of the additional transmitters, as calculated by the method set forth in § 22.911(a), must remain within the market, except that the service area boundaries may extend beyond the market boundary into the area that is part of the CGSA or is already encompassed by the service area boundaries of previously authorized

facilities. After the five-year build-out period, the service area boundaries of the additional transmitters, as calculated by the method set forth in § 22.911(a), must remain within the CGSA. Licensees must notify the Commission (FCC Form 601) of any transmitters added under this section that cause a change in the CGSA boundary. The notification must include full size and reduced maps, and supporting engineering, as described in § 22.953(a)(1) through (3). If the addition of transmitters involves a contract service area boundary (SAB) extension (*see* § 22.912), the notification must include a statement as to whether the five-year build-out period for the system on the relevant channel block in the market into which the SAB extends has elapsed and whether the SAB extends into any unserved area in the market. The notification must be made electronically via the ULS, or delivered to the filing place (*see* § 1.913 of this chapter) once yearly during the five-year build-out on the anniversary of the license grant date.

* * * * *

§ 22.323 [Removed]

3. Section 22.323 is removed.

4. Section 22.367 is amended by removing and reserving paragraph (a)(4) and by revising paragraph (d), to read as follows:

§ 22.367 Wave polarization.

* * * * *

(a) * * *

(4) [Reserved]

* * * * *

(d) *Any polarization.* Base, mobile and auxiliary test transmitters in the Cellular Radiotelephone Service are not limited as to wave polarization. Public Mobile Service stations transmitting on channels higher than 960 MHz are not limited as to wave polarization.

§ 22.377 [Amended]

5. Section 22.377 is amended by removing paragraph (c).

6. Section 22.901 is revised to read as follows:

§ 22.901 Cellular service requirements and limitations.

The licensee of each cellular system is responsible for ensuring that its cellular system operates in compliance with this section.

(a) Each cellular system must provide either mobile service, fixed service, or a combination of mobile and fixed service, subject to the requirements, limitations and exceptions in this section. Mobile service provided may be of any type, including two way radiotelephone, dispatch, one way or two way paging, and personal communications services (as defined in part 24 of this chapter). Fixed service is considered to be primary service, as is mobile service. When both mobile and fixed service are provided, they are considered to be co primary services. In providing cellular services, each cellular system may incorporate any technology that meets all applicable technical requirements in this part.

(b) Until February 18, 2008, each cellular system that provides two-way cellular mobile radiotelephone service must—

(1) Maintain the capability to provide compatible analog service (''AMPS'') to cellular telephones designed in conformance with the specifications contained in sections 1 and 2 of the standard document ANSI TIA/EIA–553–A–1999 Mobile Station—Base Station Compatibility Standard (approved October 14, 1999); or, the corresponding portions, applicable to mobile stations, of whichever of the predecessor standard documents was in effect at the time of the manufacture of the telephone. 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 of the standard may be purchased from Global Engineering Documents, 15 Inverness Way East, Englewood, CO 80112–5704 (or via the internet at *http://global.ihs.com).* Copies are available for inspection at the Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554, or the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(2) Provide AMPS, upon request, to subscribers and roamers using such cellular telephones while such subscribers are located in any portion of the cellular system's CGSA where facilities have been constructed and service to subscribers has commenced. *See* also § 20.12 of this chapter. Cellular licensees must allot sufficient system resources such that the quality of AMPS provided, in terms of geographic coverage and traffic capacity, is fully adequate to satisfy the concurrent need for AMPS availability.

7. Section 22.905 is revised to read as follows:

§ 22.905 Channels for cellular service.

The following frequency bands are allocated for assignment to service providers in the Cellular Radiotelephone Service.

(a) Channel Block A: 869—880 MHz paired with 824—835 MHz, and 890—891.5 MHz paired with 845—846.5 MHz.

(b) Channel Block B: 880—890 MHz paired with 835—845 MHz, and 891.5—894 MHz paired with 846.5—849 MHz.

8. Section 22.911 is amended by revising the first sentence in paragraphs (b)(1) and (b)(3), to read as follows:

§ 22.911 Cellular geographic service area.

* * * * *

(b) * * *

(1) The alternative CGSA determination must define the CGSA in terms of distances from the cell sites to the 32 dBuV/m contour along the eight cardinal radials, with points in other azimuthal directions determined by the method given in paragraph (a)(6) of this section. * * *

* * * * *

(3) The provision for alternative CGSA determinations was made in recognition that the formula in paragraph (a)(1) of this section is a general model that provides a reasonable approximation of coverage in most land areas, but may under-predict or over-predict coverage in specific areas with unusual terrain roughness or features, and may be inapplicable for certain purposes, *e.g.*, cells with a coverage radius of less than 8 kilometers (5 miles). * * *

* * * * *

§ 22.915 [Removed]

9. Section 22.915 is removed.

10. Section 22.917 is revised to read as follows:

§ 22.917 Emission limitations for cellular equipment.

The rules in this section govern the spectral characteristics of emissions in the Cellular Radiotelephone Service.

(a) *Out of band emissions.* The power of any emission outside of the authorized operating frequency ranges must be attenuated below the transmitting power (P) by a factor of at least 43 + 10 log(P) dB.

(b) *Measurement procedure.* Compliance with these rules is based on the use of measurement instrumentation employing a resolution bandwidth of 100 kHz or greater. In the 1 MHz bands immediately outside and adjacent to the frequency block a resolution bandwidth of at least one percent of the emission bandwidth of the fundamental emission of the transmitter may be employed. A narrower resolution bandwidth is permitted in all cases to improve measurement accuracy provided the measured power is integrated over the full required measurement bandwidth (*i.e.* 100 kHz or 1 percent of emission

bandwidth, as specified). The emission bandwidth is defined as the width of the signal between two points, one below the carrier center frequency and one above the carrier center frequency, outside of which all emissions are attenuated at least 26 dB below the transmitter power.

(c) *Alternative out of band emission limit.* Licensees in this service may establish an alternative out of band emission limit to be used at specified band edge(s) in specified geographical areas, in lieu of that set forth in this section, pursuant to a private contractual arrangement of all affected licensees and applicants. In this event, each party to such contract shall maintain a copy of the contract in their station files and disclose it to prospective assignees or transferees and, upon request, to the FCC.

(d) *Interference caused by out of band emissions.* If any emission from a transmitter operating in this service results in interference to users of another radio service, the FCC may require a greater attenuation of that emission than specified in this section.

§ 22.919 [Removed]

11. Section 22.919 is removed.

12. Section 22.921 is revised to read as follows:

§ 22.921 911 call processing procedures; 911-only calling mode.

Mobile telephones manufactured after February 13, 2000 that are capable of operating in the analog mode described in the standard document ANSI TIA/EIA–553–A–1999 Mobile Station—Base Station Compatibility Standard (approved October 14, 1999—available for purchase from Global Engineering Documents, 15 Inverness East, Englewood, CO 80112), must incorporate a special procedure for processing 911 calls. Such procedure must recognize when a 911 call is made and, at such time, must override any programming in the mobile unit that determines the handling of a non-911 call and permit the call to be transmitted through the analog systems of other carriers. This special procedure must incorporate one or more of the 911 call system selection processes endorsed or approved by the FCC.

§ 22.933 [Removed]

13. Section 22.933 is removed.

§ 22.937 [Removed]

14. Section 22.937 is removed.

§ 22.941 [Removed]

15. Section 22.941 is removed.

16. Section 22.943 is revised to read as follows:

§ 22.943 Limitations on transfer of control and assignment for authorizations issued as a result of a comparative renewal proceeding.

Except as otherwise provided in this section, the FCC does not accept applications for consent to transfer of control or for assignment of the authorization of a cellular system that has been acquired by the current licensee for the first time as a result of a comparative renewal proceeding until the system has provided service to subscribers for at least three years.

(a) The FCC may accept and grant applications for consent to transfer of control or for assignment of the authorization of a cellular system that is to be transferred as a part of a bona fide sale of an on-going business to which the cellular operation is incidental.

(b) The FCC may accept and grant applications for consent to transfer of control or for assignment of the authorization of a cellular system that is to be transferred as a result of the death of the licensee.

(c) The FCC may accept and grant applications for consent to transfer of control or for assignment of authorization if the transfer or assignment is pro forma and does not involve a change in ownership.

§ 22.945 [Removed]

17. Section 22.945 is removed.

18. Section 22.946 is amended by revising paragraph (b) and (c) to read as follows:

§ 22.946 Service commencement and construction systems.

* * * * *

(b) To satisfy this requirement, a cellular system must be interconnected with the public switched telephone network (PSTN) and must be providing service to mobile stations operated by its subscribers and roamers. A cellular system is considered to be providing service only if mobile stations can originate telephone calls to and receive telephone calls from wireline telephones through the PSTN.

(c) *Construction period for specific facilities.* The construction period applicable to specific new or modified cellular facilities for which a separate authorization is granted is one year, beginning on the date the authorization is granted.

PART 24—PERSONAL COMMUNICATIONS SERVICES

19. The authority citation for part 24 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 309 and 332.

20. Section 24.238 is revised to read as follows:

§ 24.238 Emission limitations for Broadband PCS equipment.

The rules in this section govern the spectral characteristics of emissions in the Broadband Personal Communications Service.

(a) *Out of band emissions.* The power of any emission outside of the authorized operating frequency ranges must be attenuated below the transmitting power (P) by a factor of at least 43 + 10 log(P) dB.

(b) *Measurement procedure.* Compliance with these rules is based on the use of measurement instrumentation employing a resolution bandwidth of 1 MHz or greater. However, in the 1 MHz bands immediately outside and adjacent to the frequency block a resolution bandwidth of at least one percent of the emission bandwidth of the fundamental emission of the transmitter may be employed. A narrower resolution bandwidth is permitted in all cases to improve measurement accuracy provided the measured power is integrated over the full required measurement bandwidth (*i.e.* 1 MHz or 1 percent of emission bandwidth, as specified). The emission bandwidth is defined as the width of the signal between two points, one below the carrier center frequency and one above the carrier center frequency, outside of which all emissions are attenuated at least 26 dB below the transmitter power.

(c) *Alternative out of band emission limit.* Licensees in this service may establish an alternative out of band emission limit to be used at specified band edge(s) in specified geographical areas, in lieu of that set forth in this section, pursuant to a private contractual arrangement of all affected licensees and applicants. In this event, each party to such contract shall maintain a copy of the contract in their station files and disclose it to prospective assignees or transferees and, upon request, to the FCC.

(d) *Interference caused by out of band emissions.* If any emission from a transmitter operating in this service results in interference to users of another radio service, the FCC may require a greater attenuation of that emission than specified in this section.

[FR Doc. 02–31382 Filed 12–16–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–02–14043; Notice 1]

Federal Motor Vehicle Safety Standards

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule, technical amendment.

SUMMARY: This document updates the outdated addresses in NHTSA's regulation regarding documents incorporated by reference into various Federal motor vehicle safety standards. In addition, this document properly identifies those organizations identified in the regulation that have been replaced by a successor organization.

DATES: *Effective Date:* This rule is effective December 17, 2002.

FOR FURTHER INFORMATION CONTACT: For legal issues, you may call Rebecca MacPherson, Office of the Chief Counsel, at 202–366–2992.

You may send mail to this official at National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC, 20590.

SUPPLEMENTARY INFORMATION: The National Highway Traffic Safety Administration has adopted a regulation that provided a centralized location for documents incorporated by reference into various Federal motor vehicle safety standards. This regulation is located at 49 CFR 571.5, Matter incorporated by reference. Over the past several years, NHTSA has included its incorporations by reference in the safety standards as they are adopted or amended. Accordingly, the addresses contained in 49 CFR 571.5 have, in many instances, become outdated. Additionally, one of the documents incorporated by reference, Data from the National Health Survey, Public Health Publication No. 1000, series 11, no. 8, has been updated, and the information contained in that publication is now available from the Center for Disease Control, rather than the Department of Health, Education, and Welfare.

List of Subjects in 49 CFR part 571

Imports, Incorporation by reference, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 of title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30166 delegation of authority at 49 CFR 1.50.

2. Section 571.5 is amended by revising paragraphs (b)(2) through (b)(6) and (b)(8), as follows:

§ 571.5 Matter incorporated by reference.

* * * * *

(b) * * *

(2) *Standards of the American Society for Testing and Materials (ASTM).* They are published by the American Society for Testing and Materials. Information and copies may be obtained by writing to: ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428–2959.

(3) *Standards of the American National Standards Institute (ANSI).* They are published by the American National Standards Institute. Information and copies may be obtained by writing to: RESNA, 1700 North Moore St., Suite 1540, Arlington, VA 22209–1903.

(4) *Data on the Weight Height and Selected Body Dimensions of Adults.* They are published by the National Center for Health Statistics, Centers for Disease Control (CDC). Information and copies may be obtained on the CDC web site at *http://www.cdc.gov/nchs* or by writing to National Division for Health Statistics, Division of Data Services, Hyattsville, MD 20782–2003.

(5) *Test Methods of the American Association of Textile Chemists and Colorists (AATCC).* They are published by the American Association of Textile Chemists and Colorists. Information and copies may be obtained by writing to: AATCC, 1 Davis Dr., P.O. Box 12215, Research Triangle Park, NC 27709.

(6) *Test methods of the Illuminating Engineering Society of North America (IES).* They are published by the Illuminating Engineering Society of North America. Information and copies may be obtained by writing to: IES, 120 Wall St., 7th Floor, New York, NY 10005.

* * * * *

(8) *Standards of the American Society of Mechanical Engineers (ASME).* They are published by the American Society of Mechanical Engineers. Information and copies may be obtained by writing to: ASME, 22 Law Drive, P.O. Box 2900, Fairfield, NJ 07007–2900.

* * * * *

Signed on: December 10, 2002.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 02–31598 Filed 12–16–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 021209298–2298–01; I.D. 120402C]

RIN 0648–AQ59

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Revision of the Charter Vessel and Headboat Permit Moratorium in the Gulf of Mexico

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

ACTION: Emergency rule with request for comments.

SUMMARY: NMFS issues this emergency rule to extend certain permit-related deadlines contained in the final rule implementing the charter vessel/headboat permit moratorium for reef fish and coastal migratory pelagic fish in the Gulf of Mexico and to make minor logistical adjustments consistent with those deadline extensions, *e.g.,* extend effectiveness of some existing permits. Moratorium permit deadlines extended by this rule include the December 16, 2002, deadline for having a moratorium permit aboard vessels operating in these fisheries; and the deadline for a decision regarding appeals related to eligibility. These actions are necessary to ensure that participants with valid permits in these fisheries are able to continue to participate in these fisheries pending resolution of an eligibility criterion issue in the amendments and final rule implementing the permit moratorium. That eligibility criterion issue will be addressed subsequently through the normal rulemaking process that will include additional public comment. The intended effect is to maintain continuity in these fisheries until an issue regarding permit eligibility under the moratorium can be resolved.

EFFECTIVE DATE: This rule is effective December 17, 2002 through June 16, 2003. Comments must be received no

later than 5 p.m., eastern time, January 16, 2003.

ADDRESSES: Written comments on this emergency rule must be sent to Phil Steele, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments also may be sent via fax to 727–570–5583. Comments will not be accepted if submitted via e-mail or Internet.

Copies of an economic analysis supporting this emergency rule may be obtained from NMFS' Southeast Regional Office at the address above.

FOR FURTHER INFORMATION CONTACT: Phil Steele, 727–570–5305; fax: 727–570–5583, e-mail: *Phil.Steele@noaa.gov.*

SUPPLEMENTARY INFORMATION: The fishery for reef fish is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (Reef Fish FMP) that was prepared by the Gulf of Mexico Fishery Management Council (Council). The fisheries for coastal migratory pelagic resources are managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (Coastal Migratory Pelagics FMP) that was prepared jointly by the Council and the South Atlantic Fishery Management Council. These FMPs were approved by NMFS and implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

The Council, in cooperation with the Gulf charter vessel/headboat industry, developed Amendment 14 to the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (Amendment 14) and Amendment 20 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (Amendment 20) to address issues of increased fishing mortality and fishing effort in the for-hire (charter vessel/headboat) sector of the recreational fishery in the Gulf of Mexico. NMFS approved Amendments 14 and 20 and promulgated the charter vessel/headboat moratorium regulations 67 FR 43558, June 28, 2002) to implement the amendments.

However, after a recent review of the administrative record, NMFS and the Council have determined that the amendments contained an error relating to the eligibility criteria and, therefore, did not correctly reflect the action taken by the Council. Thus, the regulations implementing the amendments also contained this error, and not all persons entitled to receive charter vessel/headboat permits under the moratorium approved by the Council would be able to receive permits under the erroneous amendments and regulations. The regulations that implemented the moratorium require all charter operators in the Gulf of Mexico EEZ to have a valid ''moratorium permit,'' as opposed to the prior open access charter permit, beginning December 26, 2002.

This emergency rule will minimize any potential adverse effects resulting from the error in the amendments and implementing regulations until the issue can be resolved through the normal rulemaking process. This rule defers the date that the ''moratorium permit'' is required until June 16, 2003. This rule also automatically extends the expiration date of valid or renewable ''open access'' permits for these fisheries through June 16, 2003, *i.e.,* no additional renewal application is required during this period. This emergency rule also extends the deadlines for issuance of ''moratorium permits'' and for resolution of appeals, consistent with the extension of the date the ''moratorium permit'' is required. However, those applicants who qualified under the existing regulations will be issued ''moratorium permits'' as soon as possible. NMFS intends to initiate the normal rulemaking process to correct the eligibility criterion error as soon as possible.

For the reasons stated above, this emergency rule meets NMFS policy guidelines for the use of emergency rules (62 FR 44421, August 21, 1997), because the emergency situation results from recently discovered circumstances; presents a serious management problem in the fishery; and the emergency rule realizes immediate benefits that outweigh the value of prior notice, opportunity for public comment, and deliberative consideration expected under the normal rulemaking process.

NMFS prepared an economic evaluation of the regulatory impacts associated with this emergency rule, which is summarized as follows.

The major effect of the emergency rule is the avoidance of severe economic loss that would occur through the disruption of the business operation of 935 for-hire vessel businesses. Under the current final rule implementing a for-hire permit moratorium, 2,037 vessels would qualify for the limited access permit and be allowed continued operation in the Gulf of Mexico for-hire fishery. An additional 935 vessels would be disqualified for the permit and, therefore, excluded from the fishery due to the errors in the amendments and the implementing final rule. These vessels represent 30 percent of the Council-intended valid participants in the fishery (3,071 vessels). Average receipts per for-hire vessel in the Gulf of Mexico are estimated at $64,000–$80,000 per year. Assuming a new amendment required less than 180 days for implementation, the emergency rule would eliminate the potential loss of $30–$37 million in receipts from these vessels. Additionally, approximately 112,000 for-hire angler trips would be allowed to be taken, supporting $37.5 million in angler expenditures. Due to the avoidance of business cessation and subsequent loss of all associated receipts, the emergency rule is determined to have a significant positive economic impact on a substantial number of small business entities.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), has determined that this emergency rule is necessary to minimize significant adverse social and economic impacts, (*i.e.,* unintended exclusion of participation in these fisheries), that would otherwise occur as a result of an error in Amendments 14 and 20 and their implementing regulations. The AA has also determined that this rule is consistent with the Magnuson-Stevens Act and other applicable laws.

The emergency rule is determined to be not significant under Executive Order 12866. Copies of the economic evaluation are available (*see* **ADDRESSES**).

Because there is no requirement to provide for prior notice and opportunity for public comment on this rule the analytical requirements of the Regulatory Flexibility Act do not apply.

This emergency rule would defer permit-related deadlines established in the final rule implementing the charter vessel/headboat permit moratorium in the Gulf of Mexico (67 FR 43558, June 28, 2002) until an inconsistency in that rule's permit eligibility criteria can be resolved through normal rulemaking procedures, *i.e.*, proposed rule, public comment, and final rule. Specifically, the deadlines for issuance of a moratorium permit, for the requirement to have a moratorium permit aboard a vessel, and for the Regional Administrator's (RA) decision regarding appeals are deferred pending subsequent rulemaking to resolve the eligibility criterion. This action will allow those applicants who would have otherwise been denied initial access to the fishery to continue participating in the fishery. Currently, the open access permits are set to expire on December 26, 2002. For these reasons, the AA finds good cause to waive the

requirement to provide prior notice and the opportunity for public comment, pursuant to authority set forth at U.S.C. 553(b)(B), as such procedures would be impracticable. This emergency rule relieves restrictions by deferring deadlines for obtaining required permits and by extending the effectiveness of certain existing permits to allow continued participation in these fisheries. Because this is a substantive rule that relieves a restriction, the 30-day delayed effectiveness provision of the Administrative Procedures Act does not apply.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: December 10, 2002.

Rebecca Lent,

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

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

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

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

§ 622.4 Permits and fees.

2. In § 622.4:

a. In paragraph (r) introductory text, a final sentence is added to read as follows:

* * * * *

(r) * * * Notwithstanding the other provisions of this paragraph (r), the expiration dates of all charter vessel/headboat permits for Gulf reef fish or Gulf coastal migratory pelagic fish that were not issued under the provision of this paragraph (r) and that are valid or renewable as of December 17, 2002, will be extended through June 16, 2003, provided that a permit has not been issued under this paragraph (r) for the applicable vessel.

* * * * *

b. In paragraph (r)(1), the first sentence is suspended, and a new sentence is added in its place to read as follows:

(r) * * *

(1) * * * Beginning June 16, 2003, the only valid charter vessel/headboat permits for Gulf coastal migratory pelagic fish or Gulf reef fish are those that have been issued under the moratorium criteria in this paragraph (r).

* * * * *

c. In paragraph (r)(6), the first sentence is suspended, and a new sentence is added in its place to read as follows:

* * * * *

(r) * * *

(6) * * * If a complete application is submitted in a timely manner and the applicable eligibility requirements specified in paragraph (r)(2) of this section are met, the RA will issue a charter vessel/headboat permit for Gulf coastal migratory pelagic fish and/or Gulf reef fish or a letter of eligibility for such fisheries, as appropriate, and mail it to the applicant not later than June 6, 2003.

d. Paragraph (r)(8)(v) is suspended and paragraph (r)(8)(vi) is added to read as follows:

* * * * *

(r) * * *

(8) * * *

(vi) The RA will notify the applicant of the decision regarding the appeal by February 18, 2003, or within 30 days after the conclusion of the oral hearing, if applicable. The RA's decision will constitute the final administrative action by NMFS.

* * * * *

[FR Doc. 02–31699 Filed 12–16–02; 8:45 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 67, No. 242
Tuesday, December 17, 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.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[CA–276–0374; FRL–7423–4]

Approval and Promulgation of Implementation Plans and Designation of Areas; California—Indian Wells Valley PM–10 Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve pursuant to the Clean Air Act (CAA or the Act) the moderate area plan and maintenance plan for the Indian Wells Valley planning area in California and to redesignate the area from nonattainment to attainment for the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM–10).

DATES: Comments on this proposal must be received in writing by January 16, 2003.

ADDRESSES: Please address your comments to Karen Irwin, Air Planning Office (AIR–2), Air Division, U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901. You may inspect and copy the rulemaking docket for this notice at the following location during normal business hours. We may charge you a reasonable fee for copying parts of the docket.

Environmental Protection Agency, Region 9 Air Division, Air Planning Office (AIR–2) 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the SIP materials are also available for inspection at the addresses listed below:

Kern County Air Pollution Control District, 2700 ''M'' Street, Suite 302, Bakersfield, CA 93301.

California Air Resources Board, 1001 I Street, Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT: Karen Irwin, Air Planning Office (AIR–2), EPA Region 9, at (415) 947–4116 or: *irwin.karen@epa.gov*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Summary of Action
II. Introduction
A. What National Ambient Air Quality Standards Are Considered in Today's Rulemaking?
B. What Is a State Implementation Plan?
C. What Is the Classification of This Area?
D. What Are the Applicable CAA Provisions for PM–10 Moderate Area Plans?
1. Statutory Provisions
2. Clean Data Areas Approach
E. What Are the Applicable Provisions for Redesignation to Attainment for PM–10?
III. Background
IV. Review of the State Submittal
A. Is the Moderate Area Plan Approvable?
1. Did the State Meet the CAA Procedural Provisions?
2. Has the State Demonstrated That the Area Qualifies for the Clean Data Policy?
a. Based on the Past 3 Years of Air Quality Data, is the Area Attaining Both the 24-Hour and Annual PM–10 NAAQS?
b. Is the State Continuing To Operate an Appropriate PM–10 Air Quality Monitoring Network?
c. Has EPA Approved as Meeting the CAA's RACM/RACT Requirements the Control Measures Responsible for Bringing the Area Into Attainment?
3. Do the Emissions Inventories Meet CAA Provisions?
4. Are the CAA Provisions for New Source Review Satisfied?
B. Is the Maintenance Plan Approvable?
1. Does the Plan Contain an Adequate Attainment Inventory?
2. Does the Plan Demonstrate Future Maintenance of the NAAQS?
3. Does the Plan Meet the CAA Provisions for Contingency Measures?
4. Has the State Committed To Continue To Operate an Appropriate PM–10 Air Quality Monitoring Network?
5. Has the State Provided for Verification of Continued Attainment?
C. Is the Redesignation Request Approvable?
1. Has the Area Attained the 24-Hour and Annual PM–10 NAAQS?
2. Has the Area Met all Relevant Requirements Under Section 110 and Part D of the Act?
3. Does the Area Have a Fully Approved SIP Under Section 110(k) of the Act?
4. Has the State Shown That the Air Quality Improvement in the Area is Permanent and Enforceable?
5. Does the Area Have a Fully Approved Maintenance Plan Pursuant to Section 175A of the Act?
D. Conformity
1. Transportation Conformity
2. General Conformity
V. Proposed Action
VI. Administrative Requirements

I. Summary of Action

We are proposing to approve the moderate area nonattainment plan and maintenance plan submitted to EPA by the California Air Resources Board (ARB) on December 5, 2002.[1] If EPA takes final action on this proposal, the Indian Wells Valley PM–10 nonattainment area (Indian Wells) would be redesignated to attainment for the 24-hour and annual PM–10 NAAQS.

II. Introduction

A. What National Ambient Air Quality Standards Are Considered in Today's Rulemaking?

Particulate matter with an aerodynamic diameter of 10 micrometers or less (PM–10) is the pollutant that is the subject of this action. The NAAQS are safety thresholds for certain ambient air pollutants set to protect public health and welfare. PM–10 is among the ambient air pollutants for which we have established such a health-based standard.

PM–10 causes adverse health effects by penetrating deep in the lung, aggravating the cardiopulmonary system. Children, the elderly, and people with asthma and heart conditions are the most vulnerable.

On July 1, 1987 (52 FR 24634), we revised the NAAQS for particulate matter with an indicator that includes only those particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers. *See* 40 CFR 50.6.

The annual primary PM–10 standard is 50 ug/m^3 as an annual arithmetic mean. The 24-hour PM–10 standard is 150 ug/m^3 with no more than one expected exceedance per year. The secondary PM–10 standards, promulgated to protect against adverse welfare effects, are identical to the primary standards. *Id.*

B. What Is a State Implementation Plan?

The Clean Air Act requires States to attain and maintain ambient air quality equal to or better than the NAAQS. The State's commitments for attaining and maintaining the NAAQS are outlined in

[1] We previously received a draft of the plan for review.

the State Implementation Plan (or SIP) for that State. The SIP is a planning document that, when implemented, is designed to ensure the achievement of the NAAQS. Each State currently has a SIP in place, and the Act requires that SIP revisions be made periodically as necessary to provide continued compliance with the standards.

SIPs include, among other things, the following: (1) An inventory of emission sources; (2) statutes and regulations adopted by the State legislature and executive agencies; (3) air quality analyses that include demonstrations that adequate controls are in place to meet the NAAQS; and (4) contingency measures to be undertaken if an area fails to attain the standard or make reasonable progress toward attainment by the required date.

The State must make the SIP available for public review and comment through a public hearing, it must be adopted by the State, and submitted to EPA by the Governor or his designee. EPA takes Federal action on the SIP submittal thus rendering the rules and regulations Federally enforceable. The approved SIP serves as the State's commitment to take actions that will reduce or eliminate air quality problems. Any subsequent revisions to the SIP must go through the formal SIP revision process specified in the Act.

C. What Is the Classification of This Area?

Upon enactment of the 1990 Clean Air Act Amendments (CAA or Act), PM–10 areas meeting the requirements of either (i) or (ii) of section 107(d)(4)(B) of the Act were designated nonattainment for PM–10 by operation of law and classified ''moderate.'' These areas included all former Group I PM–10 planning areas identified in 52 FR 29383 (August 7, 1987) and further clarified in 55 FR 45799 (October 31, 1990), and any other areas violating the NAAQS for PM–10 prior to January 1, 1989 (many of these areas were identified by footnote 4 in the October 31, 1990 FederalRegister document). A **Federal Register** document announcing the areas designated nonattainment for PM–10 upon enactment of the 1990 Amendments, known as ''initial'' PM–10 nonattainment areas, was published on March 15, 1991 (56 FR 11101). A subsequent **Federal Register** document correcting some of these areas was published on August 8, 1991 (56 FR 37654). These nonattainment designations and moderate area classifications were codified in 40 CFR part 81 in a **Federal Register** document published on November 6, 1991 (56 FR 56694).

The Searles Valley planning area was designated nonattainment and classified as moderate. The area originally included three subregions (Coso Junction, Indian Wells Valley and Trona) under the planning jurisdiction of different air pollution control agencies. On August 6, 2002, EPA changed the boundaries of the Searles Valley PM–10 nonattainment area by dividing this area into three separate, newly created PM–10 nonattainment areas. 67 FR 50805. One of these areas is Indian Wells Valley which is under the jurisdiction of the Kern County Air Pollution Control District (APCD or the District). The Indian Wells Valley PM–10 nonattainment area boundaries include the portion of Kern County contained within the United States Geological Survey Hydrologic Unit #18090205. The Indian Wells Valley area covers approximately 300 square miles and is populated by about 30,000 persons, with only one community of significant size, Ridgecrest.

D. What Are the Applicable CAA Provisions for PM–10 Moderate Area Plans?

The air quality planning requirements for moderate PM–10 nonattainment areas are set out in subparts 1 and 4 of title I of the Act. We have issued guidance in a General Preamble describing our preliminary views on how we will review SIPs and SIP revisions submitted under title I of the Act, including those containing moderate PM–10 nonattainment area SIP provisions. 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992). The General Preamble provides a detailed discussion of our interpretation of the title I requirements.

1. Statutory Provisions

States with initial moderate PM–10 nonattainment areas were required to submit, among other things, the following provisions by November 15, 1991:

(a) Provisions to assure that reasonably available control measures (RACM) (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology (RACT)) shall be implemented no later than December 10, 1993;

(b) Either a demonstration (including air quality modeling) that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994, or a demonstration that attainment by that date is impracticable;

(c) Pursuant to section 189(c)(1), for plan revisions demonstrating attainment, quantitative milestones which are to be achieved every 3 years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994; and

(d) Provisions to assure that the control requirements applicable to major stationary sources of PM–10 also apply to major stationary sources of PM–10 precursors, except where the Administrator determines that such sources do not contribute significantly to PM–10 levels which exceed the NAAQS in the area.

In addition, States must submit a permit program for the construction of new and modified major stationary sources in 1992 and contingency measures in 1993. See sections 189(a) and 172(c)(5).

2. Clean Data Areas Approach

The clean data areas approach applies the clean data policy concept already in place for ozone [2] to selected PM–10 nonattainment areas in order to approve control measures for these areas into the SIP. The approach only applies to PM–10 areas with simple PM–10 source problems, such as residential wood combustion and fugitive dust. If an area meets the following requirements, the State will no longer be required to develop, among other things, an attainment demonstration. The requirements for the approach are:

(a) The area has attained the PM–10 NAAQS with the three most recent years of quality assured air quality data.

(b) The State must continue to operate an appropriate PM–10 air quality monitoring network, in accordance with 40 CFR part 58, in order to verify the attainment status of the area.

(c) The control measures responsible for bringing the area into attainment must be approved by EPA as meeting the CAA requirements for RACM/RACT.

(d) An emissions inventory must be completed for the area. In addition to the above requirements for the use of the clean data areas approach, any requirements that are connected solely to designation or classification, such as new source review (NSR) and RACM/RACT, will remain in effect. However, the requirements under CAA sections 172(c) and 189 for developing attainment demonstrations, RFP

[2] See memorandum from John Seitz, Director, Office of Air Quality Planning and Standards (OAQPS) to Regional Division Directors entitled ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' May 10, 1995.

demonstrations and contingency measures are suspended.

Any sanctions and/or federal implementation plan (FIP) clocks that may be running for an area due to failure to submit, or disapproval of any attainment demonstration, RFP or contingency measure requirements, are stopped. In addition, areas are still required to demonstrate transportation conformity. Areas typically use the build/no-build test or the no-greater-than-1990 test because the requirements for an attainment demonstration and RFP, which establish the budgets, no longer apply. However, the emissions budget test applies once a maintenance plan is submitted and its budgets are determined adequate. The applicable tests for general conformity still apply.

The use of the clean data areas approach does not constitute a CAA section 107(d) redesignation, but only serves to approve nonattainment area SIPs required under part D of the CAA.[3]

E. What Are the Applicable Provisions for Redesignation To Attainment for PM–10?

The 1990 CAA Amendments revised section 107(d)(3)(E) to provide five specific requirements that an area must meet in order to be redesignated from nonattainment to attainment:

(1) The area must have attained the applicable NAAQS;

(2) The area has a fully approved SIP under section 110(k) of the Act;

(3) The air quality improvement must be due to permanent and enforceable reductions;

(4) The area has met all relevant requirements under section 110 and part D of the Act; and

(5) The area must have a fully approved maintenance plan pursuant to section 175A of the Act.

Our primary guidance on redesignation requests is a September 4, 1992 memorandum from John Calcagni, Director, Air Quality Management Division, to Regional Division Directors, entitled ''Procedures for Processing Requests to Redesignate Areas to Attainment'' (Calcagni memo). Below is a summary of the discussion in the memo of each of the above statutory requirements:

a. Attainment of the Standard. There are two components involved in making this demonstration. The first component concerns ambient air quality monitoring. The ambient air quality monitoring data used to demonstrate attainment should be representative of the area of highest concentration. The monitors should remain at the same location for the duration of the monitoring period required for demonstrating attainment. The data should be collected and quality-assured in accordance with 40 CFR part 58 and recorded in the Air Quality Systems (AQS) Database for public review. The second component relies on supplemental EPA-approved air quality modeling to ensure source impacts are comprehensively evaluated, however, specific circumstances may determine whether there is a need for modeling. See also section IV.A.2.a of this proposed action.

b. State Implementation Plan Approval. The SIP for the area must be fully approved under section 110(k) and must satisfy all requirements that apply to the area.

c. Permanent and Enforceable Improvement in Air Quality. The State must be able to reasonably attribute the improvement in air quality to emission reductions which are permanent and enforceable. Attainment resulting from temporary reductions in emission rates (*e.g.*, reduced production or shutdown due to temporary adverse economic conditions) or unusually favorable meteorology would not qualify as an air quality improvement due to permanent and enforceable emission reductions.

d. Section 110 and part D Requirements. A State must meet all requirements of section 110 and part D that were applicable prior to submittal of the complete redesignation request except those suspended by the use of the clean data approach. These requirements must be fully approved into the plan at or before the time EPA redesignates the area. Section 110(a)(2) contains general requirements for nonattainment plans and part D consists of general requirements applicable to all areas which are designated nonattainment based on a violation of the NAAQS and pollutant-specific subparts.[4] One of the applicable requirements necessary for redesignation is that the State show its SIP provisions are consistent with section 176(c) conformity requirements.

e. Fully Approved Maintenance Plan. CAA section 175A provides the general framework for maintenance plans. The Calcagni memo lists five core provisions to ensure maintenance of the relevant NAAQS in an area seeking redesignation: attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and contingency plan. Below is a summary of each provision:

1. Attainment Inventory. The State should develop an attainment emissions inventory to identify the level of emissions in the area which is sufficient to attain the NAAQS. Where the State has made an adequate demonstration that air quality has improved as a result of the SIP, the attainment inventory will generally be the actual inventory at the time the area attained the standard. This inventory should be consistent with EPA's most recent guidance on emissions inventories, including emissions during the time period associated with the monitoring data showing attainment.

2. Maintenance Demonstration. There are two means by which maintenance of the NAAQS in the future can be demonstrated—a projected inventory showing that future emissions for the 10-year period following redesignation will not exceed the level of the attainment inventory, or modeling showing that the future mix of sources and emission rates in the 10-year period following redesignation will not cause a violation of the NAAQS. The projected inventory should consider future growth, including population and industry, be consistent with the attainment inventory, and document data inputs and assumptions. Any assumptions concerning emission rates must reflect permanent, enforceable measures.

3. Monitoring Network. Once an area has been redesignated, the State should continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR part 58, to verify the attainment status of the area.

4. Verification of Continued Attainment. Each State should ensure that it has the legal authority to implement and enforce all measures necessary to attain and to maintain the NAAQS. One such measure is ambient and source emission data. Also, the State should track the progress of the maintenance plan. One option is for the State to periodically update the emissions inventory. Another option is a comprehensive review of the factors that were used in developing the attainment inventory to show no significant change; if such review showed significant change, the State should then perform an update of the inventory. In any event, the State should monitor the indicators for triggering contingency measures.

[3] Moreover, the lack of a requirement to submit the SIP revisions noted above and the suspension of sanction clocks/FIP requirements will exist only as long as the area continues to attain the NAAQS. If we determine prior to a final redesignation to attainment that the area has violated the standards, the basis for the determination that the area need not make these SIP revisions would no longer exist.

[4] Note that this requirement and the second requirement, SIP approval, discussed previously are effectively coterminous.

5. Contingency Plan. A maintenance plan is required to include contingency provisions, as necessary, to promptly correct any violation of the NAAQS that occurs after redesignation of the area. For purposes of CAA section 175A, a State is not required to have fully adopted contingency measures that will take effect without further action by the State in order for the maintenance plan to be approved. However, the contingency plan is considered to be an enforceable part of the SIP and should ensure that the contingency measures are adopted expeditiously once they are triggered. The plan should clearly identify the measures to be adopted, a schedule and procedure for adoption and implementation, and a specific time limit for action by the State. As a necessary part of the plan, the State should also identify specific indicators, or triggers, which will be used to determine when the contingency measures need to be implemented. The EPA will review what constitutes a contingency plan on a case-by-case basis. At a minimum, it must require that the State will implement all measures contained in the part D nonattainment plan for the area prior to redesignation.

III. Background

On December 5, 2002, ARB submitted to EPA the ''PM–10 (Respirable Dust) Attainment Demonstration, Maintenance Plan, and Redesignation Request; Kern County Portion of Indian Wells Valley Segment of 'Searles Valley' Federal Planning Area,'' Kern County Air Pollution Control District, September 5, 2002 (September 2002 plan) that is the subject of this proposed action.[5,6] On December 6, 2002, we found that the submittal met the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

The Indian Wells PM–10 nonattainment area has two PM–10 monitoring sites. One is located downwind of the City of Ridgecrest and the ''main base'' of the Naval Air Weapons Station at China Lake-Powerline Road (China Lake monitor). This site has been monitoring PM–10 emissions since 1990. The other site is located in downtown Ridgecrest at City Hall, 100 West California Avenue (Ridgecrest monitor). This second site began monitoring PM–10 concentrations in January 2000.

On June 13, 2001, EPA proposed to find, pursuant to CAA section 188(b)(2), that the Indian Wells Valley had not attained the 24-hour and annual PM–10 NAAQS by the applicable attainment date of December 31, 1994. 66 FR 31873. This proposed finding was based on inadequate data collection from the China Lake monitor during the 1992–1994 period. If EPA had finalized that proposal, the Indian Wells Valley nonattainment area would have been reclassified by operation of law as a serious PM–10 nonattainment area under CAA section 188(b)(2)(A).

When we issued our proposed finding of failure to attain, the Indian Wells Valley had not recorded any PM–10 exceedances during 1999 and 2000, but ambient air quality data for the year 2001 in its entirety was not yet available. Today's action proposing to redesignate the area to attainment is predicated on ambient air quality data from the year 2001 in full, in combination with the data sets from the years 1999 and 2000.

IV. Review of the State Submittal

A. Is the Moderate Area Plan Approvable?

1. Did the State Meet the CAA Procedural Provisions?

Prior to adoption by the State, the plan received proper public notice and was the subject of a public hearing in Bakersfield on September 5, 2002.

2. Has the State Demonstrated that the Area Qualifies for the Clean Data Policy?

a. Based on the past 3 years of air quality data, is the area attaining both the 24-hour and annual PM–10 NAAQS?

Attainment of the annual PM–10 standard is achieved when the annual arithmetic mean PM–10 concentration over a three year period is equal to or less than 50 ug/m^3. Attainment of the 24-hour standard is determined by calculating the expected number of days in a year with PM–10 concentrations greater than 150 ug/m^3. The 24-hour standard is attained when the expected number of days with levels above 150 ug/m^3 (averaged over a three year period) is less than or equal to one. Three consecutive years of air quality data are generally necessary to show attainment of the 24-hour and annual standards for PM–10. See 40 CFR part 50 and appendix K. A complete year of air quality data, as referred to in 40 CFR part 50, appendix K, is comprised of all 4 calendar quarters with each quarter containing data from at least 75 percent of the scheduled sampling days.

All data cited in the following discussion are recorded in the AQS database. Three years of clean data (1999–2001) have been recorded in the Indian Wells Valley, with values well below both the 24-hour and annual NAAQS. The monitoring data meets EPA's minimum requirements for data collection and data substitution. The following table summarizes the PM–10 data collected at the China Lake monitoring site during the period 1999—2001.[7]

Year	1st max 24-hr conc. (μg/m^3)	2nd max 24-hr conc. (μg/m^3)	3rd max 24-hr conc. (μg/m^3)	4th max 24-hr conc. (μg/m^3)	Annual average (μg/m^3)	3 year annual average (μg/m^3)
1999	28	28	27	24	16	NA
2000	53	38	34	30	15	NA
2001	115	37	27	26	15	NA
						15

Source: EPA/AQS database.

[5] ARB submitted in October 1993 an initial moderate area PM–10 plan for the Searles Valley PM–10 nonattainment area, including the Indian Wells subregion, entitled ''Searles Valley Planning Area State Implementation Plan,'' November 1991. (November 1991 plan).

[6] While the moderate area nonattainment plan, the maintenance plan and the redesignation request are contained in one document, each component is discussed separately in the sections of this proposed action.

[7] The Calcagni memo notes that air quality modeling should be considered in determining whether an area has attained the NAAQS. However, accurately estimating fugitive dust emissions for input to dispersion modeling over a large area is much more difficult than for point sources of gaseous pollutants, which were the archetypes for development of much of our modeling guidance. This is due to uncertainty in fugitive dust emissions' temporal and spatial variability. Since the Indian Wells September 2002 plan addresses a simple PM–10 source problem (fugitive dust) in an area that lacks major stationary sources, we believe it is adequate for the attainment demonstration to be based on representative monitoring data rather than dispersion modeling.

The highest annual arithmetic mean calculated during 1999–2001 was 16; the highest 24-hour value recorded in that time period was 115 μg/m^3. Data collected in 2002 through the end of October has shown the highest 24-hour value recorded as 74 μg/m^3.

Additional data collected by the Kern County APCD at the Ridgecrest monitoring site supports our proposed finding that the Indian Wells Valley area has attained the PM–10 NAAQS. This monitor does not have three full years of data at this time since it began operation in January 2000. The following table summarizes the data from the Ridgecrest monitoring site.

RIDGECREST PM–10 MONITORING DATA 2000–2001

Year	1st max conc. (μg/m^3)	2nd max conc. (μg/m^3)	3rd max conc. (μg/m^3)	4th max conc. (μg/m^3)	Annual average (μg/m^3)
2000	90	52	48	45	21
2001	63	46	41	38	21

The monitoring site at China Lake upon which this proposed finding of attainment is based is representative of the area of highest PM–10 concentration, downwind of the City of Ridgecrest.[8] The China Lake monitor readings are affirmed by data showing concentrations well within the standards collected from the Ridgecrest monitor, which also represents a site of highest PM–10 concentration.[9]

Based on quality-assured monitoring data from 1999 through 2001 meeting the requirements of 40 CFR part 50, appendix K, we propose to find that the Indian Wells Valley PM–10 nonattainment area has attained the PM–10 NAAQS.

b. Is the State continuing to operate an appropriate PM–10 air quality monitoring network?

As stated previously, demonstrating that an area has attained the PM–10 NAAQS involves submittal of ambient air quality data from an ambient air monitoring network representing peak PM–10 concentrations which should be stored in AQS. Once the area has been redesignated, the State will continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR part 58, to verify the attainment status of the area. ARB has committed to work with Kern County APCD to ensure continued PM–10 air quality monitoring in the Indian Wells Valley PM–10 nonattainment area, in accordance with 40 CFR Part 58, for at least 10 years following redesignation of the area to attainment, in order to verify the attainment status of the area.[10] This commitment satisfies the obligation to maintain an adequate monitoring program in the area.

c. Has EPA approved as meeting the CAA's RACM/RACT requirements the control measures responsible for bringing the area into attainment?

In this action, we are proposing to approve the following measures as meeting the RACM requirement of CAA section 189(a)(1)(C)[11] that we can reasonably ascertain were collectively responsible for bringing the area into attainment of the 24-hour PM–10 standard:[12]

1. Fugitive Dust Control Plan for the Naval Air Weapons Station, China Lake, California (September 1, 1994).[13] This plan establishes controls for unpaved roads, disturbed vacant land and open storage piles.

2. Paving of unpaved roads between 1993 and the present.[14] The District identifies the funding sources for some of those road miles as California Department of Motor Vehicle funds, City of Ridgecrest funds and Congestion Mitigation and Air Quality funds.

3. Kern County 1990 Land Use Ordinance—Chapter 18.55 and Kern County Development Standards, Chapter III. This ordinance requires paving of streets for new subdivisions according to the County Development Standards.[15]

4. City of Ridgecrest Municipal Code 1980 which requires paving of streets for new subdivisions.[16]

5. Bureau of Land Management closure of 83 miles of unpaved roads/off-highway vehicle trails, between 1994 and the present[17], which reduces disturbance to open areas and corresponding windblown emissions.

6. Rule 401 ''Visible Emissions,'' November 29, 1993; Rule 404.1 ''Particulate Matter Concentration, April 18, 1972; and Rule 405 ''Particulate Matter Emission Rate,'' July 18, 1983, with respect to control of process fugitive emissions.

This list is a subset of the measures attributed in the September 2002 plan as responsible for bringing the area into attainment.[18] We look to the November 1991 plan for the Searles Valley Planning Area to provide information on the sources that primarily contributed to the area's exceedences. The November 1991 plan provides a source category breakdown for emissions contributing to the China Lake monitor which recorded an exceedence of 166 μg/m^3 on the selected March 13, 1991 design day.[19] Unpaved roads were estimated to contribute 46 percent of the emissions, wind erosion 14 percent, process fugitives 17 percent and stationary stack emissions 1 percent. The remaining contribution (22 percent) was attributed to government aircraft associated with the Naval Air Weapons Station. However, since the District does not have authority to control military flight operations, the District focused its control strategy on the unpaved road, wind erosion and process fugitive categories.[20]

In the current submittal, Kern County APCD only credits emission reductions to the unpaved road, wind erosion and process fugitive categories,[21] further confirming that controls on these

[8] September 2002 plan, Chapter 5, pg. 5–1.

[9] Op. Cit.

[10] ARB Executive Order G–125–295, pg. 4 of the submittal.

[11] CAA Section 172(c)(1) requires RACT for existing sources in PM–10 nonattainment areas and CAA Section 189(e) requires RACT provisions for gaseous precursors of PM–10 except where EPA determines that such sources do not contribute significantly to PM–10 levels exceeding the standard. There are no major stationary sources of PM–10 in the nonattainment area, and total emissions associated with all industrial sources account for only 0.16 tons per day, or less than 3 percent of PM–10 emissions in 2001. For this reason, no sources within the Indian Wells area are subject to the RACT requirement, either with respect to primary or secondary PM–10 emissions.

[12] There have been no recorded exceedances of the annual 50 μg/m^3 PM–10 standard in the area since the inception of PM–10 monitoring. September 2002 plan, Chapter 2, pg. 2–1.

[13] Appendix D of the September 2002 plan.

[14] Appendix E of the September 2002 plan ''Map of Roadways Paved''.

[15] Appendix E of the September 2002 plan.

[16] Op. Cit.

[17] Appendix E of the September 2002 plan, letter from Hector Villalobos, U.S. Bureau of Land Management, to Thomas Paxson, Kern County APCD, September 9, 2002.

[18] See Table 4–3 of the September 2002 plan.

[19] The design day, by definition, is the day with the highest ambient concentration determined to be the result of local effects, *i.e.* a worst case day.

[20] November 1991 plan, pg. 6.

[21] September 2002 plan, Chapter 4, Table 4–2.

sources are primarily responsible for the area's ability to attain the 24-hour standard.

Our list of control measures responsible for bringing the area into attainment therefore only includes measures that reduced emissions from these three areawide source categories.[22]

The September 2002 plan attributes a 25 percent reduction in process fugitives (0.06 tons per day), a 15 percent reduction in wind erosion PM–10 emissions (0.08 tons per day) and a 25 percent reduction in unpaved road PM–10 emissions (0.41 tons per day) from the measures implemented in the area. While the actual reduction achieved from each of these categories is uncertain, the clean monitoring data reported in the 1998–2001 timeframe speaks to their success.

We conclude that the six control measures listed in this subsection are responsible for bringing the area into attainment, and therefore propose to approve them into the California SIP as meeting the RACM provisions of CAA section 189(a)(1)(C). The submittal demonstrates that these measures have been fully carried out. The measures will be approved SIP regulations upon finalization of this proposed action.

The measures have been implemented in total with sufficient expedition to achieve three years of clean data between 1999 and 2001. In addition to these six controls, we consider the other measures implemented in the Indian Wells area as supplemental strategies that contributed still further emission reductions and public health protection. Continued implementation of these measures will help ensure that the Indian Wells area maintains the 24-hour and annual PM–10 NAAQS but we are not relying on them for this determination.

3. Do the Emissions Inventories Meet CAA Provisions?

Our guidance specifies that an attainment inventory be developed that identifies the level of emissions during the time period associated with the monitoring data showing attainment. ARB has developed an actual inventory of emissions for the year 2001 and has estimated the inventory for the year 1999. See Chapter 7, Table 7–1 of the September 2002 plan. Total tonnage per day in 1999 is estimated to be 5.76 and total tonnage per day in 2001 is estimated to be 5.68. We can assume the estimated tonnage per day in 2000 lies in between these two values. A detailed inventory is provided in Appendix C of the September 2002 plan and was prepared by ARB using its most recent emissions factors. Background information on the assumptions underlying the emissions inventory estimates can be found in a report titled ''Development of Emission Growth Surrogates and Activity Projections Used in Forecasting Point and Area Source Emissions, Final Report,'' E.H. Pechan and Associates, February 26, 2001 (Pechan Report).

For the mobile source component of the emissions inventories, ARB uses a California-specific model known as EMFAC, including the model used to calculate exhaust and evaporative emissions from motor vehicles and the contribution of mobile emissions to the PM–10 inventory. We have no evidence that supports a conclusion that PM–10 gaseous precursors (such as nitrogen oxides) within the area are a significant contributor to the PM–10 nonattainment problem, and therefore emissions inventories for PM–10 gaseous precursors were not included in the plan and are not required. *See also* footnote 11 and section IV.D.1 of this proposed action which discuss stationary source and motor vehicle exhaust emissions.

We propose to approve the emissions inventory under CAA section 172(c)(3) as current, accurate, and complete.

4. Are the CAA Provisions for New Source Review Satisfied?

All new major sources and modifications to existing major sources are subject to the new source review (NSR) and prevention of significant deterioration (PSD) requirements of Rule 210.1. We have not yet approved the District's NSR rule into the SIP, but, for major sources and modifications of PM–10 emissions, we have delegated to Kern County APCD the authority to administer the PSD program.

CAA section 172(c)(5) requires NSR permits for the construction and operation of new and modified major stationary sources anywhere in nonattainment areas. We have determined that areas being redesignated from nonattainment to attainment do not need to comply with the requirement that a NSR program be approved prior to redesignation provided that the area demonstrates maintenance of the standard without part D nonattainment NSR in effect. The rationale for this decision is described in a memorandum from Mary Nichols dated October 14, 1994 (''Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment''). We have determined that the Indian Wells Valley September 2002 plan's maintenance demonstration does not rely on nonattainment NSR and, therefore, the area need not have a fully approved nonattainment NSR program prior to approval of the redesignation request.

The requirements of the Part D NSR program will be replaced by the PSD program once the area has been redesignated.[23] Kern County's PSD program pursuant to 40 CFR 52.21 will become effective in the area with respect to PM–10 upon redesignation of the area to attainment, per the delegation agreement between EPA and Kern County APCD dated August 12, 1999.

B. Is the Maintenance Plan Approvable?

1. Does the Plan Contain an Adequate Attainment Inventory?

Yes. See section IV.A.3 of this proposed action.

2. Does the Plan Demonstrate Future Maintenance of the NAAQS?

As previously discussed, the Calcagni memo identifies two means by which maintenance of the NAAQS in the future can be demonstrated—emissions inventory projections or modeling for the 10-year period following redesignation. The Indian Wells Valley September 2002 plan relies on the former.

The plan includes a linear model forecast that projects emissions in tons per day between 2001 and 2013[24] and corresponding concentrations. Overall, ARB predicts that emissions in the Indian Wells Valley PM–10 nonattainment area will decrease from 5.68 tons per day in 2001 to 5.18 tons per day in 2013. This decrease reflects assumptions that fugitive dust emissions from farming operations and farmland (part of the area source and natural wind erosion source categories, respectively) will decrease by urbanization and attrition of farmland throughout Kern County. In contrast, increased urbanization would lead to slight emissions increases in all other categories throughout the county, although this effect is so slight on the unpaved road and offroad mobile source categories that the daily tonnage from these two categories remains the same. ARB's projections are based on assumptions of statewide population growth that are incorporated into the

[22] See EPA's Technical Support Document associated with this proposed rule for our evaluation of other measures listed in the September 2002 plan that we are not proposing to approve as responsible for bringing the area into attainment.

[23] Calcagni memo, pg. 6.

[24] September 2002 plan, Chapter 7, Table 7–1.

Pechan Report emission factors.[25] However, statewide growth assumptions may not apply to growth trends in the Indian Wells area because the Kern County APCD indicates that the area experienced a reduction in population between 1990 and 2001,[26] and no significant population increases in the area are anticipated in the future. Kern County APCD explains that the economy is heavily dependent on Naval Air Weapon Station activities which have declined in recent years and only a small amount of farming is conducted in the Valley, limited by groundwater supplies and weather.

The linear model forecast in the plan conservatively assumes a baseline ''worst case'' concentration of 149 μg/m^3 in the year 2001. Since the highest maximum 24-hour value recorded in 2001 equaled 115 μg/m^3 (this is also the highest value recorded in the 1998–2001 time frame), we believe it more accurately reflects current conditions. Assuming no significant population change, the emissions inventory would remain the same into the future, thus not triggering an exceedence. ARB's calculations (under the population growth scenario) show a decrease in emissions of 0.5 tons per day after 2001, resulting in a maximum concentration of 136 μg/m^3 in 2013. Even if the expected decreases in farming operations and farmland do not occur as predicted, the result would be an emissions increase of only 0.19 tons per day by 2013. Based on the highest 24-hour concentration recorded in the 1999–2001 time frame (115 μg/m^3), this increase would be too slight to have an impact on maintenance of the 24-hour standard.

Although an exceedence attributable to Owens Lake PM–10 transport has not been recorded in the area since 1995, for purposes of maintaining the NAAQS, we consider the possibility for an Owens Lake wind event to cause or contribute to a future exceedence. Indian Wells Valley is located at the southern edge of the 50-mile radius Owens Lake impact zone with respect to NAAQS violations.[27] Fugitive dust controls are currently being implemented on Owens Lake according to the adopted and EPA SIP-approved Owens Valley PM–10 SIP. As of January 27, 2002, control measures were implemented on ten (10) square miles of lake bed[28] and controls on an additional 3.5 square miles of lake bed are to be completed by December 31, 2002.[29]

Another 3 square miles will be controlled by December 31, 2003 and the Great Basin APCD has committed to revise the Owens Valley PM–10 Plan in 2003 to provide for controls on any additional square milage deemed necessary for attainment of the NAAQS by December 31, 2006. EPA has approved these controls as meeting Best Available Control Measures (BACM) for the Owens Valley PM–10 nonattainment area, required per CAA 189(b) for PM–10 nonattainment areas classified as serious. 64 FR 48305 (September 3, 1999). Therefore, we believe this adequately addresses future PM–10 transport emissions from Owens Lake into surrounding areas.

3. Does the Plan Meet the CAA Provisions for Contingency Measures?

The maintenance plan must identify contingency measures to promptly correct any violation of the NAAQS that occurs after redesignation of the area.[30] *See* section II.E of this proposed action for additional detail.

Kern County APCD has included a contingency measure in the Indian Wells Valley plan to control unpaved roads for an emission reduction of 0.16 tons per day.[31] Kern County APCD has also identified a trigger for the contingency measure, which is failure of the area to maintain the NAAQS.[32]

Furthermore, Kern County APCD indicates that additional contingency control measures could be implemented as needed, for example control of truck tire carryout onto paved roads.[33] Since it is difficult to predict what source category(ies) would potentially contribute to a future exceedence, we believe it is appropriate for our proposed approval to rely on a contingency measure that targets additional emissions reductions from unpaved roads, which constituted the single largest source of PM–10 emissions for the 1991 design day exceedence. We conclude that the plan satisfies the contingency measure provision of CAA Section 175A(d).

4. Has the State Committed to Continue to Operate an Appropriate PM–10 Air Quality Monitoring Network?

Yes. See section IV.A.2.b of this proposed action.

5. Has the State Provided for Verification of Continued Attainment?

According to the Calcagni memo, the State's maintenance plan submittal should indicate how the State will track the progress of the maintenance plan. ARB continually updates its inventory as new information becomes available, and will review impacts of inventory changes on the Indian Wells maintenance portion of the September 2002 plan and notify EPA if inventory changes necessitates a revision to the maintenance strategy and plan.[34]

C. Is the Redesignation Request Approvable?

1. Has the Area Attained the 24-hour and Annual PM–10 NAAQS?

Yes. See section IV.A.2.a of this proposed action.

2. Has the Area Met All Relevant Requirements Under Section 110 and Part D of the Act?

Yes. See section IV.A of this proposed action.

3. Does the Area Have a Fully Approved SIP Under Section 110(k) of the Act?

Yes. We are proposing to approve in today's action the moderate area plan for the Indian Wells Valley, and confirming that the SIP meets other applicable provisions of the CAA. See section IV.A of this proposed action.

4. Has the State Shown That the Air Quality Improvement in the Area Is Permanent and Enforceable?

CAA sections 110(a) and 172(c) generally require that plan provisions include enforceable emissions limitations, means or techniques. If an implemented measure has resulted in permanent emission reductions, we need not evaluate it for enforceability. Measures 2 through 5 (see section IV.A.2.c. of this proposed action) which we are proposing as meeting RACM per CAA 189(a) are permanent measures for the following reasons. Measures 2, 3 and 4 concern road paving, which is permanent by its very nature. Measure 5 concerns BLM closure of off-highway roads/trails which reduces emissions from wind erosion through permanent prevention of disturbance.

Measure 1 (Naval Air Weapons Fugitive Dust Control Plan) was

[25] Pechan Report, pg. 41.

[26] September 2002 plan, Chapter 4, pg. 4–5 and Chapter 7, pg. 7–1.

[27] ''Owens Valley PM–10 Planning Area Demonstration of Attainment State Implementation Plan'', Great Basin Unified APCD, November 16, 1998, pg. S–3.

[28] Letter from Brian Lamb, Great Basin APCD, to Richard Harasick, Los Angeles Department of Water and Power, March 12, 2002.

[29] Op. Cit. Owens Valley PM–10 Plan, pg. S–17.

[30] Calcagni memo, pg. 12.

[31] September 2002 plan, Chapter 8, pg. 8–1.

[32] September 2002 plan, Appendix A, Rule 402, section III.F.

[33] September 2002 plan, Chapter 8, pg. 8–1.

[34] ARB Executive Order G–125–295, pg. 3 of the submittal.

developed employing a three-step process that included identifying/characterizing potential sources of fugitive dust, proposing control measures, and establishing a compliance schedule for the control measures to be completed. The Dust Control Plan presents a detailed assessment of each fugitive dust source. The Plan requires paving of unpaved roads with motor vehicle traffic of 25 vehicle trips per day or more that are greater than or equal to 75 feet in length; closing off of certain areas of vacant land from use and allowing natural recrusting or vegetation growth; stabilizing unpaved traffic and parking areas by applying recycled asphalt or concrete, spreading and compacting granite, or applying chemical dust stabilizers; watering an open pit actively disturbed once a week prior to and after soil excavation; and covering all open storage piles with a tarp or other suitable material. Once approved into the SIP, the dust control plan will be federally enforceable.

Measure 6 includes Kern County APCD Rules 401, 404.1 and 405. These rules have been previously approved by EPA and remain a federally enforceable component of the California SIP.

5. Does the Area Have a Fully Approved Maintenance Plan Pursuant to Section 175A of the Act?

We are proposing to approve the maintenance plan based on applicable EPA guidance as discussed in section IV.B.

D. Conformity

Section 176(c)(1) of the Act prohibits federal agencies from permitting, approving, or funding any activity in nonattainment or maintenance areas that does not conform to a SIP once the SIP has been approved by EPA under section 110 of the Act. Section 176(c)(1) also prohibits metropolitan planning organizations (MPOs), such as the Kern County Counsel of Governments, from approving any project, program, or plan that does not conform to a SIP once the SIP has been approved by EPA under section 110 of the Act. The transportation conformity rule and the general conformity rules, which were developed in response to Section 176(c)(1), apply to nonattainment areas and attainment areas with maintenance plans. Both rules provide that conformity can be demonstrated by showing that the expected emissions from planned actions are consistent with the emissions budgets for the area.

1. Transportation Conformity

A motor vehicle emissions budget consists of the projected vehicle-related PM–10 emissions. For Indian Wells, this includes PM–10 from paved and unpaved roads and construction activities. A transportation conformity finding is a demonstration that emissions associated with regional transportation plans (RTPs) and transportation improvement plans (TIPs) do not exceed emission budgets contained in the SIP for the area. The transportation conformity budgets contained in the Indian Wells Plan are 1.6 tons per day for 2001 and 1.7 tons per day for 2013.

PM–10 vehicle exhaust is a very small portion of the total 2001 PM–10 inventory, 1.7 percent, and only 6 percent of the motor vehicle emissions budget. Therefore, Kern County APCD has concluded that vehicle exhaust PM–10 is not a significant factor in ensuring that future transportation plans will not interfere with maintenance of the PM–10 standard, and has not included the exhaust emissions in the budget.

Our review of the budgets has also been announced on EPA's conformity website: *http://www.epa.gov/oms/traq*. Once there, click on the ''Conformity'' button, then look for ''Adequacy Review of SIP Submissions for Conformity.'' We are concurrently revising the budgets for adequacy against the criteria contained in the conformity rule (40 CFR 93.118(e)(4)). In this notice, we propose to approve the PM–10 motor vehicle emission budgets contained in the plan as meeting the purposes of section 176(c)(1) and the transportation conformity rule at 40 CFR part 93, subpart A. We expect to publish a notice announcing our findings on the budgets in January 2003.

2. General Conformity

For Federal actions which are required to address the specific requirements of the general conformity rule, one set of requirements applies particularly to ensuring that emissions from the action will not cause or contribute to new violations of the NAAQS, exacerbate current violations, or delay timely attainment. One way that this requirement can be met is to demonstrate that ''the total of direct and indirect emissions from the action (or portion thereof) is determined and documented by the State agency primarily responsible for the applicable SIP to result in a level of emissions which, together with all other emissions in the nonattainment area, would not exceed the emissions budgets specified in the applicable SIP.'' 40 CFR 93.158(a)(5)(i)(A).

The decision about whether to include specific allocations of allowable emissions increases to sources is one made by the State and local air quality agencies. Such emissions budgets are unlike and not to be confused with those used in transportation conformity. Emissions budgets in transportation conformity are required to limit and restrain emissions. Emissions budgets in general conformity allow increases in emissions up to specified levels.

Kern County APCD and ARB have not chosen to include any specific emissions allocations for Federal projects that would be subject to the provisions of general conformity.

V. Proposed Action

We are proposing to approve the moderate area plan and the maintenance plan for the Indian Wells Valley, and to redesignate the area from nonattainment to attainment for the 24-hour and annual PM–10 NAAQS.

VI. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this proposed action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). It merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law.

Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule would approve pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This

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

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

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

40 CFR Part 81

Environmental protection, Air pollution control.

Dated: December 6, 2002.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 02–31665 Filed 12–16–02; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[CA–274–0372; FRL–7422–5]

Approval and Promulgation of State Implementation Plans and Designation of Areas for Air Quality Planning Purposes; California—Coachella Valley

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve state implementation plan (SIP) revisions submitted by the State of California to provide for attainment of the particulate matter (PM–10) national ambient air quality standard (NAAQS) in the Coachella Valley area and to establish emissions budgets for purposes of transportation conformity. EPA is also proposing to grant the State's request for an extension of the PM–10 attainment deadline to December 31, 2006. EPA is proposing to approve the SIP revisions under provisions of the Clean Air Act (CAA) regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards, and plan requirements for nonattainment areas.

DATES: Written comments on this proposal must be received by January 16, 2003.

ADDRESSES: Comments should be mailed to: Eleanor Kaplan, Office of Air Planning (AIR–2), EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901. The rulemaking docket for this notice is available for public inspection during normal business hours at the EPA Region 9 office. A reasonable fee may be charged for copying parts of the docket.

Copies of the SIP materials are also available for inspection at the following locations:

California Air Resources Board, 1001 I Street, Sacramento, California 95814

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, California 91765–0932. The 2002 plan is electronically available at: *http://www.aqmd.gov/aqmp/.*

FOR FURTHER INFORMATION CONTACT: Eleanor Kaplan, (415) 947–4147 or *kaplan.eleanor@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' means EPA. This supplementary information is organized as follows.

Table of Contents

I. Background
A. Summary
B. Description of the Coachella Valley and its PM–10 Problem
C. Particulate Matter and Health Effects
D. Design and Classification
E. CAA Requirements
II. Evaluation of SIP Submittal
A. Separation of Rulemaking Actions on the Annual and 24-hour Standards
B. Emissions Inventory
C. Control Measures
D. Contingency Measure
E. Reasonable Further Progress and Milestones
F. Attainment Demonstration
G. Extension of Attainment Date
H. Review of the Natural Events Action Plan
I. Motor Vehicle Emission Budgets
III. Summary of EPA's Proposed Action
IV. Administrative Requirements

I. Background

A. Summary

We are proposing to approve the SIP revisions submitted by the State of California to provide for the attainment of the particulate matter (PM–10) NAAQS for the Coachella Valley (Valley) and to grant the State's request that the attainment date be extended from December 31, 2001 to December 31, 2006. We are also proposing to approve the motor vehicle emissions budgets contained in the revised SIP as adequate for transportation conformity purposes.

B. Description of the Coachella Valley and its PM–10 Problem

The Coachella Valley PM–10 nonattainment area consists of an approximately 2,500 square mile portion of central Riverside County in California. The Valley, which is part of the Salton Sea Air Basin, extends in a northwest-southeast direction from the Banning Pass to the Salton Sea and is bounded by the San Jacinto Mountains to the west and the Little San Bernardino Mountains to the east. The Valley includes ten local jurisdictions, namely: the County of Riverside and the following cities: Cathedral City, Coachella, Desert Hot Springs, Indian Wells, Indio, La Quinta, Palm Desert, Palm Springs and Rancho Mirage.

The Valley's climate is continental desert-type with hot summers, mild winters and very little annual rainfall. Elevation ranges from approximately 500 feet above sea level in the northern part of the Valley to about 150 feet below sea level near the Salton Sea.

The economy of the Valley is mixed. The upper portion which includes the area north of Indio is used primarily for resort and retirement activities. The

lower portion is also urbanized but is oriented around an agricultural economy that extends south of the Riverside County-Imperial County boundary. Agricultural commodities such as citrus fruit, dates, grapes, etc. are grown almost year round.

One of the major sources of PM–10 in the Valley is locally generated fugitive dust. Fugitive dust usually refers to the dust put into the atmosphere by the wind blowing over plowed fields, dirt roads or desert or sandy areas with little or no vegetation. There are also human caused sources of fugitive dust that include entrained road dust from paved and unpaved roads, agriculture and construction activities and disturbed vacant land.

In addition to man-made sources, windblown dust from the desert also is a major contributor to PM–10 in the Valley. High winds occur in the area because the low elevation in part of the Valley provides a natural path for the movement of air from the ocean into the desert during the summer and for the passage of storms moving from west to east during the winter. These winds can occasionally exceed 60 miles per hour and can pick up large amounts of natural desert soils which can then be transported over large distances.

C. Particulate Matter and Health Effects

Particulate matter with an aerodynamic diameter of less than 10 micrometers (PM–10) is the pollutant that is the subject of this action. The NAAQS are safety thresholds for certain ambient air pollutants set by EPA to protect public health and welfare. PM–10 is among the ambient air pollutants for which EPA has established a health-based standard. There are two separate NAAQS for PM–10, an annual standard of 50 micrograms per cubic meter (μg/m_3) and a 24-hour standard of 150 μg/m_3.[1] PM–10 causes adverse health effects by penetrating deep in the lung, aggravating the cardiopulmonary system. Children, the elderly, and people with asthma and heart conditions are the most vulnerable.

D. Design and Classification

When the Clean Air Act Amendments (CAAA) were enacted in 1990, all areas in the United States that were previously designated as federal nonattainment areas for PM–10, including the Valley, were initially designated as ''moderate'' PM–10 nonattainment. Once an area is designated nonattainment, section 188 of the CAA outlines the process for classification of the area and establishes the area's attainment date.

EPA determined on January 8, 1993, that the Valley could not practicably attain the PM–10 NAAQS by the applicable attainment deadline for moderate areas which was December 31, 1994, per section 188 (c)(1) of the Act, and reclassified the area as serious PM–10 nonattainment. See 58 FR 3334. In accordance with section 189(b)(2) of the Act, the applicable deadline for submittal of SIPs for the Valley addressing the requirements for serious PM–10 nonattainment areas in section 189(b) and (c) of the Act were:

(1) August 8, 1994 (18 months after the effective date of the reclassification), SIP to ensure the implementation of BACM no later than 4 years after reclassification;

(2) February 8, 1997 (4 years after the effective date of the reclassification), SIP to provide for progress and expeditious attainment.

The South Coast Air Quality Management District (SCAQMD), which has jurisdiction over the Valley, adopted the 1994 Best Available Control Measures (BACM) SIP for the Valley on July 8, 1994 and the California Air Resources Board (CARB) submitted the plan to us on August 26, 1994. The 1994 plan, in accordance with the provisions of CAA section 189(b)(1)(B), identified the Best Available Control Measures (BACM) that were required for this serious PM–10 nonattainment area and committed to implementation of these measures by February 8, 1997.

Subsequent air quality monitoring data indicated that there were no violations of the annual or 24-hour PM–10 NAAQS in the Valley for the years 1993–1995. On December 13, 1996 the SCAQMD adopted a Request for Redesignation and a Maintenance Plan (''1996 plan'') and on February 5, 1997 CARB submitted the plan to us. The 1996 plan addressed the remaining plan provisions for serious PM–10 nonattainment areas, as specified in the CAA sections 188 and 189, and requested redesignation to attainment based on three years of clean data. However, before EPA acted on the 1996 plan, the area recorded a violation of the annual PM–10 NAAQS during the period from 1999 through 2001 and was therefore unable to meet its attainment date of December 31, 2001.

On June 21, 2002 and September 13, 2002 the SCAQMD adopted an amendment to the 1996 Valley Plan (''2002 Plan''). The California Air Resources Board (CARB) submitted the 2002 Plan to EPA on November 18, 2002. The amendment contains four revisions: (1) It requests an extension of the attainment date to December 31, 2006; (2) it demonstrates attainment by 2006; (3) it establishes motor vehicle emissions budgets for purposes of transportation conformity and (4) it formally withdraws the maintenance plan provisions and the redesignation request contained in the 1996 plan. On November 20, 2002, we found that the 2002 Plan met the completeness criteria in 40 CFR part 51, appendix V.

For the 1996 and 2002 Plans the SCAQMD and CARB satisfied applicable statutory and regulatory requirements for reasonable public notice and hearing prior to adoption of both the 1996 and 2002 Plans, and the motor vehicle budgets. The SCAQMD conducted public workshops, and properly noticed the public hearings at which the Plans were adopted. The SIP submittal for the 1996 and 2002 Plans includes proof of publication of notices for the public hearings. Therefore, we conclude that the 1996 and 2002 Plans met the public notice and involvement requirements of sections 110(a)(1) of the CAA.

Beyond meeting the CAA public notice and involvement requirements, the SCAQMD and the Coachella Valley Association of Governments (CVAG) conducted an exemplary program involving the public in the SIP development process. A Valley Task Force (Task Force) was formed with a wide diversity of members including mayors and city council members of all Valley cities, tribal chairs or co-chairs from all local Indian tribes, city managers, representatives from the local farm bureau, building industry association, developers, CALTRANS, and staff from the SCAQMD, CARB and EPA. The Task Force operated through sub-committees to review and comment on SIP development and implementation issues. The Task Force intends to assist adoption and implementation of the control measures that it helped develop.

[1] EPA revised the NAAQS for particulate matter on July 1, 1987 (52 FR 24672), replacing standards for total suspended particulates with new standards applying only to particulate matter up to 10 microns in diameter (PM–10). At that time, EPA established two PM–10 standards. The annual PM–10 standard is attained when the expected annual arithmetic mean of the 24-hour samples averaged over a 3-year period does not exceed 50 micrograms per cubic meter (μg/m^3). The 24-hour PM–10 standard of 150 μg/m^3 is attained if samples taken for 24-hour periods have no more than one expected exceedance per year, averaged over 3 years. See 40 CFR 50.6 and 40 CFR part 50, appendix K.

On July 18, 1997 EPA reaffirmed the annual PM–10 standard and slightly revised the 24-hour standard (62 FR 38651). In the same action, EPA also established two new standards for PM, both applying only to particulate matter up to 2.5 microns in diameter (PM–2.5).

E. CAA Requirements

Title I of the CAA was substantially amended in 1990 to establish new planning requirements and attainment deadlines for the NAAQS. The most fundamental of these nonattainment area provisions applicable to the Valley is the requirement that the State submit a SIP demonstrating attainment of the PM–10 NAAQS. This demonstration must be based upon enforceable measures to achieve emission reductions leading to emissions at or below the level predicted to result in attainment of the NAAQS throughout the nonattainment area. The measures must meet the standard for Reasonably Available Control Measures (RACM) and BACM and the measures must be implemented expeditiously and ensure attainment no later than the applicable CAA deadline.

EPA has issued a ''General Preamble'' describing the Agency's preliminary views on how EPA intends to act on SIPs submitted under Title I of the Act. See 57 FR 13498 (April 16, 1992), 57 FR 18070 (April 28, 1992). EPA later issued an Addendum to the General Preamble providing guidance on SIP requirements for serious PM–10 areas. 59 FR 41998 (August 16, 1994). The reader should refer to these documents for a more detailed discussion of EPA's preliminary interpretations of Title I requirements. In this proposed rulemaking action, EPA applies these policies to the Valley PM–10 SIP submittal, taking into consideration the specific factual issues presented.

Since the 2002 Plan requests an extension of the attainment date beyond the applicable deadline of December 31, 2001, it is also subject to the provisions of CAA section 188(e) which deal with the requirements for extension of attainment dates for serious PM–10 nonattainment areas.

II. Evaluation of the SIP Submittals

A. Separation of Rulemaking Actions on the Annual and 24-hour Standards

Although, as discussed above, the Act contains two PM–10 NAAQS (an annual and a 24-hour standard) in this proposed action we are evaluating the Valley 2002 Plan only for its compliance with the requirements for attaining the annual PM–10 standard.[2] We need not, at this time, evaluate the plan for its compliance with the Act's requirements for the 24-hour PM–10 standard because the data indicate that there were no violations of the 24-hour standard during the period 1993–2001.[3] We find therefore that the area is currently in attainment for the 24-hour PM standard.

Although the Valley had attained both the annual and 24-hour PM–10 NAAQS during the years 1993–1995, increased construction activities in the Valley during the period 1999–2001 caused a violation of the annual standard at the area's two monitoring sites as shown in Table 1.

TABLE 1.—ANNUAL ARITHMETIC MEAN FOR PM–10 IN THE VALLEY, 1999–2001

	1999	2000	2001	Expected AAM
Indio	52.7	51.9	49.4	51.3
Palm Springs	28.9	24.4	26.7	26.7

Note: samples collected on high wind days are excluded.

B. Emissions Inventory

CAA section 172(c)(3) requires that nonattainment area plans include a comprehensive, accurate, and current inventory of actual emissions from all sources in the nonattainment area.

The inventory in the 2002 Plan supersedes the 1996 Plan inventory and includes a 2000 base year inventory that utilizes the 1995 inventory representing annual average and 24-hour emissions. Information on the methodology that was employed in developing estimates for emissions sources for the 1995 inventory is contained in Chapter 3 of the 1996 Plan.

In addition to the 2000 base year inventory, the 2002 Plan provides future year inventories for 2003 and 2006. The emission reductions assumed from control measure implementation by December 2003 are included in the 2003 inventory.

CARB uses a California-specific model known as EMFAC for the mobile source component of the emissions inventories, including the model used to calculate exhaust and evaporative emissions from motor vehicles and the contribution of mobile emissions to the PM–10 inventory. The version of the model that was and remains currently available for use in the 1996 and 2002 Plans is known as EMFAC 7G, adopted by CARB in 1996. (CARB, *Methodology for Estimating Emissions from On-Road Motor Vehicles, 1996*). EPA has approved EMFAC 7G for use in transportation plan and program conformity analyses (letter from David Howekamp, EPA to Michael P. Kenny, CARB, dated April 16, 1998).

CARB has recently prepared draft revisions to EMFAC 7G, which CARB has committed to finalize and submit in the near future. However, because EMFAC 7G represented the best available emissions model at the time the plan was developed and submitted, our approval of the 2002 Plan's emissions inventory and the motor vehicle emissions budgets derived from EMFAC 7G is warranted at this time.

Both SCAQMD and CARB have committed to submit within a very short period of time a revised plan with updated and refined emission inventories and budgets. The agencies will base the new plan and budgets on use of the most current and accurate emissions data, including the revised version of the EMFAC model for motor vehicle emissions incorporating the latest planning assumptions on vehicle fleet and age distribution, and incorporating the latest activity levels.

In proposing to approve the 2002 Plan based on EMFAC 7G, we also find it significant that the motor vehicle exhaust and brake and tire wear emissions in both the 1996 and 2002

[2] The two PM–10 standards are independent and must be addressed independently by states in their SIPs. This independence was highlighted by the Ninth Circuit Court of Appeals in *Ober* v. *EPA*, 84 F.3d 304 (9th Cir. 1996).

[3] There were exceedances of the 24-hour PM–10 standard during 2000-2001 but not in 1999. Those exceedances were caused by high wind events and were flagged by the SCAQMD under the provisions of EPA's Natural Events Policy which is discussed in detail in Section III of this proposed action. If EPA concurs that data were properly flagged under that policy, the data are not used for purposes of determining attainment of the NAAQS or for computing a design value for the area. EPA has received documentation from CARB justifying the flagging of each of these events under the Natural Events Policy and concurs with CARB's justification. Given the flagging of all the 24-hour exceedances during 2000 and 2001, EPA concludes that there was no violation of the 24-hour standard during the period from 1999–2001.

Plan inventories constitute only about 3% of the total emissions, demonstrating that PM–10 from motor vehicles (exclusive of reentrained dust from paved and unpaved roads) is not a significant contributor to the air quality problem in the Valley. In summary, we are proposing to approve the 2002 Plan based on EMFAC 7G because it is the only currently approved model, CARB and SCAQMD have committed to revise the PM–10 Plan based on the updated version of EMFAC in 2003, and the overall contribution of PM–10 from motor vehicles is only about 3%.

The transportation conformity implications of our proposed approval are discussed later in this document in Section II under Motor Vehicle Emissions Budgets.

C. Control Measures

1. Applicable Requirements

Because the Valley is classified as serious nonattainment for PM–10, the nonattainment plan for the area must include control measures that reflect a BACM level of control for each source category that contributes significantly to a violation of the annual NAAQS. CAA section 189(b)(1)(B).[4]

By analogy to Title I Part C of the Clean Air Act relating to Prevention of Significant Deterioration (PSD), EPA interprets BACM for serious PM–10 areas as generally similar to the definition of Best Available Control Technology (BACT) for the PSD program. PM–10 BACM is therefore defined as ''the maximum degree of emissions reduction of PM–10 and PM–10 precursors from a source * * * which is determined on a case by case basis, taking into account energy, environmental, and economic impacts and other costs, to be achievable for such source through application of production processes and available methods, systems, and techniques for control of each such pollutant.'' General Preamble Addendum, 59 FR 42010 (August 16, 1994).

Finally, the control measures in the serious area plan must be sufficient to achieve expeditious attainment by the applicable date.

[4] When a moderate area is reclassified to serious, the requirement to implement RACM in section 189(a)(1)(C) continues to apply. Thus, a serious area's PM–10 plan must provide for the implementation of RACM as expeditiously as practicable to the extent that the RACM requirements have not been satisfied in the area's moderate plan. We are not making an independent assessment of the Plan's control measures against the RACM and RACT requirements since the plan will meet RACM and RACT requirements if it is found to meet the BACM requirement.

2. Identification of Significant Source Categories

The 1996 Plan (Tables 4–1 and 4–2) used receptor modeling to identify the emission sources that contribute to the PM–10 air quality at specific receptor sites. The receptor model used is the Chemical Mass Balance (CMB) Model. This method matches the measured chemical components of the PM–10 samples with known chemical profiles of individual sources of PM–10 particles. The results of this model are shown in Table 4–1 of the 1996 Plan ''Annual Average Source Contributions for the Coachella Valley.''

Future year PM–10 concentrations were estimated using a linear rollback approach for each primary source. In the linear rollback approach, it is presumed that future year PM–10 contributions from each source category are a linear function of emission rates for each source category. Table 4–3 in the 1996 Plan provides base year and future ambient PM–10 concentrations.

From these evaluations, the 1996 Plan identified significant sources and a determination of which categories have ''significant'' impacts on PM–10 concentrations. The significant sources identified include background, transport, mobile, fugitive dust (including construction, paved roads, unpaved roads, agriculture, windblown), and vegetative burning.

We propose to find that the 2002 Plan has not excluded any source categories that should be considered significant from its list of significant source categories. The 2002 Plan presents acceptable modeling to evaluate the impact of various PM–10 sources and source categories on PM–10 levels.

The 2000 inventory in the 2002 Plan indicates that emissions from industrial point sources were insignificant—0.29 tons per day out of a total of 54.44 tons per day from all sources. Therefore, based on their negligible impact on ambient PM–10 levels, we propose to determine that major sources of PM–10 precursors do not contribute significantly to PM–10 levels which exceed the annual standard in the Valley.

3. Description of Control Measures

(a) BACM: Existing Controls

In the 1994 plan (Chapter 4) and the 1996 plan (Chapter 1), the SCAQMD has provided extensive documentation on both the control measures included in the plan and those rejected. The documentation quantifies the costs of implementation, discusses the technological feasibility of control options, explains the schedule for expeditious implementation and examines other factors as part of a comprehensive justification of the measures as reflecting BACM. Implementation of BACM in the Valley has been carried out through dust control ordinances of the local jurisdictions in Valley, and with AQMD Rules 403 and 403.1 serving as backstop regulations for the Valley's construction activity emissions.

The local ordinances developed by Riverside County, Cathedral City, Coachella, Desert Hot Springs, Indian Wells, Indio, La Quinta, Palm Desert, Palm Springs and Rancho Mirage are based on a model fugitive dust control ordinance developed by CVAG, local governments, and the SCAQMD. The ordinances typically require: (1) Dust control plans for each construction project needing a grading permit; (2) plans to pave or chemically treat unpaved surfaces if daily vehicle trips exceed 150; (3) imposition of 15 mph speed limits for unpaved surfaces if daily vehicle trips do not exceed 150; (4) paving or chemical treatment of unpaved parking lots; and (5) actions to discourage use of unimproved property by off-highway vehicles.

SCAQMD Rule 403, Fugitive Dust, helps to establish performance criteria for the local dust ordinances and also serves as a backstop rule for the Valley. The Rule establishes reasonably available and best available fugitive dust control measures to reduce fugitive dust emissions associated with agricultural operations, construction/demolition activities (including grading, excavation, loading, crushing, cutting, planing, shaping or ground breaking), earth-moving activities, track out of bulk material onto public paved roadways, and open storage piles or disturbed surface areas.

The Rule 403 Handbook allows producers to be exempted from Rule 403 requirements if they implement a specified number of conservation practices listed for the particular operation. The handbook includes conservation practices for active operations, inactive operations, farm yard areas, track-out, unpaved roads, and storage piles. EPA approved the handbook into the SIP because implementation of the conservation practices should achieve the emission reductions that would otherwise be accomplished through compliance with the general provisions of Rule 403. (65 FR 8057, February 17, 2000).

SCAQMD Rule 403.1, Wind Entrainment of Fugitive Dust, establishes dust control requirements under high wind conditions in the Valley. The Rule consists of additional

fugitive dust measures for agriculture, abandoned disturbed surface areas, and bulk material deposits entrained by high winds within the Valley. EPA also approved the sections of Rule 403.1 Implementation Handbook including the chapters on ''Wind Monitoring'' and ''Storage Piles''.[5]

Clean Streets Management Program: In order to assure implementation of the control measures that had been enacted for entrained road dust, which is one of the larger source categories in the Valley, CVAG has worked to secure funding for a Clean Streets Management Program through the allocation of Congestion Mitigation and Air Quality (CMAQ) funds which now falls under the Transportation Efficiency Act for the 21st Century (TEA–21). Under the Clean Streets Management Program, local jurisdictions submit proposals to CVAG requesting funding for implementation of clean streets management practices, *i.e.*, stabilization of unpaved shoulders, installation of wind breaks, etc. CVAG has provided technical assistance to the local jurisdictions to identify cost effective eligible projects for CMAQ funding.

(b) Most Stringent Measures (MSM)

One of the requirements for an extension of attainment date, which the Valley has requested (see section II G) is that ''the State demonstrates to the satisfaction of the Administrator that the plan for that area includes the most stringent measures that are included in the implementation plan of any State or are achieved in practice in any State, and can feasibly be implemented in the area.'' (CAA section 188(e)).

Chapter 4 of the 2002 Plan contains a description of the SCAQMD's MSM analysis. That analysis compares the provisions in the Valley's local dust control ordinances and applicable SCAQMD Rules 403 and 403.1 to regulations from Maricopa County (Arizona), Clark County (Nevada) the San Joaquin Valley (California) and the South Coast Air Basin (California). These areas were selected because of similar geographic conditions (arid climates) as the Valley and because of recent planning/rule development efforts in these regions. MSM analyses were provided for each fugitive dust category, including construction activities, disturbed vacant lands, unpaved roads/parking lots, paved road dust and agricultural activities. (See sections 4.1, 4.2, 4.3, 4.4 and 4.5 of the 2002 Plan.)

The upgraded control measures that resulted from the Valley MSM analysis are categorized as Construction (CV BCM 1), Disturbed Lands (CV BCM 2), Unpaved Roads and Unpaved Parking Lots (CV BACM 3), Paved Roads (CV BACM 4), and Agriculture (CV BCM 5). The implementing agencies are either the local jurisdictions or the SCAQMD or, in the instances of Construction and Paved Roads, both parties.

Chapter 5 of the 2002 Plan provides the control strategy that has been developed by the SCAQMD based on their MSM analysis. Table 2 below summarizes Tables 5–1 and 5–2 contained in the 2002 Plan which provide information on the adoption and implementation schedules for the MSMs, the implementing agencies and the estimated tonnage per day reduction for each of these control measures.

TABLE 2.—MSM ADOPTION AND IMPLEMENTATION SCHEDULES, AND PROJECTED EMISSION REDUCTIONS FOR THE VALLEY

Control measure	Source category	Implementing agency	Adoption schedule	Implementation schedule	Estimated emission reductions 2006
CV BACM 1	Construction	Local Jurisdictions	Prior to 10/1/03	Begin no later than 10/1/03.	2.0 tons/day.
		AQMD	Prior to 1/1/04	Begin no later than 1/04.	
CV BACM 2	Disturbed Lands	Local Jurisdictions	10/03	Begin no later than 10/03.	TBD After Survey.
CV BACM 3	Unpaved Roads and lots.	Local Jurisdictions	10/03	Begin no later than 10/1/03, phased implementation.	0.71 tons/day.
CV BACM 4	Paved Roads	Local Jurisdictions	10/03	Begin no later than 10/1/03.	0.57 tons/day.
		AQMD	01/04	Begin no later than 1/04.	
CV BCM 5	Agriculture	AQMD	01/04	Begin no later than 1/04.	0.02 tons/day.
Total Projected Emission Reductions.					3.3 tons/day.

3. Implementation of Control Measures

The SCAQMD commits to meet the adoption dates, implementation dates, and emission reduction targets, unless a measure, in whole or in part, is determined to be infeasible. Should that be the case, the SCAQMD commits to achieve equivalent reductions on the same schedule through substitute controls. If the SCAQMD determines that a control measure is infeasible, SCAQMD staff would document the infeasibility of the control measure provision and propose a replacement provision or contingency measure (if necessary) to achieve equivalent emissions reductions. Significant changes to a control measure would need to be documented in a SIP revision and would be subject to EPA review and approval. The plan cites the feasibility criteria as: (1) Cost feasibility, namely that a control measure is considered cost feasible if the cost-effectiveness is less than $5,300 per ton of PM–10 reduced on an annual basis, and (2)

[5] EPA originally approved a version of Rule 403 into the SIP on June 14, 1978. The SCAQMD subsequently revised the rule in 1992, 1993 and February 14, 1997. On August 11, 1998 (63 FR 42786) EPA proposed granting limited approval and limited disapproval of Rule 403 as amended on February 14, 1997 because it did not fully meet the CAA provisions regarding plan submissions and requirements for nonattainment areas. EPA gave final limited approval and disapproval of Rule 403 on December 9, 1998 (63 FR 67784). Following another amendment that was submitted by the SCAQMD as a SIP revision on May 13, 1999, EPA granted full approval of the Rule on February 17, 2000 (65 FR 8057).

technological feasibility, namely that a control measure is considered technically feasible if the following conditions are satisfied: the control technology is currently available and the control efficiency is at least 10%.

4. Proposed Action on Control Measures

We conclude that the 2002 Plan demonstrates that the control measures for each significant source category are consistent with the BACM requirement in terms of the timing, degree, and extent of the control program and reflect current MSM.

We therefore propose to approve the control measures under CAA section 110(k)(3), as meeting the requirements of CAA sections 110(a), 188(e) and 189(b)(1)(B). We are proposing to approve each of the control measure commitments to adopt and implement rules and ordinances by specified dates and to achieve particular emission reductions by milestone years. We are also proposing to approve the commitment made by the SCAQMD Board directing the Executive Officer to update the 2002 Plan, including emissions budgets in 2003, using the latest approved motor vehicle emissions model and planning assumptions.

D. Contingency Measure

The CAA (section 172(c)(9)) requires that the SIP include contingency measures to be implemented if the area fails to meet progress requirements or to attain the NAAQS by the applicable deadline. Implementation of these contingency measures is automatic, and requires no further action by the SCAQMD or any other agency.

The contingency measure identified in the 2002 Plan, CVCTY 3, is the requirement to reduce emissions from turf overseeding activities on Golf Courses/Turf Areas. Turf overseeding generates fugitive dust through the raking process and thatch removal when summer grass is replaced with winter rye grasses. According to the SCAQMD, following a series of studies, new methods were developed to remove the summer grass resulting in fugitive dust emission reduction. The SCAQMD staff believes the control measure is currently being adopted voluntarily by local golf courses, but in the event of failure of Reasonable Further Progress (RFP) or nonattainment by the year 2006 or if voluntary compliance drops, SCAQMD would propose to implement the measure with a SCAQMD rule or rule amendment.

EPA concludes that the 2002 Plan satisfies the contingency requirements, and proposes to approve the 2002 Plan's contingency provisions under section 172(c)(9).

E. Reasonable Further Progress and Milestones

The 2002 Plan must also include quantitative milestones which are to be achieved every 3 years until the area is redesignated to attainment, and show Reasonable Further Progress (RFP) toward attainment by the applicable attainment deadline. CAA section 189(c).

Table 3–4 in the 2002 Plan, ''2002 PM–10 Emission Inventory by Major Source Category'' shows that the total tpd emissions from all sources for 2000 year was 54.44. Table E–1 contained in Appendix E of the Plan provides a baseline inventory for 2003 which was selected by the SCAQMD as the milestone year and shows that emissions reductions resulting from the adoption and implementation of CV BCM–1 ''Construction and Earth Movement Activities,'' would amount to a total of 0.96 tpd, reducing the total amount of emissions from all sources in 2003 to 54.08 tpd, which represents remaining emissions by the end of 2003. assuming a 50% combined ordinance/rule penetration. The reduction in total tpd emissions from 2002 to 2003 demonstrates reasonable progress toward the attainment level projected for 2006.

The SCAQMD made a commitment in resolutions accompanying the 2002 Plan to update the plan, including emissions budgets in 2003, using the latest approved version of EMFAC and the latest approved planning assumptions.[6] In addition, CARB's Executive Order G–125–391, accompanying the submittal of the 2002 Plan, stated that CARB, ''upon the timely submission by the District of an approvable revision to the 2002 Coachella Valley PM–10 State Implementation Plan and 2002 Coachella Valley PM–10 State Implementation Plan Addendum, shall process such revision and submit it to the U.S. EPA in 2003.''

We find that the assumptions regarding the control measures are reasonable. Therefore we propose to find that the 2002 Plan meets the provisions of CAA section 189(c) requiring quantitative milestones showing RFP toward attainment by the attainment date of 2006.

F. Attainment Demonstration

The SIP must provide a detailed demonstration (including air quality modeling) that the specified control strategy will reduce PM–10 emissions so that the standards will be attained as soon as practicable but no later than December 31, 2006, assuming final EPA approval of the attainment deadline extension. CAA section 189(b)(1)(A). EPA considers the area to be in attainment of the NAAQS if 24-hour concentrations are 150 μg/m3 or less and the annual arithmetic mean is 50 μg/m3 or less.

The attainment demonstration in the 2002 Plan analyzes both the 24-hour and annual NAAQS, but since the Valley has not violated the 24-hour standard during the period from 1993—2001, our review is limited to the annual standard.

A modeled attainment demonstration for the PM–10 annual standard should first estimate the temporal and spatial distribution of PM–10 and PM–10 precursor emissions reductions that result from the adopted control measures by the attainment date. It should then simulate the ambient air concentration of the remaining emissions in an air quality model and show that all locations within the nonattainment area have annual average PM–10 concentrations at or below the level of the annual PM–10 standard of 50 μg/m3. *See* ''Guidelines on Air Quality Models,'' 40 CFR part 52, appendix W, § 7.2.2 and ''PM–10 SIP Development Guideline'', EPA–450/286–001, June 1987.

The attainment demonstration in the 2002 Plan relies on control measures that either are approved or have been proposed for approval and meet our SIP enforceability criteria. The emissions estimates credited to these control measures in the attainment demonstration are reasonable and the measures are being implemented on a schedule that is as expeditious as practicable and will result in attainment by the earliest practicable date.

[6] Resolution No. 02–21 adopted by the SCAQMD Board June 21, 2002:

BE IT FURTHER RESOLVED, that the South Coast Air Quality Management District Governing Board directs the Executive Officer to update the 2002 CVSIP, including emissions budgets in 2003, using the latest approved motor vehicle emissions model and planning assumptions; and

BE IT FURTHER RESOLVED, that the South Coast Air Quality Management District Governing Board requests that the U.S. EPA approve the District's commitment to forward to the CARB for review and submittal to the U.S. EPA as a revision to the State Implement Plan by 2003 the update to the PM–10 emissions inventory portion of the 2002 CVSIP, including revised emission budgets using the latest approved motor vehicle emissions model and planning assumptions; and

BE IT FURTHER RESOLVED, that the South Coast Air Quality Management District requests that the U.S. EPA approve the emissions budgets based on the 2002 CVSIP for use only until the U.S. EPA finds adequate the revised budgets for the same years submitted as part of the 2003 revision to the 2002 CVSIP.

A complete description of the modeling for the Valley is found in the 1996 Plan (Chapter 4). In summary, modeling was based on the following:

The SCAQMD determined primary PM–10 source apportionment by a combination of receptor models. Source apportionment information, which was used in the 1994 and the 1996 Plan was determined through receptor modeling known as the Chemical Mass Balance (CMB) model which is a USEPA approved method that matches the measured chemical components of the PM–10 samples with known chemical profiles of individual sources of PM–10 particles.

Since secondary particles in the Valley represent a small component of the PM–10 problem and are transported from the South Coast Air Basin and since the limited number of major sources in the Valley are already regulated for NO_X, SO_X and VOC emissions under existing SCAQMD rules, the SCAQMD did not model secondary PM–10 generated within the Valley. However, the impact of transported secondary particulates into the Coachella Valley from the South Coast Air Basin was projected using UAM/LC (Urban Airshed Model/Linear Chemistry).

The modeling attainment demonstration for future years in the 2002 Plan utilized a linear rollback approach for each primary source category.

Based on this modeling, the 2002 Plan (Tables 6–2 and 6–3) compares the annual and 24 hour PM design values for the years 2003 and 2006. The table provides information on 2006 concentrations both for the baseline and control scenarios as shown in Table 3 below. This modeling demonstrates attainment of the annual average PM 10 standard by the year 2006 and continued attainment of the 24-hour standard in 2006.

TABLE 3.—2003 AND 2006 MODELED PM–10 CONCENTRATIONS (μG/M^3) IN THE VALLEY

Source	2003 baseline annual	2003 baseline 24-hour	2006 baseline annual	2006 baseline 24-hour	2006 annual with more controls	2006 24-hour with more controls
Background	3.0	3.0	3.0	3.0	3.0	3.0
Transport	5.9	14.1	5.9	14.1	5.8	14.1
Mobile	1.1	3.3	1.1	3.2	1.1	3.2
Fugitive Dust:						
Construction	4.5	16.6	4.7	17.1	4.2	15.4
Paved Roads	4.5	16.2	4.6	16.9	3.7	13.3
Unpaved Roads	3.2	11.6	3.2	11.6	2.8	10.0
Agriculture	0.6	2.1	0.5	2.0	0.5	1.9
Windblown	18.3	66.7	18.3	66.7	18.3	66.7
Veg. Burning	5.5	9.7	5.2	9.2	5.2	9.2
Others	3.8	3.1	4.0	3.3	4.0	3.3
Totals	50.4	133.0	50.6	147.0	48.6	140.1

In contrast to other pollutants, we have not issued detailed modeling guidelines for PM–10, nor have we established minimum performance requirements for PM–10 modeling. We have reviewed the SCAQMD's modeling approaches for both primary PM–10 and secondary PM–10, using both receptor modeling and dispersion modeling. We believe that the modeling in the 1996 and 2002 Plans provides a reasonable basis for linking emissions with air quality, for identifying an appropriate control strategy, and for determining whether the strategy delivers attainment for the 24-hour and annual PM–10 NAAQS.

The SCAQMD's modeling shows that the level of emissions after implementation of the proposed set of control strategies would result in ambient concentrations within the Valley in 2006 consistent with attainment of annual and 24-hour PM–10 NAAQS. We therefore conclude that the air quality modeling and attainment demonstration contained in Chapter 6 of the 2002 Plan are consistent with existing EPA guidance, and we propose to approve the attainment demonstration under CAA section 189(b)(1)(A).

G. Extension of Attainment Deadline

CAA section 188(e) allows states to apply for up to a 5-year extension of the serious area attainment deadline of December 31, 2001. In order to obtain the extension, there must be a showing that: (1) Attainment by 2001 would be impracticable; (2) the state complied with all requirements and commitments pertaining to the area in the implementation plan for the area; and (3) the state demonstrates that the plan for the area includes the most stringent measures (MSM) that are included in the SIP of any state or are achieved in practice in any state, and can feasiblely be implemented in the area.

As discussed in section II C above, we propose to conclude that the 2002 Plan includes BACM and MSM for each significant source category, and that the implementation schedule for each control measure is as expeditious as practicable. Using UAM/LC and chemical mass balance modeling techniques discussed above in section II F, the SCAQMD calculated the annual arithmetic mean for PM–10 based on 1999–2001 data for the two sampling sites in the area at Palm Springs and Indio. That data showed that the Palm Springs site had an expected annual arithmetic mean of 26.7 μg/m^3 while the Indio site with an expected annual arithmetic mean of 51.6 μg/m^3 exceeded the annual standard. Table E–2 of Appendix E of the 2002 Plan shows that by the end of 2003 the average tons per day would be 54.08. Table 3–7 of the 2002 Plan shows that in 2006 with all the SIP controls in place the tons per day emitted would be 51.11. The 2003 data are above the carrying capacity and, based on this, we therefore conclude that 2006, the requested extension date, is the most expeditious date that the Valley can attain the standard.

We find that the SCAQMD has met the CAA provisions relating to attainment date extensions, and we propose to grant, under CAA section 188(e), a 5-year attainment date extension to December 31, 2006.

H. Review of Natural Events Action Plan

Section 188(f) of the CAA provides that the Administrator may, on a case-by-case basis, waive any requirement

applicable to any serious area under subpart 4 where the Administrator determines that anthropogenic sources of PM–10 do not contribute significantly to the violation of the PM–10 standard in the area. In May of 1996 EPA issued a Natural Events Policy (Policy) that was intended to provide guidance to air districts regarding the exclusion of ambient air quality data affected by extraordinary natural events such as volcanic and seismic activity, wildland fires and high winds.

In order to qualify for the exclusion of ambient air quality data, the Policy requires the adoption of a Natural Events Action Plan (NEAP) to minimize emissions and to protect public health. The Policy requires that the NEAP (1) establish public notification and education programs, (2) minimize public exposures to high concentrations of PM–10 due to future natural events, (3) abate or minimize appropriate contributing controllable sources of PM–10, (4) identify, study and implement practical mitigating measures as necessary, (5) periodically reevaluate the conditions causing violations of the PM–10 NAAQS in the area and the state of implementation of the NEAP and the adequacy of the actions being implemented, (6) document natural events, and (7) develop the NEAP in conjunction with the stakeholders affected by the plan.

In accordance with the requirements of the Policy, the SCAQMD included a NEAP in the 1996 Plan and submitted a revised version in the 2002 Plan. Although EPA does not require that a NEAP be submitted as part of a SIP the Policy states that final plans should be submitted to EPA for review and comment.

The revised NEAP describes the status of the commitments made in the 1996 NEAP, all of which were fully implemented with the exception of the element ''Evaluation and implementation of practical mitigation measures,'' which was partially implemented by an initial blowsand study. Phase 2 of that study has not been initiated to date owing to funding constraints.

We find that the NEAP in the 2002 Plan meets the requirements of the Agency's Natural Events Policy. Further, we would like to commend the staff of the SCAQMD and the CVAG on the scope of the plan and the wide cooperation and expertise that has been involved in its implementation.

I. Motor Vehicle Emissions Budgets

Rate of progress and attainment demonstration submittals must specify the maximum amount of transportation-related motor vehicle emissions allowed in each milestone year and the attainment year and demonstrate these emissions levels, when considered with emissions from all other sources, are consistent with RFP and attainment. In order for us to find these emissions levels or ''budgets'' adequate and approvable, the submittal must meet the conformity adequacy provisions of 40 CFR 93.118(e)(4) and be approvable under all pertinent SIP requirements.

The budgets defined by this and other plans, when they are approved into the SIP or, in some cases, when they are found to be adequate, are then used to determine the conformity of transportation plans, programs, and projects to the SIP, as described by CAA section 176(c)(3)(A). For more detail on this part of the conformity requirements, see 40 CFR 93.118. For transportation conformity purposes, the cap on emissions of transportation-related PM–10 precursors is known as the motor vehicle emissions budget. The budget must reflect all of the motor vehicle control measures contained in the attainment demonstration (40 CFR 93.118()(4)(v)), and must include PM–10 and PM–10 precursor emissions from the following sources: motor vehicles, reentrained dust from traffic on paved and unpaved roads, and emissions during construction of highway and rail projects.

A motor vehicle budget for the Valley for the attainment year 2006 is presented in Table 3–8 of the 2002 Plan and the budget for milestone year 2003 is presented in appendix E, Table E–3. Both budgets appear below in Table 4.

TABLE 4.—2003 AND 2006 MOTOR VEHICLE EMISSION BUDGETS FOR TRANSPORTATION CONFORMITY FOR THE VALLEY

[PM–10 tons/day]

	2003 [1]	2006
Motor Vehicles	1.04	0.98
Reentrained paved road dust	7.04	6.27
Reentrained unpaved road dust	5.44	4.72
Road Construction	0.06	0.06
Total	13.58	12.03

[1] Presents remaining emissions at the end of the year 2003 with implementation of CV BCM–1 and 50% combined ordinance/rule penetration by that time.

As discussed above in section II.B, Emissions Inventory, the motor vehicle emissions portion of this budget (the evaporative and tailpipe emissions) was developed using the EMFAC 7G motor vehicle emissions factors.

We propose to approve the motor vehicle emission budget contained in the 2002 Plan as consistent with the adequacy criteria of 40 CFR 93.118(e)(4), including consistency with the baseline emission inventory, and the reductions needed for continued attainment of the standard after the attainment deadline.

As discussed in section II.B, CARB is finalizing a revised version of EMFAC, and both CARB and SCAQMD have committed to adopt and submit a comprehensive revision to the PM–10 plan in 2003, using the new EMFAC, incorporating the latest planning assumptions on vehicle fleet and age distribution, and incorporating the latest activity levels. This revised plan will include revised budgets, based on the new inventory and attainment demonstration. Assuming that these new budgets are adequate and approvable, the new budgets will soon replace the budgets in the current submittal.

Since these revised budgets will be based on the most current and accurate motor vehicle emissions data, we intend to allow expedited use of the updated budgets in transportation conformity determinations. Therefore, we propose to limit our proposed approval of the budgets in the current submittal to last only until we find adequate the new budgets that are expected to be adopted in 2003 as part of the revised PM–10 plan for the Valley. On the effective date of our adequacy finding for the new budgets, our approval of the budgets in the current submittal would terminate and thus the new budget would apply for purposes of transportation conformity. 67 FR 69139 (November 15, 2002).

III. Summary of EPA's Proposed Action

We are proposing to approve the serious area PM–10 SIP submitted by the State of California for the Valley. Specifically, we are proposing to approve the 1996 Plan and the 2002 Plan with respect to the CAA requirements for emissions inventories under section 172(c)(3); control measures under section 110(k)(3), as meeting the requirements of sections 110(a) and 188(b)(1)(B); RFP under section 189(c); contingency measures under section 172(c)(9); demonstration of attainment under section 189(b)(1)(A); and motor vehicle emissions budgets under section 176(c)(2)(A). We are also proposing to approve the State's request for an extension of the attainment date from December 31, 2001 to December 21, 2006 under CAA section 188(e). We show the proposed approvals in Table 5 ''Proposed Approvals of South Coast

PM–10 Submittals for the Coachella area.''

PROPOSED APPROVALS OF SOUTH COAST PM–10 SUBMITTTALS FOR THE VALLEY

CAA section	Provision	SIP submittal	Plan citation
172(c)(3)	Emission Inventories	2002 Plan	*2002 Plan,* Ch 3.
110(a), 188(e), and 189(b)(1)(B)	Control Measures	1994 Plan, 1996 Plan, 2002 Plan	*1996 Plan,* Ch. 4, *2002 Plan,* Ch. 4, Ch. 5.
189(c)	Reasonable Further Progress	2002 Plan	*Appendix E–3,* Table E–2.
172(c)(9)	Contingency Measures	2002 Plan	*2002 Plan,* Ch. 4, Ch. 5.
189(b)(1)(A)	Attainment Demonstration	2002 Plan	*2002 Plan,* Ch. 6.
176(c)(2)(A)	Motor Vehicle Emissions Budget	2002 Plan	*2002 Plan, Ch. 3 Appendix E 2002 Table E–3.*
188(e)	Attainment Date Extension	2002 Plan	*2002 Plan,* Ch. 8.

IV. Administrative Requirements

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

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

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

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

40 CFR Part 81

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

Dated: December 6, 2002.

Alexis Strauss,

Acting Regional Administrator, Region IX.

[FR Doc. 02–31679 Filed 12–16–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[CA–274–0371; FRL–7422–4]

Approval and Promulgation of State Implementation Plans and Designation of Areas for Air Quality Planning Purposes; California—South Coast

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve state implementation plan (SIP) revisions submitted by the State of California to provide for attainment of the particulate matter (PM–10) national ambient air quality standards (NAAQS) in the Los Angeles-South Coast Air Basin Area and to establish emissions budgets for purposes of transportation conformity. EPA is also proposing to grant the State's request for an extension of the PM–10 attainment deadline to December 31, 2006. EPA is proposing to approve the SIP revisions under provisions of the Clean Air Act (CAA) regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards, and plan requirements for nonattainment areas.

DATES: Written comments on this proposal must be received by January 16, 2003.

ADDRESSES: Please mail comments to: Dave Jesson (AIR–2), EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901. The rulemaking docket for this notice is available for public inspection during normal business hours at EPA's Region IX office. A

reasonable fee may be charged for copying parts of the docket.

Copies of the SIP materials are also available for inspection at the following locations:

California Air Resources Board, 1001 I Street, Sacramento, California, 95812

South Coast Air Quality Management District, 21865 E. Copley Drive Diamond Bar, California, 91765–0932

Most of the plan materials are also electronically available at: *http://www.aqmd.gov/aqmp.*

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

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
A. Summary
B. PM–10 Problem in the South Coast
C. CAA Provisions
D. Designation and Classification
E. Adoption and Submittal
II. Evaluation of the SIP Submittals
A. Emission Inventories
B. Control Measures
1. Applicable Requirements
2. Description of Control Measures
3. Proposed Action on Control Measures
C. Contingency Measures
D. Reasonable Further Progress (RFP) and Milestones
E. Attainment Demonstration
F. Extension of the Attainment Deadline
G. Motor Vehicle Emission Budgets
III. Summary of the Proposed Action
IV. Administrative Requirements

I. Background

A. Summary

We are proposing to approve portions of the 1994 and 1997 plans, the 1998 and 1999 plan amendments, and the 2002 status report for the South Coast Air Basin (or ''South Coast''), as these SIP submittals pertain to PM–10, and to grant the State's request that the attainment date for the 24-hour and annual PM–10 NAAQS be extended from December 31, 2001, to December 31, 2006.[1] We are also proposing to approve emissions budgets for purposes of transportation conformity.

B. PM–10 Problem in the South Coast Air Basin

Although great progress has been made in reducing PM–10 concentrations, the South Coast continues to violate both the 24-hour and annual PM–10 NAAQS, and the State must therefore submit measures and other provisions sufficient to make expeditious progress and attain the NAAQS.[2] The South Coast PM–10 plans were prepared to meet applicable CAA provisions, including attainment of the PM–10 NAAQS throughout the basin. Preparation of these plans was particularly challenging because PM–10 concentrations in the South Coast consist of both primary particulate (such as road dust and diesel soot, emitted directly into the atmosphere) and secondary particulate (particles formed through atmospheric chemical reactions from precursor gases, notably oxides of nitrogen, oxides of sulfur, and ammonia), and the principal causes of PM–10 violations show a strong spatial variation within the South Coast.

The health effects from elevated PM–10 concentrations include lung damage, increased respiratory disease, and premature death. Children, the elderly, and people suffering from heart and lung disease, such as asthma, are especially at risk.

C. CAA Provisions

Title I of the Federal CAA was substantially amended in 1990 to establish new planning requirements and attainment deadlines for the NAAQS. The nonattainment area plan provisions for PM–10 areas appear in CAA section 189. The most fundamental of these provisions is the requirement that the State submit a SIP demonstrating attainment of the PM–10 NAAQS. CAA section 189(a)(1)(B) and 189(b)(1)(A). This demonstration must be based upon enforceable measures to achieve emission reductions leading to emissions at or below the level predicted to result in attainment of the NAAQS throughout the nonattainment area. For areas classified as serious, such as the South Coast, the measures must meet the standard for Best Available Control Measures (BACM), and the measures must be implemented expeditiously and ensure attainment no later than the applicable CAA deadline. Because the State requests an extension of the attainment date beyond the applicable deadline of December 31, 2001, CAA section 188(e) provides that the State must demonstrate that the plan includes the most stringent measures (MSM) that are included in any implementation plan or are achieved in practice, and can feasibly be implemented in the area.

EPA has issued a ''General Preamble'' describing the Agency's preliminary views on how EPA intends to act on SIPs submitted under Title I of the Act. *See* 57 FR 13498 (April 16, 1992), 57 FR 18070 (April 28, 1992). EPA later issued an Addendum to the General Preamble providing guidance on SIP requirements for serious PM–10 areas. 59 FR 41998 (August 16, 1994). The reader should refer to these documents for a more detailed discussion of EPA's preliminary interpretations of Title I requirements. In this proposed rulemaking action, EPA applies these policies to the South Coast PM–10 SIP submittals, taking into consideration the specific factual issues presented.

D. Designation and Classification

On the date of enactment of the 1990 CAA Amendments, PM–10 areas, including the South Coast Air Basin, meeting the qualifications of section 107(d)(4)(B) of the amended Act, were designated nonattainment by operation of law. *See* 56 FR 11101 (March 15, 1991).

Once an area is designated nonattainment, section 188 of the CAA outlines the process for classification of the area and establishes the area's attainment date. In accordance with section 188(a), at the time of designation, all PM–10 nonattainment areas, including the South Coast Air Basin, were initially classified as moderate by operation of law. Section 188(b)(1) of the Act further provides that moderate areas can subsequently be reclassified as serious before the applicable moderate area attainment date if at any time EPA determines that the area cannot ''practicably'' attain the PM–10 NAAQS by this attainment date.

[1] The nonattainment area includes all of Orange County and the more populated portions of Los Angeles, San Bernardino, and Riverside Counties. For a description of the boundaries of the Los Angeles-South Coast Air Basin Area, see 40 CFR 81.305.

[2] EPA revised the NAAQS for particulate matter on July 1, 1987 (52 FR 24672), replacing standards for total suspended particulates with new standards applying only to particulate matter up to 10 microns in diameter (PM–10). At that time, EPA established two PM–10 standards. The annual PM–10 standard is attained when the expected annual arithmetic mean of the 24-hour samples averaged over a 3-year period does not exceed 50 micrograms per cubic meter (ug/m3). The 24-hour PM–10 standard of 150 ug/m3 is attained if samples taken for 24-hour periods have no more than one expected exceedance per year, averaged over 3 years. See 40 CFR 50.6 and 40 CFR part 50, appendix K.

On July 18, 1997, EPA reaffirmed the annual PM–10 standard, and slightly revised the 24-hour PM–10 standard (62 FR 38651). In the same action, EPA also established two new standards for PM, both applying only to particulate matter up to 2.5 microns in diameter (PM–2.5).

This SIP submittal addresses the 24-hour and annual PM–10 standards as originally promulgated. An opinion issued by the U.S. Court of Appeals for the D.C. Circuit in *American Trucking Assoc., Inc., et al.* v. *USEPA*, No. 97–1440 (May 14, 1999), among other things, vacated the new standards for PM–10 that were published on July 18, 1997 and became effective September 16, 1997. However, the PM–10 standards promulgated on July 1, 1987 were not an issue in this litigation, and the Court's decision noes not affect the applicability of those standards in this area. Codification of those standards continues to be recorded at 40 CFR 50.6.

EPA determined on January 8, 1993, that the South Coast could not practicably attain the PM–10 NAAQS by the applicable attainment deadline for moderate areas (December 31, 1994, per section 188(c)(1) of the Act), and reclassified the area as serious (58 FR 3334). In accordance with section 189(b)(2) of the Act, the applicable deadline for submittal of SIPs for the South Coast addressing the requirements for serious PM–10 nonattainment areas in section 189(b) and (c) of the Act were:

(1) August 8, 1994 (18 months after the effective date of the reclassification)—SIP to ensure the implementation of BACM no later than 4 years after reclassification;

(2) February 8, 1997 (4 years after the effective date of the reclassification)—SIP to provide for progress and expeditious attainment.

The 1994 PM10 plan addresses the first requirement and the 1997 plan addresses the second requirement.

E. Adoption and Submittal

The South Coast Air Quality Management District (SCAQMD) adopted the 1994 Air Quality Management Plan (AQMP) on September 9, 1994, and the California Air Resources Board (CARB) submitted the plan to us on November 15, 1994. This plan addresses the BACM provisions of CAA section 189(b)(1)(B).[3]

The SCAQMD adopted the 1997 AQMP on November 15, 1996, and CARB submitted the plan on February 5, 1997. This plan addresses the remaining plan provisions for serious PM–10 nonattainment areas, as specified in CAA sections 188 and 189.

In addition to PM–10, these two AQMPs address carbon monoxide (CO), ozone, and nitrogen dioxide (NO2).[4] By operation of law pursuant to CAA section 110(k)(1)(B), the PM–10 portions of the 1994 and 1997 plan submittals became complete 6 months after submittal by the State—*i.e.*, on May 15, 1995, and August 5, 1997, respectively.

On April 10, 1998, the SCAQMD adopted a 1998 amendment to the 1997 plan, establishing 2010 and 2020 PM–10 motor vehicle emission budgets. The State submitted these budgets to us as a SIP revision on April 22, 1998, and this submittal became complete by operation of law on October 22, 1998.

On December 10, 1999, the SCAQMD adopted a 1999 amendment to the 1997 plan, primarily addressing the ozone elements of the plan but also affecting some control measures relating to PM–10. CARB submitted the 1999 amendment on February 4, 2000. On March 15, 2000, we found that the 1999 amendment met the completeness criteria in 40 CFR part 51, appendix V.

On June 7, 2002, the SCAQMD adopted and on November 18, 2002, CARB submitted a status report, including motor vehicle emissions budgets for purposes of transportation conformity under CAA section 176(c), based on the motor vehicle emissions in the 1997 PM–10 plan. On November 20, 2002, we found that this submittal met the completeness criteria in 40 CFR part 51, appendix V.

In this document, we refer to the PM–10 portion of the 1994 and 1997 Air Quality Management Plans as ''the 1994 plan'' and ''1997 plan.'' We refer to the 1998 and 1999 amendments to the 1997 plan as the ''1998 amendments,'' and ''1999 amendments,'' respectively, and we refer to the 2002 submittal as the ''2002 status report.''

Both the District and CARB satisfied applicable statutory and regulatory requirements for reasonable public notice and hearing prior to adoption of the plans and the motor vehicle emissions budgets. The District conducted numerous public workshops, and properly noticed the public hearing at which the plans were adopted. The SIP submittals include proof of publication for notices of the public hearings. Therefore, we conclude that the 1994 and 1997 plans, the 1998 and 1999 amendments, and the 2002 status report met the public notice and involvement requirements of section 110(a)(1) of the CAA.

II. Evaluation of the SIP Submittals

A. Emission Inventories

The emission inventories in the 1997 plan supersede those in the 1994 plan. The 1997 plan includes summary emission inventories for major source categories in tons per annual average day for VOC, NO_X, CO, SOx, and PM–10 for the 1993 base year (Table 3–3A) and for 2000 (Table 3–5A) and 2006 (Table 3–6A). Appendix III (*Base and Future Year Emission Inventories*) to the 1997 plan provides more detailed emissions inventories for 1987, 1990, 1993, 1997, 2000, 2002, 2003, 2005, and 2006. Appendix III also includes additional emissions data, including planning inventories for summer and winter days, and estimates of emission reductions from each of the 1997 plan control measures for 2000, 2006, and subsequent years. Finally, Appendix III documents the source of the data and references SCAQMD and ARB reports that provide detailed information on the methodologies used to estimate emissions from area sources.

Appendix V (*Modeling and Attainment Demonstrations*) includes estimated emission reductions by control measure for PM–10 milestone years (1997, 2000, 2003, and 2006) and the detailed emission inventories used in the modeling analyses.

The 1997 plan's emission inventories employ activity levels, emission factors, and growth projections that were the most current and accurate available when the plan was required to be submitted and when the plan was, in fact, submitted: February 1997. The emission inventories are complete with respect to sources that have been found to contribute to PM–10 violations. We therefore propose to approve the emission inventories in Chapter 3, Appendix III, and Appendix V of the 1997 plan as meeting the provisions of CAA section 172(c)(3).

In the years since development, adoption, and submittal of the 1997 plan, CARB has prepared draft revisions to the mobile source component of the emissions inventories, including the model used to calculate exhaust and evaporative emissions from motor vehicles. This California-specific motor vehicle emissions model is known as EMFAC. The version of the model available for development of the 1997 PM–10 plan is known as EMFAC 7G, adopted by CARB in 1996 (CARB, *Methodology for Estimating Emissions from On-Road Motor Vehicles*, 1996).[5]

CARB and SCAQMD have formally committed to adopt and submit a revised PM–10 plan and revised motor vehicle emissions budgets by Spring 2003, and to base the new plan and budgets on use of the most current and accurate emissions data, including the latest available version of the EMFAC model for motor vehicle emissions, incorporating the latest planning assumptions on vehicle fleet and age distribution, and incorporating the latest activity levels. This revised plan will also update the ozone and CO SIPs and

[3] SCAQMD adopted and CARB submitted in 1991 an AQMP intended, in part, to satisfy the CAA section 189(a) provisions for PM–10 nonattainment areas classified as moderate. We did not take action on this plan and are not doing so now, since the plan was superseded by the subsequent SIP submittals.

[4] We granted interim approval to the CO portion of the 1997 submittal on April 21, 1998 (63 FR 19661), and we approved the NO2 portion of the 1997 submittal on July 24, 1998 (63 FR 39747). On January 8, 1997 (62 FR 1150), we approved the ozone portion of the 1994 submittal. On April 10, 2000 (65 FR 18903), we approved the ozone portion of the 1997 submittal, as amended in December 1999, as a replacement for the 1994 ozone plan.

[5] EPA has approved EMFAC 7G for use in transportation plan and program conformity analyses (letter from David Howekamp, EPA, to Michael P. Kenny, CARB, dated April 16, 1998).

budgets for the South Coast, which are similarly based on motor vehicle emissions calculated using EMFAC 7G and planning assumptions available in 1996.

We believe that approval of the 1997 plan's emissions inventories and the motor vehicle emissions budgets derived from the 1997 plan's emissions inventories is warranted at this time, since the inventories and budgets reflect the best available information at the time of the plan's preparation. Moreover, both SCAQMD and CARB have committed to submit, within a short period of time, a revised plan with updated emissions inventories and budgets. The transportation conformity implications of our proposed approval are discussed later in this document, in section II.G., Motor Vehicle Emissions Budgets.

B. Control Measures

1. Applicable Requirements

Because the South Coast is classified as serious for PM–10, the nonattainment plan for the area must include control measures that reflect a BACM level of control for each source category that contributes significantly to a violation of the 24-hour or annual PM–10 NAAQS.[6]

By analogy to Title I Part C of the Clean Air Act relating to Prevention of Significant Deterioration (PSD), EPA interprets BACM for serious PM–10 areas as generally similar to the definition of Best Available Control Technology (BACT) for the PSD program. PM–10 BACM is therefore defined as ''the maximum degree of emissions reduction of PM–10 and PM–10 precursors from a source * * * which is determined on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, to be achievable for such source through application of production processes and available methods, systems, and techniques for control of each such pollutant.'' General Preamble Addendum, 59 FR 42010 (August 16, 1994).

EPA exempts from the BACM requirement de minimis source categories, which do not contribute significantly to nonattainment. By analogy to the new source permit programs (40 CFR 51.165(b)), EPA has presumed that a source category contributes significantly to a violation of the 24-hour PM–10 NAAQS if its impact at the location of expected violation would exceed 5 μg/m3, and would contribute significantly to a violation of the annual PM–10 NAAQS if its impact at the time and location of the expected violation would exceed 1 μg/m3. 59 FR 42011. However, states must also review the potential to attain the PM–10 NAAQS earlier through application of controls on anthropogenic sources below these general levels.

SCAQMD identified significant categories as part of the BACM provisions of the 1994 plan. Appendix I–D (*Best Available Control Measures—PM10 SIP for the South Coast Air Basin*), Chapter 3, includes a calculation of the ambient impact of source categories at 5 representative sampling sites in the South Coast, which were subject to source apportionment analysis. Table 3–2 shows source contribution to annual average concentrations of ammonium sulfate, ammonium nitrate, secondary carbon, and geological particulate. Table 3–3 shows contributions to 24-hour average concentrations for the same species. The Tables show that the following categories were clearly significant contributors with respect to both of the NAAQS: Paved road dust, unpaved road dust, construction and demolition, and motor vehicles. The SCAQMD noted that 3 other categories are slightly above the de minimis levels but, given emission uncertainties, may not be significant: Non-farm equipment, non-utility internal combustion engines, and refinery boilers and heaters. These 3 source categories and most of the source categories that are below the de minimis levels were subject to stringent SCAQMD or CARB regulations, which helped keep PM–10 impact levels from these categories low, despite the large population and activity levels in the basin.

CAA section 189(b)(1)(B) provides that BACM must be implemented within 4 years after the date the area is reclassified to serious. In the case of the South Coast, reclassification to serious became effective on January 8, 1993, so BACM implementation is required by January 8, 1997.

Because the State has requested an extension of the PM–10 NAAQS attainment deadline pursuant to CAA section 188(e), the plan must include a demonstration that ''the plan for the area includes the most stringent measures that are included in the implementation plan of any State or are achieved in practice in any State, and can feasibly be implemented in the area.''

Finally, the control measures in the serious area plan must be sufficient to achieve expeditious attainment by the applicable deadline.

2. Description of Control Measures

The control measures in the 1997 PM–10 plan are described at length in Appendix IV–A (*Stationary and Mobile Source Control Measures*). To reduce secondary precursor emissions of PM–10 (notably NO_X and, to a lesser extent, SO_x, VOC, and ammonia), the 1997 PM–10 plan relies on a large number of SCAQMD and CARB control measures, either as part of the base line emissions (this is primarily the case for measures which were fully adopted in regulatory form by 1996) or as specific control measure commitments. The majority of these control measures have been approved in prior actions on South Coast ozone plans or on individual SCAQMD regulations submitted over the years.[7]

The 1997 plan also contains SCAQMD control measure commitments to reduce primary PM–10. These control measure commitments have not been previously approved and we are proposing approval of them at this time. Table 1 below, entitled ''South Coast PM–10 Control Measure Commitments,'' lists for each primary PM–10 control measure the SCAQMD commitments to adopt and implement the measure by specific dates to achieve particular emission reductions. A thorough discussion of each of the measures may be found in Appendix IV–A; the adoption and implementation dates are taken from Table 7–3 in the 1997 plan, Table 2–1 in the 1999 amendments, and Attachment D in the 2002 status report; the emission reduction commitments are taken from the 1997 plan, Appendix V, Attachment A, and from the 2002 status report, Attachment D.

[6] The plan must also satisfy lesser control measure provisions applicable to moderate areas, Reasonably Available Control Measures (RACM) for areas sources such as fugitive dust, and Reasonably Available Control Technology (RACT) for stationary sources such as commercial and industrial operations. We are not making an independent assessment of the plan's control measures against the RACM and RACT requirements, since the plan will meet RACM and RACT requirements if it is found to meet the BACM requirement.

[7] See, for example, our approval of the 1997 ozone plan and that plan's NO_X and VOC control measure commitments, as amended in 1999 (65 FR 6091, February 8, 2000; 65 FR 18903, April 10, 2000). We have approved the District's NO_X and VOC regulations in separate rulemaking over the years. You may see copies of the approved rules at: *http://www.epa.gov/region09/air/sips/*. See also our approval of SCAQMD's fugitive dust regulations, Rules 403 (Fugitive Dust) and 1186 (PM–10 Emissions from Paved and Unpaved Roads and Livestock Operations), on August 11, 1998 (63 FR 42786) and February 17, 2000 (65 FR 8057).

TABLE 1.—SOUTH COAST PM–10 CONTROL MEASURE COMMITMENTS

[Emission reductions shown in tons per day of PM–10]

Measure	Adoption date	Implementation date	2003 emission reductions	2006 emission reductions
BCM–01 Emission Reductions from Paved Roads (Rule 403)	1997	1997	53.33	54.40
BCM–06 Emission Reductions from Fugitive Dust Sources to meet BACM Requirements (Rule 403)	1997	1997	5.65	5.88
BCM–03 Emission Reductions from Unpaved Roads & Parking Lot and Staging Areas (Rule 403)	1997	1997–2006	10.49	15.21
BCM–04 Emission Reductions from Agricultural Activities (Rule 403)	1997	1997–9	0.03	0.03
CMB–09 Emission Reductions from Petroleum Fluid Catalytic Cracking Units	[1] 2002	[1] 2006	0.00	0.48
PRC–01 Emission Reductions from Woodworking Operations	[1] 2002	[1] 2002	7.20	7.50
PRC–03 Emission Reductions from Restaurant Operations	[1] 2003–4	[1] 2004–6	0.00	7.87
WST–01 Emission Reductions from Livestock Waste	[2] 2002	[2] 2004	6.16	5.96

[1] These dates reflect changes made in the 2002 status report, amending the 1997 plan.
[2] These dates reflect changes made in the 1999 amendments to the 1997 plan.

In the 1994 and 1997 plans and in the appendices to the plans (*e.g.*, 1994 plan, Appendix I–D), the District has provided extensive documentation on both the control measures included in the plan and those rejected. The documentation quantifies the costs of implementation, discusses the technological feasibility of control options, explains the schedule for expeditious implementation, and examines other factors as part of a comprehensive justification of the measures as reflecting BACM. As discussed above, the plans also include quantitative analyses of the South Coast emissions sources and a determination of which categories have ''significant'' impacts on PM–10 concentrations.

SCAQMD also reviewed the measures against the MSM criteria, in order to demonstrate that the plan reflects the most stringent measures that were included in the implementation plan of any State or were achieved in practice in any State, and can feasibly be implemented in the area. SCAQMD further analyzed all source categories and control approaches as part of an ''all feasible measures'' requirement of State law, and assessed on an international scale those potential control measures that could be adopted to attain the ozone NAAQS in the South Coast, the only ozone area in the country classified as extreme.

We agree with the SCAQMD's conclusion that the District's control measures represent the most stringent measures at the time the plans were required to be submitted. The plans therefore demonstrate that BACM and MSM have been adopted for each of the significant source categories.[8]

[8] The SCAQMD's analyses were performed in the months immediately prior to adoption and submittal of the 1994 and 1997 plans, and so reflect information current at that time on the availability and applicability of control measures within the South Coast to address the BACM and MSM criteria. As part of the 2003 plan revision, SCAQMD intends to reassess BACM and MSM and adopt any measures directed by a new BACM or MSM evaluation. However, for purposes of our action on the submittals now before us, we are applying BACM and MSM tests appropriate at the time of the plans' submittal dates, when the BACM and serious area attainment plans were due. Because the statutory BACM implementation deadline will have passed for any new measures included in the 2003 plan revision, that plan must assure that BACM will be implemented ''as soon as possible.'' Delaney v. EPA, 898 F.2d 687, 691 (9th Cir. 1990). EPA has interpreted this requirement to be ''as soon as practicable.'' 55 FR 36458, 36505 (September 9, 1990).

3. Proposed Action on Control Measures

We conclude that the submittals demonstrate that the control measures for each significant source category, and for *de minimis* categories as a whole, are consistent with the BACM requirement in terms of the timing, degree, and extent of the control program and reflect MSM at the time the plan was required to be submitted.

We also conclude that the measures are sufficient to meet RFP and expeditious attainment provisions, as discussed below in sections II.D and II.F.

We therefore propose to approve the control measures under CAA section 110(k)(3), as meeting the requirements of CAA sections 110(a), 188(e), and 189(b)(1)(B). We are proposing to approve each of the control measure commitments to adopt and implement rules by specified dates and to achieve particular emission reductions by milestone years. Specifically, we are approving the SCAQMD's enforceable commitments in Table 1, taken from Attachment D to the 2002 status report, and the descriptions of the measures in Appendix IV–A of the 1997 plan, as amended by the 1999 amendments.

C. Contingency Measures

The CAA requires that the SIP include contingency measures to be implemented if the area fails to meet progress requirements or to attain the NAAQS by the applicable deadline. In response to this provision, the 1997 plan includes contingency measures, 3 of which are specifically directed toward increasing reductions of primary PM–10: CTY–12—Emission Reductions from Paved Roads (Curb and Gutter/Chemical Stabilization); CTY–13—Further Emission Reductions from Construction and Demolition Activities; and CTY–14—Emission Reductions from Miscellaneous Sources (Weed Abatement). These measures are discussed at length in Appendix IV, Section 6, pages IV–6–25 through IV–6–33. Each measure has the potential to achieve significant further PM–10 reductions and may be implemented quickly to cure a SIP shortfall.

We conclude that the 1997 plan satisfies the contingency requirements, and propose to approve the SCAQMD's contingency measure commitments under CAA section 110(k)(3) as meeting the contingency provisions of CAA section 172(c)(9). Specifically, we are approving the contingency measure commitments as set forth in Section 6 of Appendix IV–A to the 1997 plan.

D. Reasonable Further Progress (RFP) and Milestones

The plan must also include quantitative milestones which are to be achieved every 3 years until the area is redesignated to attainment, and show RFP toward attainment by the applicable attainment deadline. CAA section 189(c).

The 1997 plan, as modified by the 2002 status report, includes enforceable schedules for implementation of the specified control measures resulting in

the emissions levels shown in Table 2—''South Coast PM–10 Reasonable Further Progress Milestones.'' Using the approaches discussed in Section II.F. below, the SCAQMD modeled the emissions levels for 2006 to demonstrate attainment of both the 24-hour and annual PM–10 NAAQS.

TABLE 2.—SOUTH COAST PM–10 REASONABLE FURTHER PROGRESS MILESTONES

[Emissions are shown in tons per day]

Pollutant	2003	2006
PM–10	310	301
NO_X	748	635
SO_X	64	67
VOC	747	623

EPA proposes to approve this annual schedule as meeting the RFP and milestone requirements of CAA section 189(c), since the schedule reflects expeditious implementation of BACM and expeditious attainment of the 24-hour and annual PM–10 NAAQS. We are approving the RFP and milestone provisions in the 1997 plan, Chapters 4 and 6, Appendix III, and Chapter 2 of Appendix V, as modified by the 2002 status report.

E. Attainment Demonstration

The SIP must provide a detailed demonstration (including air quality modeling) that the specified control strategy will reduce PM–10 emissions so that the standards will be attained as soon as practicable but no later than December 31, 2006, assuming final EPA approval of the attainment date extension. CAA section 189(b)(1)(A). EPA considers the area to be in attainment of the NAAQS if 24-hour concentrations are 150 ug/m3 or less and the annual arithmetic mean is 50 ug/m3 or less. In the case of the South Coast, the attainment demonstration in the 1997 PM–10 plan must analyze both the 24-hour and annual NAAQS, since the area has historically violated both NAAQS.

Because of the complexity and diversity of the PM–10 problem in the South Coast, the SCAQMD decided to use a variety of modeling approaches to assess control scenarios and determine attainment of the 24-hour and annual PM–10 NAAQS: (1) Urban Airshed Modeling with Linear Chemistry Module (UAM/LC (Lurmann and Kumar 1996); (2) the Chemical Mass Balance (CMB) receptor model for source apportionment in the Basin; (3) the particle in cell (PIC) model developed by California Institute of Technology for determining sulfate and nitrate formation; and (4) UAM-Aero (Kumar and Lurmann, 1996) for evaluating interactions of emissions, meteorology, and aerosol chemistry. The inputs and applications of each of these models are described in Chapter 2 of Appendix V (Modeling and Attainment Demonstrations) of the 1997 plan.

The modeling results for 2000, 2006, and 2010 are presented in the 1997 AQMP, Chapter 5 (Figures 5–3, 5–4, and 5–5), and on pages V–2–58 to V–2–67 of Appendix V. The UAM/LC and CMB modeling predicts that the peak annual concentration in 2006 with implementation of controls will be 48.10 ug/m3, compared to the 50 ug/m3 annual PM–10 NAAQS. The speciated rollback analysis predicts peak concentrations of 47.10 ug/m3 for 2006 with controls. The UAM/LC and CMB modeling predicts that the peak 24-hour concentration in 2006 with controls will be 142.9 ug/m3, while the speciated rollback analysis predicts 136.26 ug/m3, compared to the 150 ug/m3 24-hour PM–10 NAAQS.

In contrast to other pollutants, we have not issued detailed modeling guidelines for PM–10, nor have we established minimum performance requirements for PM–10 modeling.[9] We have reviewed the SCAQMD's modeling approaches for both primary PM–10 and secondary PM–10, using both receptor modeling and dispersion modeling. We believe that the modeling in the 1997 plan provides a reasonable basis for linking emissions with air quality, for identifying an appropriate control strategy, and for determining whether the strategy delivers attainment for both the 24-hour and annual PM–10 NAAQS.

The SCAQMD's modeling shows that the level of emissions after implementation of the proposed set of control strategies would result in ambient concentrations within the South Coast in 2006 consistent with attainment of both the 24-hour and annual PM–10 NAAQS. We therefore conclude that the air quality modeling and attainment demonstration contained in the 1997 plan, Chapter 5 and Appendix V, Chapter 2, are consistent with existing EPA guidance, and we propose to approve the attainment demonstration under CAA section 189(b)(1)(A).

F. Extension of the Attainment Deadline

CAA section 188(e) allows states to apply for up to a 5-year extension of the serious area attainment deadline of December 31, 2001. In order to obtain the extension, there must be a showing that: (1) The plan for the area includes the most stringent measures that are included in the SIP of any state or are achieved in practice in any state, and can feasibly be implemented in the area, (2) the state complied with all requirements and commitments pertaining to the area in the implementation plan for the area, and (3) attainment by 2001 would be impracticable.

As discussed in section II.B. above, we propose to conclude that the South Coast PM–10 plans include BACM and MSM for each significant source category, and that the implementation schedule for each control measure is as expeditious as practicable. Attachment B to the 2002 status report shows that the responsible agencies have generally met the SIP requirements and commitments. Although the adoption and implementation dates of some of the 1997 plan's scheduled measures have been revised, EPA agrees with the SCAQMD that SIP implementation has been satisfactory and changes in the schedule should not adversely affect air quality at the 2003 milestone or at the 2006 attainment date.

Using UAM/LC and chemical mass balance modeling techniques discussed below in section II.E., the SCAQMD calculated 24-hour and annual PM10 concentrations in the year 2000 for the 5 representative sampling sites in the basin, with and without the plan control measures (1997 plan, Tables 2–17 and 2–19). The results show attainment at 4 of the sites but not at the Rubidoux site in northwestern Riverside County, where continued violations of both the 24-hour and annual NAAQS were predicted, despite aggressive implementation of BACM and MSM. Similar modeling analyses for 2006 show that additional emissions reductions from BACM and MSM, along with further emissions reductions from de minimis source categories, reduced ambient PM–10 concentrations further, bringing Rubidoux values slightly below both the 24-hour and annual PM–10 NAAQS. Based on this analysis, the SCAQMD determined that attainment

[9] Over the years, EPA has issued some recommendations on PM–10 modeling, including those codified at 40 CFR part 51, appendix W, 7.2.1 and 7.2.2, and those set forth in the PM–10 SIP Development Guideline (USEPA 450/2–860001, 6/87). Although we do not set minimum performance goals or require model performance evaluation for PM–10 modeling, the SCAQMD included a performance evaluation for the UAM/LC at each of the 5 study sites for sulfate, nitrate, ammonium, and primary PM–10 (1997 plan, Appendix V, pages V–2–52 to V–2–54). For the peak site, Rubidoux, the annual percent error is under 20 percent for nitrate, ammonium, and primary PM–10, but is 42.9 percent for sulfate. Sulfates, however, account for less than 5 ug/m3 at each of the stations, and bias in the prediction performance is thus typically less than 2 ug/m3.

could not feasibly be achieved before 2006.

We find that the SCAQMD has met the CAA provisions relating to attainment date extensions, and we propose to grant, under CAA section 188(e), a 5-year attainment date extension to December 31, 2006, for attainment of both the 24-hour and annual PM–10 NAAQS, based on the demonstration provided in the 1997 plan in Chapters 5 and 6 and in Appendix V, Chapter 2.

G. Motor Vehicle Emission Budgets

Rate of progress and attainment demonstration submittals must specify the maximum emissions of transportation-related precursors of PM–10 allowed in each milestone year and the attainment year. The submittals must also demonstrate that these emissions levels, when considered with emissions from all other sources, are consistent with RFP and attainment. In order for us to find these emissions levels or ''budgets'' adequate and approvable, the submittal must meet the conformity adequacy provisions of 40 CFR 93.118(e)(4) and be approvable under all pertinent SIP requirements.

The budgets defined by this and other plans when they are approved into the SIP or, in some cases, when the budgets are found to be adequate, are then used to determine the conformity of transportation plans, programs, and projects to the SIP, as described by CAA section 176(c)(3)(A). For more detail on this part of the conformity requirements, *see* 40 CFR 93.118. For transportation conformity purposes, the cap on emissions of transportation-related PM–10 precursors is known as the motor vehicle emissions budget. The budget must reflect all of the motor vehicle control measures contained in the attainment demonstration (40 CFR 93.118(e)(4)(v)), and must include PM–10 and PM–10 precursor emissions from the following sources: motor vehicles, reentrained dust from traffic on paved and unpaved roads, and emissions during construction of highway and rail projects.[10]

The motor vehicle emissions budgets are presented in Table 3 below, entitled ''South Coast PM–10 Plan Motor Vehicle Emissions Budgets,'' which is taken from Attachment C to the 2002 status report. Emission reductions attributed to transportation control measures (TCMs) in the SIP are shown as positive numbers, and emission increases associated with the TCMs are shown as negative numbers in Table 3; however, as noted, the TCM emissions impacts are incorporated in the motor vehicle emissions lines in the budgets.

TABLE 3.—SOUTH COAST PM–10 PLAN MOTOR VEHICLE EMISSIONS BUDGETS

[Emissions are shown in tons per day]

Year and Source Category	PM–10	NO_X	VOC
2003 Budget:			
Motor vehicles	14.5	429.1	258.0
Reentrained dust from paved roads	130.6	.....	.....
Reentrained dust from unpaved roads	41.9	.....	.....
Construction of transportation projects	27.1	.....	.....
Total	214.1	419.1	258.0
TCM reductions (already included in budget)	0.1	–1.8	9.6
2006 Budget:			
Motor vehicles	13.7	350.2	187.2
Reentrained dust from paved roads	133.2	.....	.....
Reentrained dust from unpaved roads	37.2	.....	.....
Construction of transportation projects	28.1	.....	.....
Total	212.2	350.2	187.2
TCM reductions (already included in budget)	0.1	–2.3	14.7
2010 Budget:			
Motor vehicles	13.5	282.7	81.8
Reentrained dust from paved roads	136.7	.....	.....
Reentrained dust from unpaved roads	37.2	.....	.....
Construction of transportation projects	29.1	.....	.....
Total	216.5	282.7	81.8
TCM reductions (already included in budget)	0.2	–3.2	17.0
2020 Budget:			
Motor vehicles	14.6	272.3	56.3
Reentrained dust from paved roads	143.7	.....	.....
Reentrained dust from unpaved roads	37.2	.....	.....
Construction of transportion projects	30.0	.....	.....
Total	225.5	272.3	56.3
TCM Reductions	0.5	7.2	11.4

As discussed above in section II.A., Emission Inventories, the motor vehicle emissions portion of these budgets (*i.e.*, the evaporative and tailpipe emissions) was developed using the EMFAC 7G motor vehicle emissions factors.

[10] The conformity regulations provide that, for purposes of budgets and conformity determinations, the applicable pollutants are VOC, NO_X, and PM–10 if the applicable implementation plan establishes a budget for such emissions as part of the RFP, attainment, or maintenance strategy, or EPA has made such a finding. 40 CFR 91.102(b)(2)(iii). Thus, although the SCAQMD has established SO_X as a PM–10 precursor in the South Coast and has set RFP and attainment reduction targets for SO_X, the conformity regulations do not allow for SO_X budgets. The conformity regulations require that, in PM–10 areas with SIPs which identify construction-related fugitive PM–10 as a contributor to the nonattainment problem, the PM–10 budget and conformity analysis must include fugitive PM–10 emissions associated with the construction of highway and transit projects. 40 CFR 93.122(d)(2).

When the 2010 and 2020 budgets were adopted on April 10, 1998, SCAQMD submitted with the 1998 amendments a modeled demonstration that the emissions levels for motor vehicles reflected in the budgets, combined with emissions levels from all other PM–10 and PM–10 precursor emissions sources in the South Coast, would be consistent with maintenance of the 24-hour and annual PM–10 NAAQS. This demonstration was required in order to allow for approval of the budgets, since the budgets show a slight increase in emissions of primary PM–10 over the 2006 attainment levels (an increase of 2 percent in 2010 and 6 percent in 2020). The demonstration showed that the increase in primary PM–10 associated with motor vehicles is more than offset by decreases in emissions of secondary PM–10 precursors, resulting in projected 24-hour and annual concentrations below the predicted 2006 levels, which are below the NAAQS.

We propose to approve the motor vehicle emission budgets as consistent with the adequacy criteria of 40 CFR 93.118(e)(4), including consistency with the baseline emissions inventories, the motor vehicle control measure emission reductions used in the progress and attainment demonstration, and the reductions needed for continued attainment of the standard after the attainment deadline. Specifically, we are approving the budgets in the 2002 status report, which are based on, and consistent with, the 1997 plan and the 1998 amendment.

As discussed in section II.A., CARB is finalizing a revised version of EMFAC, and both CARB and SCAQMD have committed to adopt and submit a comprehensive revision to the PM–10 plan in Spring 2003, using the new EMFAC, incorporating the latest planning assumptions on vehicle fleet and age distribution, and incorporating the latest activity levels. This revised plan will include revised budgets, based on the new inventory and attainment demonstration. Assuming that these new budgets are adequate and approvable, the new budgets will soon replace the budgets in the current submittal.

Since these revised budgets will be based on the most current and accurate motor vehicle emissions data, we intend to allow for expedited use of the updated budgets in transportation conformity determinations. Therefore, we propose to limit our proposed approval of the budgets in the current submittal to last only until we find adequate the new budgets that are expected to be adopted in Spring 2003 as part of the revised PM–10 plan for the South Coast. On the effective date of our adequacy finding for the new budgets, our approval of the budgets in the current submittal would terminate and thus the new adequate budget would apply for purposes of transportation conformity. We have separately promulgated a similar limitation on the approval of the existing South Coast ozone and nitrogen dioxide (NO_2) budgets, in order to expedite use of new budgets associated with these pollutants in the 2003 plan revision for the South Coast. 67 FR 69139 (November 15, 2002).

III. Summary of EPA's Proposed Action

We are proposing to approve the serious area PM–10 SIP submitted by the State of California for the South Coast. Specifically, we are proposing to approve the 1994 and 1997 PM–10 plans, the 1998 and 1999 amendments, and the 2002 status report with respect to the CAA requirements for emissions inventories under section 172(c)(3); control measures under section 110(k)(3), as meeting the requirements of sections 110(a), 188(e), and 189(b)(1)(B); RFP under section 189(c); contingency measures under section 172(c)(9); demonstration of attainment under section 189(b)(1)(A); and motor vehicle emissions budgets under section 176(c)(2)(A). We are proposing to limit our approval of the motor vehicle emissions budgets to last only until the effective date of our adequacy findings for new replacement budgets. We are also proposing to approve the State's request for an extension of the attainment date from December 31, 2001 to December 31, 2006, under CAA section 188(e). We show the proposed approvals in Table 4—''Proposed Approvals of South Coast PM–10 Submittals.''

TABLE 4.—PROPOSED APPROVALS OF SOUTH COAST PM–10 SUBMITTALS

CAA section	Provision	SIP submittal	Plan citation
172(c)(3)	Emission inventories	1997 plan	1997 plan Ch. 3; App. III; App. V, Ch. 2
110(a), 188(e), and 189(b)(1)(B)	Control measures	1994 plan 1997 plan 1999 amendment 2002 status report	1997 plan Ch. 4, App. IV–A; 1999 plan, App. B; 2002 status report, Att. D
189(c)	Reasonable further progress	1997 plan 2002 status report	1997 plan, Ch. 4 & 6, App. III, App. V, Ch. 2; 2002 status report
172(c)(9)	Contingency measures	1997 plan	1997 plan, App. IV–A
189(b)(1)(A)	Attainment demonstration	1997 plan	1997 plan, Ch. 5, App. V
176(c)(2)(A)	Motor vehicle emissions budgets	1997 plan 1998 amendment 2002 status report	2002 status report, Att. C
188(e)	Attainment date extension	1997 plan	1997 plan, Ch. 5 & 6, App. V, Ch. 2

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this proposed action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This proposed action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing

requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

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

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

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

40 CFR Part 81

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

Dated: December 6, 2002.

Alexis Strauss,

Acting Regional Administrator, Region IX.

[FR Doc. 02–31680 Filed 12–16–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 43, 63 and 64

[IB Docket Nos. 02–324, 96–261; DA 02–3314]

International Settlements Policy Reform and International Settlement Rates

AGENCY: Federal Communications Commission.

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

SUMMARY: On October 25, 2002, the Federal Communications Commission published a proposed rule document initiating a proceeding to re-examine the Commission's International Settlements Policy. In light of recent international developments, the Commission decided to extend the initial pleading cycle by 35 days to allow interested parties an opportunity to include in their initial comments any response to these recent developments and their effect on the policies under consideration in the proposed rulemaking.

DATES: Comments are due on or before January 14, 2003. Reply Comments are due on or before February 6, 2003.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., Washington, DC 20554. *See* Supplementary Information for filing instructions.

FOR FURTHER INFORMATION CONTACT: James Ball, Chief, or Lisa Choi, Senior Legal Advisor, Policy Division, International Bureau, (202) 418–1460.

SUPPLEMENTARY INFORMATION: 1. On October 11, 2002, the Commission released a Notice of Proposed Rulemaking (NPRM) seeking comment from the public regarding possible reform of its International Settlements Policy, International Simple Resale and benchmarks policies, and the issue of foreign mobile termination rates. (*See* 67 FR 65527, October 25, 2002.)

2. The Commission has become aware of the recent actions taken by several foreign administrations to impose rate floors on international termination rates, including U.S.-international accounting rates. Actions of this nature raise concerns insofar as they have the potential to cause increases in consumer calling rates by raising commercially-negotiated termination rates between U.S. and foreign carriers. The NPRM in this proceeding specifically asked for comment on potential anticompetitive harms to U.S. carriers and consumers from foreign carriers with market power.

3. In light of these recent developments and the questions raised in the NPRM regarding possible reform of the Commission's ISP and accounting rate policies, we extend the pleading cycle established in the NPRM, FCC 02–285, IB Docket Nos. 02–324 & 96–261, by 35 days in order to allow interested parties an opportunity to include in their initial comments any response to these recent developments and their effect on the policies under consideration in the proposed rulemaking. We find that the public interest will be served by this brief extension of both the comment and reply dates to allow for a more complete record in this proceeding.

4. Accordingly, pursuant to §§ 1.1 of the Commission's rules, 47 CFR 1.1, the new comment due date is January 14, 2003 and the new reply comment due date is February 6, 2003. Instructions for filing pleadings in this proceeding are set forth in the NPRM, available on the Commission's website at *http://www.fcc.gov.* All comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Information Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC 20554.

Federal Communications Commission.

James Ball,

Chief, Policy Division, International Bureau.

[FR Doc. 02–31604 Filed 12–16–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–3189; MB Docket No. 02–363, RM–10604]

Digital Television Broadcast Service; Asheville, NC and Greenville, SC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Meredith Corporation, licensee of

Station WHNS(TV), channel 21 and paired digital channel 57, Asheville, North Carolina, proposing the reallotment of channel 21 and paired digital channel 57, from Asheville to Greenville, South Carolina, and the modification of station WHNS(TV)'s license accordingly.

DATES: Comments must be filed on or before January 16, 2003, and reply comments on or before February 1, 2003.

ADDRESSES: The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making (except in broadcast allotment proceedings). *See Electronic Filing of Documents in Rule Making Proceedings,* GC Docket No. 97–113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: James E. Dunstan, Esquire, Garvey, Schubert & Barer, Fifth Floor, 1000 Potomac Street, NW., Washington, DC 20007 (Counsel for Meredith Corporation).

FOR FURTHER INFORMATION CONTACT: Brad Lerner, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–363, adopted November 18, 2002, and released November 25, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. 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.*

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

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

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

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

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.

§ 73.606 [Amended]

2. Section 73.606, the Table of Television Allotments under North Carolina, is amended by removing channel 21 at Asheville and under South Carolina, is amended by adding channel 21 at Greenville.

§ 73.622 [Amended]

3. Section 73.622(b), the Table of Digital Television Allotments under North Carolina, is amended by removing DTV Channel 21 at Asheville and under South Carolina, is amended by adding DTV channel 57 at Greenville.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–31715 Filed 12–16–02; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 67, No. 242
Tuesday, December 17, 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

Forest Service

Plumas National Forest; California; Stream Fire Restoration Project

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent.

Responsible Official and Lead Agency

Plumas National Forest Supervisor Jim Peña is the responsible official.

Dated: December 10, 2002.

Robert G. Macwhorter,

Deputy Forest Supervisor.

[FR Doc. 02–31639 Filed 12–16–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

Service Industries, Tourism & Finance (SITF)

ACTION: Notice of development of a mailing list for U.S. companies interested in design, engineering, construction and other projects for the 2008 Beijing Olympics.

SUMMARY: In July 2001, Beijing was awarded the right to host the 2008 Olympics. In preparation for the games, Beijing plans to spend approximately U.S. $23 billion on the games. This includes Olympic sport facilities, as well as major enhancements to infrastructure projects in Beijing to improve the city's water processing, transportation, telecommunication networks and other projects. The Department of Commerce is developing a mailing list for U.S. companies interested in participating in the projects. If you would like to receive information on design, engineering, construction or other projects, contact the Service Industries Office at the email address below. Please provide a contact name, company name, address, phone and fax number, email address and what types of projects you are interested in knowing more about.

FOR FURTHER INFORMATION CONTACT: Ann Reed or Russell Adise in the International Trade Administration at the U.S. Department of Commerce at *osi@ita.doc.gov,* or by phone at 202–482–6165 and 202–482–5086.

Dated: November 21, 2002.

Keith Roth,

Acting Director, Office of Service Industries.

[FR Doc. 02–31710 Filed 12–16–02; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–863]

Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation.

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 17, 2002.

FOR FURTHER INFORMATION CONTACT: Angelica Mendoza or Sheila Forbes at (202) 482–3019 and (202) 482–4697, respectively; AD/CVD Enforcement, Office 8, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with section 351.213 of the Department of Commerce's (the Department's) Regulations (2002), that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

On December 2, 2002, the Department published in the **Federal Register** (67 FR 71533) a Notice of Opportunity to Request Administrative Review of such orders, findings, or suspended investigations with December anniversary dates. In publishing the December 2, 2002 Notice of Opportunity to Request Administrative Review, the Department inadvertently omitted a reference to the antidumping duty order on Honey from the People's Republic of China (A-570–863), which has a December anniversary date. Accordingly, the Department is separately publishing this notice of an opportunity for interested parties to request an administrative review of the antidumping duty order on Honey from the People's Republic of China (A-570–863).

Opportunity to Request a Review

Not later than the last day of December 2002, interested parties may request administrative review of the following antidumping duty order on honey from the People's Republic of China for the following period:

Antidumping Duty Proceeding	Period
People's Republic of China: Honey, A-570–863	5/11/01–11/30/02

In accordance with section 351.213(b) of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International

Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/ Countervailing Duty Enforcement, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with section 351.303(f)(l)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the Federal Register a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of December 2002. If the Department does not receive, by the last day of December 2002, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: December 10, 2002.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 02–31627 Filed 12–16–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–882]

Notice of Initiation of Antidumping Duty Investigation: Refined Brown Aluminum Oxide (Otherwise known as Refined Brown Artificial Corundum or Brown Fused Alumina) from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Initiation of Antidumping Duty Investigation

EFFECTIVE DATE: December 17, 2002.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Jim Mathews, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4136 or (202) 482–2778, respectively.

SUPPLEMENTARY INFORMATION:

Initiation Of Investigation

The Petition

On November 20, 2002, the Department received a petition filed in proper form by Washington Mills Company, Inc. On November 27, 2002, the petition was amended to include two additional petitioners, C-E Minerals and Treibacher Schleifmittel Corporation (collectively, the petitioners). The Department received information supplementing the petition throughout the initiation period.

In accordance with section 732(b)(1) of the Tariff Act of 1930, as amended (the Act), the petitioners allege that imports of refined brown aluminum oxide from the People's Republic of China (PRC) are, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring an industry in the United States.

The Department finds that the petitioners filed the petition on behalf of the domestic industry because they are interested parties as defined in section 771(9)(C) of the Act and they have demonstrated sufficient industry support with respect to the antidumping investigation that they are requesting the Department to initiate. *See infra,* ''Determination of Industry Support for the Petition.''

Scope of Investigation

The merchandise covered by this investigation is ground, pulverized or refined artificial corundum, also known as brown aluminum oxide or brown fused alumina, in grit size of 3/8 inch or less. Excluded from the scope of the investigation is crude artificial corundum in which particles with a diameter greater than 3/8 inch constitute at least 50 percent of the total weight of the entire batch. The scope includes brown artificial corundum in which particles with a diameter greater than 3/8 inch constitute less than 50 percent of the total weight of the batch. The merchandise under investigation is currently classifiable under subheading 2818.10.20.00 of the *Harmonized Tariff Schedule of the United States*(HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

During our review of the petition, we discussed the scope with the petitioners to ensure that it accurately reflects the product for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations (*Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments within 20 calendar days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determination.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that the Department's industry support determination, which is to be made before the initiation of the investigation, be based on whether a minimum percentage of the relevant industry supports the petition. A petition meets this requirement if the domestic producers or workers who support the petition account for: (1) at least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall either poll the industry or rely on other information in order to determine if there is support for the petition.

Section 771(4)(A) of the Act defines the ''industry'' as the producers of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is

responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[1]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation,'' *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

We reviewed the description of the domestic like product presented in the petition. At this time, we have no basis on the record to find the petition's definition of the domestic like product to be inaccurate. Therefore, we have adopted the domestic like product set forth in the petition, which is defined in the ''Scope of Investigation'' section above.

Finally, the Department has determined that, pursuant to section 732(c)(4)(A) of the Act, the petition contains adequate evidence of industry support and, therefore, polling is unnecessary. *See* the Import Administration Antidumping Investigation Initiation Checklist, Industry Support section, December 10, 2002 (Initiation Checklist), on file in the Central Records Unit, Room B-099 of the main Department of Commerce building. The Department has determined that the petitioners have demonstrated industry support representing over 50 percent of total production of the domestic like product. Therefore, the domestic producers or workers who support the petition account for at least 25 percent of the total production of the domestic like product, and the requirements of section 732(c)(4)(A)(i) of the Act are met. Furthermore, because the Department received no opposition to the petition, the domestic producers or workers who support the petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petition. Thus, the requirements of section 732(c)(4)(A)(ii) are also met. Accordingly, we determine that this petition is filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

[1] *See Algoma Steel Corp. Ltd., v. United States,* 688 F. Supp.639, 642-44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380-81 (July 16, 1991).

Export Price and Normal Value

The following are descriptions of the allegation of sales at less than fair value upon which the Department based its decision to initiate this investigation. The sources of data for the deductions and adjustments relating to the U.S. price and the factors of production are discussed in greater detail in the Initiation Checklist. Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determination, we may re-examine the information and revise the margin calculation, if appropriate.

Regarding the information involving non-market economies (NME), the Department presumes, based on the extent of central government control in an NME, that a single dumping margin, should there be one, is appropriate for all NME exporters in the given country. In the course of the investigation, all parties will have the opportunity to provide relevant information related to the issues of a country's NME status and the granting of separate rates to individual exporters. *See, e.g., Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994).

Export Price

The petitioners based export price (EP) on the FOB PRC price of the subject merchandise as invoiced to one of the petitioners. No adjustments were made to this FOB price.

Normal Value

The petitioners allege that the PRC is an NME country, and that in all previous investigations the Department has determined that the PRC is an NME. *See, e.g., Notice of Final Determination in the Less Than Fair Value Investigation of Steel Wire Rope From the People's Republic of China*, 66 FR 12759, 12761 (Feb. 28, 2001). In accordance with section 771(18)(c) of the Act, any determination that a foreign country has at one time been considered an NME shall remain in effect until revoked. Therefore, the PRC will continue to be treated as an NME unless and until its NME status is revoked. Pursuant to section 771(18)(C)(i) of the Act, because the PRC's status as a NME remains in effect, the petitioners determined the dumping margin using an NME analysis.

The petitioners assert that India is the most appropriate surrogate country for the PRC, claiming that India is: (1) a market economy; (2) a significant producer of comparable merchandise; and (3) at a level of economic development comparable to that of the PRC in terms of per-capita gross national income. Based on the information provided by the petitioners, we believe that the petitioners' use of India as a surrogate country is appropriate for purposes of initiation of this investigation.

The petitioners valued the factors of production using the quantities of inputs to produce refined brown aluminum oxide as reported by one of the petitioners because the petitioners stated that current reliable information about PRC factor quantities was not reasonably available. The factors of production and usage amounts were derived from the petitioners' average actual production experience for various sizes of refined brown aluminum oxide during the period April through September 2002.

The surrogate values for bauxite and coke were based on the 2000–2001 annual report of Carborundum Universal Limited (CUMI), an Indian producer of refined aluminum oxide. The surrogate values for borings and electrodes were based on the values reported in the *Monthly Statistics of the Foreign Trade of India*. Labor was valued using the regression-based wage rate for the PRC provided by Import Administration's website and in accordance with 19 CFR 351.408(c)(3). The petitioners valued electricity using the 2000 price for India quoted in *Energy Prices & Taxes, Quarterly Statistics*, published by the International Energy Agency of the OECD. The petitioners made an adjustment to the sum of these values to account for a small amount of ferrosilicon produced and sold as a by-product.

To determine factory overhead, SG&A, and financial expenses, the petitioners relied on ratios derived from the financial statements of CUMI. The petitioners valued the by-product, ferrosilicon, by using their own sales value. Based on the information provided by the petitioners, we believe that the surrogate values represent information reasonably available to the

petitioners and are acceptable for purposes of initiation of this investigation.

Based upon a comparison of EP to normal value (NV), the petitioners estimate a margin of 131.38 percent.

Fair Value Comparisons

Based on the data provided by the petitioners, there is reason to believe that imports of refined brown aluminum oxide from the PRC are being, or are likely to be, sold at less than fair value.

Allegations and Evidence of Material Injury and Causation

The petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of imports of the subject merchandise sold at less than NV.

The petitioners contend that the industry's injured condition is evident in the declining trends in net operating profits, net sales volumes, production employment, and capacity utilization. The allegations of injury and causation are supported by relevant evidence including U.S. Customs import data, lost sales, and pricing information. We have assessed the allegations and supporting evidence regarding material injury and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. *See* the Initiation Checklist.

Initiation of Antidumping Investigation

Based upon our examination of the petition on refined brown aluminum oxide, we have found that it meets the requirements of section 732 of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of refined brown aluminum oxide from the PRC are being, or are likely to be, sold in the United States at less than fair value. Unless this deadline is extended pursuant to section 733(b)(1)(A) of the Act, we will make our preliminary determination no later than 140 days after the date of this initiation.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the petition has been provided to the representatives of the Government of the PRC.

ITC Notification

We have notified the ITC of our initiation as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will determine no later than January 6, 2003, whether there is a reasonable indication that imports of refined brown aluminum oxide from the PRC are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: December 10, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–31628 Filed 12–16–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-351–806]

Silicon Metal from Brazil; Final Results of Antidumping Duty Administrative Review and Revocation of Order in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review and revocation of order in part.

SUMMARY: On August 8, 2002, the Department of Commerce (the Department) published the preliminary results of administrative review of the antidumping duty (AD) order on silicon metal from Brazil. The merchandise covered by this order is silicon metal from Brazil. This review covers three manufacturers/exporters, Rima Industrial SA (Rima), Companhia Ferroligas Minas Gerais - Minasligas (Minasligas) and Companhia Carbureto de Calcio (CBCC). The period of review (POR) is July 1, 2000, through June 30, 2001.

Based on our analysis of the comments received, we have made changes in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled ''*Final Results of the Review*.'' We also have we have made a final determination to revoke the order with respect to Rima.

EFFECTIVE DATE: December 17, 2002.

FOR FURTHER INFORMATION CONTACT: Maisha Cryor, telephone: (202) 482–5831, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as mended (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's regulations are to 19 CFR Part 351 (2002).

Background

On August 8, 2002, the Department published the preliminary results of administrative review of the AD order on silicon metal from Brazil. *See Silicon Metal From Brazil: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent To Revoke Order in Part*, 67 FR 51539 (August 8, 2002)(*Preliminary Results*). This review covers three manufacturers/exporters, Rima, Minasligas and CBCC. The POR is July 1, 2000, through June 30, 2001. We invited parties to comment on our preliminary results of review. We received comments on September 16, 2002, from Rima, Minasligas, CBCC (collectively the respondents), and Elkem Metals Company and Globe Metallurgical (collectively the petitioners). On September 23, 2002, we received rebuttal comments from the petitioners, Minasligas and CBCC.

The Department has conducted this administrative review in accordance with section 751 of the Act.

Scope of Review

The merchandise covered by this administrative review is silicon metal from Brazil containing at least 96.00 percent but less than 99.99 percent silicon by weight. Also covered by this administrative review is silicon metal from Brazil containing between 89.00 and 96.00 percent silicon by weight but which contains more aluminum than the silicon metal containing at least 96.00 percent but less than 99.99 percent silicon by weight. Silicon metal is currently provided for under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule (HTS) as a chemical product, but is commonly referred to as a metal. Semiconductor grade silicon (silicon metal containing by weight not less than 99.99 percent silicon and provided for in subheading 2804.61.00 of the HTS) is

not subject to the order. Although the HTS item numbers are provided for convenience and for U.S. Customs purposes, the written description remains dispositive.

Revocation

The Department ''may revoke, in whole or in part'' an antidumping duty order upon completion of a review under section 751 of the Act. While Congress has not specified the procedures that the Department must follow in revoking an order, the Department has developed a procedure for revocation as described in 19 CFR 351.222. This regulation requires, *inter alia*, that a company requesting revocation must submit the following: (1) A certification that the company has sold the subject merchandise at not less than normal value (NV) in the current review period and that the company will not sell at less than NV in the future; (2) a certification that the company sold the subject merchandise in commercial quantities in each of the three years forming the basis of the revocation request; and (3) an agreement to reinstatement in the order or suspended investigation, as long as any exporter or producer is subject to the order (or suspended investigation), if the Secretary concludes that the exporter or producer, subsequent to the revocation, sold the subject merchandise at less than NV. *See* 19 CFR 351.222(e)(1). Upon receipt of such a request, the Department will consider the following in determining whether to revoke the order in part: (1) Whether the producer or exporter requesting revocation has sold subject merchandise at not less than NV for a period of at least three consecutive years; (2) whether the continued application of the antidumping duty order is otherwise necessary to offset dumping; and (3) whether the producer or exporter requesting revocation in part has agreed in writing to the immediate reinstatement of the order, as long as any exporter or producer is subject to the order, if the Department concludes that the exporter or producer, subsequent to revocation, sold the subject merchandise at less than NV. *See* 19 CFR 351.222(b)(2); *see also Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review and Intent to Revoke Antidumping Duty Order in Part: Certain Pasta From Italy*, 66 FR 34414, 34420 (June 28, 2001).

I. Rima: Determination to Revoke Order in Part

In the preliminary results, we determined that Rima met the requirements for revocation. *See Preliminary Results*, 67 FR at 51540–51541(August 8, 2002). On September 11, 2002, we established a separate schedule for parties to submit additional information regarding the necessity of the AD order with respect to Rima. *See Memorandum from Thomas Futtner to Holly A. Kuga; Silicon Metal from Brazil; Comment Period for Revocation*, dated September 11, 2002. We received no comments from the petitioners or Rima on this revocation determination. We now find, based on the final results in this review and the final results of the two preceding reviews, that Rima has demonstrated three consecutive years of sales at not less than NV. Furthermore, we find that Rima's aggregate sales to the United States were made in commercial quantities during each of those three years. *See Preliminary Results* 67 FR at 51541 (August 8, 2002). Finally, based on our review of the record, there is no basis to find that the continued application of the AD order is necessary to offset dumping. Therefore, for the final results, we find that Rima qualifies for revocation of the order on silicon metal from Brazil, under 19 CFR 351.222(b)(2).

II. Minasligas: Determination Not to Revoke Order in Part

In the preliminary results, we found that Minasligas did not meet the requirements for revocation because it did not have a zero or *de minimis* dumping margin during the 1999–2000 POR. *See Preliminary Results*, 67 FR at 51541 (August 8, 2002). Because of this, we preliminarily determined that Minasligas failed to make sales of subject merchandise ''at not less than NV for a period of at least three consecutive years,'' as required by the Department's regulations. Consequently, because no evidence has been presented to change our preliminary findings on this issue, we continue to find, for the final results, that Minasligas does not qualify for revocation of the AD order on silicon metal from Brazil, under 19 CFR 351.222(b)(2).

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the ''Issues and Decision Memorandum'' (Decision Memorandum) from Bernard T. Carreau, Deputy Assistant Secretary, Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated December 6, 2002, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B-099 (''B-099'') of the main Department building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at *http://www.ita.doc.gov/import__admin/records/frn/*. The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made the following changes in the margin calculations. These changes are discussed in the relevant sections of the Decision Memorandum, accessible in B-099 and on the Web at *http://www.ita.doc.gov/import___admin/records/frn/*.

1. We made an adjustment to Minasligas' home market imputed credit expense in order to correct double counting.
2. We included stowage, customs, weighing and bill of lading release expenses in Minasligas' foreign movement expenses.
3. We subtracted Programa de Integracao Social (PIS) and Contribuicao do Fin Social (COFINS) taxes from NV in Minasligas' margin calculation program.
4. We excluded value-added taxes (VAT) from CBCC's cost of production (COP).
5. We made an adjustment to the exchange rate calculation for Rima, Minasligas and CBCC.
6. We made an adjustment to the currency conversion formula for Rima and CBCC.

Final Results of Review

We determine that the following percentage weighted-average margins exist for the period July 1, 2000, through June 30, 2001:

Manufacturer/exporter	Margin (percent)
Rima	0.00
Minasligas	0.74
CBCC	0.00

Effective Date of Revocation

This revocation applies to all entries of subject merchandise that are produced by Rima and that are also exported by Rima, entered, or withdrawn from warehouse, for consumption on or after July 1, 2001. The Department will order the suspension of liquidation ended for all such entries and will instruct U.S.

Customs to release any cash deposits or bonds. The Department will further instruct U.S. Customs to refund with interest any cash deposits on entries made after June 30, 2001.

Assessment

The Department will determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated an importer-specific assessment rate for merchandise subject to this review. The Department will issue appropriate assessment instructions directly to the Customs Service within 15 days of publication of these final results of review. We will direct the Customs Service to assess the resulting assessment rates against the entered customs values for the subject merchandise on each of the importer's entries during the review period.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of silicon metal from Brazil entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) Cash deposits for Rima will no longer be required and the suspension of liquidation will cease for entries made on or after July 1, 2001; (2) the cash deposit rate for the other reviewed companies will be the rates shown above; (3) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (4) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (5) the cash deposit rate for all other manufacturers or exporters will continue to be 91.06 percent. This rate is the ''All Others'' rate from the LTFV investigation. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Orders

This notice also serves as the only reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the return or destruction of proprietary information disclosed under an APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: December 6, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix Issues in Decision Memorandum

Minasligas

1. Circumstance of Sale Adjustment for PIS and COFINS Taxes

2. Home Market Credit

3. Foreign Movement Expenses

4. Model Matching

5. Duty Drawback and the Treatment of VAT, *i.e.*, Imposto Sobre a Circulacao de Mercadorias e Servicos and Imposto Sobre Produtos Industrialzados Taxes

6. Home Market Movement Expenses

7. PIS and COFINS Taxes and the Margin ProgramCBCC

8a. Special Rule for Value Added After Importation

8b. Further Manufactured Products

9. Related Party Transactions

10. VAT and COP

Minasligas, CBCC and Rima

11. Exchange Rate

CBCC and Rima

12. Currency Conversion

[FR Doc. 02–31625 Filed 12–16–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–854]

Certain Tin Mill Products From Japan: Preliminary Results of Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On October 28, 2002, the Department of Commerce (''the Department'') published a notice of initiation of a changed circumstances review with the intent to revoke, in part, the antidumping duty order on certain tin mill products from Japan with respect to certain laminated tin-free steel, as described below. *See Certain Tin Mill Products From Japan: Notice of Initiation of Changed Circumstances Antidumping Duty Review,* 67 FR 65783 (October 28, 2002) *(''Initiation Notice'').* In our *Initiation Notice* we invited interested parties to comment. On October 29, 2002, Nippon Steel Corporation (''NSC'') filed a letter on behalf of Ohio Coatings Company (''Ohio Coatings'') stating that Ohio Coatings does not oppose the exclusion of certain laminated tin-free steel from the antidumping duty order. We now preliminarily revoke this order, in part, with respect to future entries of certain laminated tin-free steel described below, based on the fact that domestic parties have expressed no interest in the continuation of the order with respect to certain laminated tin-free steel.

EFFECTIVE DATE: December 17, 2002.

FOR FURTHER INFORMATION CONTACT: Michael Ferrier, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1394.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, as amended (''the Act''), by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations as codified at 19 CFR part 351 (2002).

SUPPLEMENTARY INFORMATION:

Background

On August 28, 2000, the Department published in the **Federal Register** the antidumping duty order on certain tin

mill products from Japan. *See Notice of Antidumping Duty Order: Certain Tin Mill Products from Japan* 65 FR 52067 (August 28, 2000) (*TMP Order*). On September 6, 2002, Nippon Steel Corporation (''Nippon''), an exporter and manufacturer of the subject merchandise requested that the Department revoke, in part, the antidumping duty order on certain tin mill products from Japan. Specifically, Nippon requested that the Department revoke the order with respect to imports meeting the following specifications: Tin-free steel laminated on one or both sides of the surface with a polyester film, consisting of two layers (an amorphous layer and an outer crystal layer), that contains no more than the indicated amounts of the following environmental hormones: 1 mg/kg BADGE (BisPhenol—A Di-glycidyl Ether), 1 mg/kg BFDGE (BisPhenol—F Di-glycidyl Ether), and 3 mg/kg BPA (BisPhenol—A). Nippon included letters from Weirton Steel Corporation, United States Steel Corporation, Bethlehem Steel Corporation, USS-Posco Industries, and National Steel Corporation, in its request for the changed circumstances review stating their support for the exclusion of the laminated tin-free steel, as described above. However, the Department had no information on the record that these domestic producers of tin mill products, account for substantially all, or at least 85 percent, of the production of the domestic like product (*See Oil Country Tubular Goods From Mexico: Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review,* 64 FR 14213 (March 24, 1999). Therefore, we did not combine this initiation with the preliminary determination, which is our normal practice under section 351.221(c)(3)(ii) of the Department's regulations.

On October 28, 2002, the Department published a notice of initiation of a changed circumstances review of the antidumping duty order on certain tin mill products from Japan with respect to certain laminated tin-free steel. *See Initiation Notice.* In the *Initiation Notice,* we indicated that interested parties could submit comments for consideration in the Department's preliminary results not later than 14 days after publication of the initiation of the review, and submit responses to those comments no later than 7 days following the submission of comments. On October 29, 2002, Nippon filed a letter on behalf of Ohio Coatings stating that Ohio Coatings does not oppose the exclusion of certain laminated tin-free steel from the antidumping duty order on tin mill products from Japan. We did not receive any other comments, nor any rebuttal comments.

Scope of Review

The products covered by this antidumping order are tin mill flat-rolled products that are coated or plated with tin, chromium or chromium oxides. Flat-rolled steel products coated with tin are known as tin plate. Flat-rolled steel products coated with chromium or chromium oxides are known as tin-free steel or electrolytic chromium-coated steel. The scope includes all the noted tin mill products regardless of thickness, width, form (in coils or cut sheets), coating type (electrolytic or otherwise), edge (trimmed, untrimmed or further processed, such and scroll cut), coating thickness, surface finish, temper, coating metal (tin, chromium, chromium oxide), reduction (single- or double-reduced), and whether or not coated with a plastic material. All products that meet the written physical description are within the scope of this order unless specifically excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this order:

—Single reduced electrolytically chromium coated steel with a thickness 0.238 mm (85 pound base box) (#10%) or 0.251 mm (90 pound base box) (#10%) or 0.255 mm (#10%) with 770 mm (minimum width) (#1.588 mm) by 900 mm (maximum length if sheared) sheet size or 30.6875 inches (minimum width) (# 1/16 inch) and 35.4 inches (maximum length if sheared) sheet size; with type MR or higher (per ASTM) A623 steel chemistry; batch annealed at T2 1/2 anneal temper, with a yield strength of 31 to 42 kpsi (214 to 290 Mpa); with a tensile strength of 43 to 58 kpsi (296 to 400 Mpa); with a chrome coating restricted to 32 to 150 mg/m^2; with a chrome oxide coating restricted to 6 to 25 mg/m^2 with a modified 7B ground roll finish or blasted roll finish; with roughness average (Ra) 0.10 to 0.35 micrometers, measured with a stylus instrument with a stylus radius of 2 to 5 microns, a trace length of 5.6 mm, and a cut-off of 0.8 mm, and the measurement traces shall be made perpendicular to the rolling direction; with an oil level of 0.17 to 0.37 grams/base box as type BSO, or 2.5 to 5.5 mg/m^2 as type DOS, or 3.5 to 6.5 mg/m^2 as type ATBC; with electrical conductivity of static probe voltage drop of 0.46 volts drop maximum, and with electrical conductivity degradation to 0.70 volts drop maximum after stoving (heating to 400 degrees F for 100 minutes followed by a cool to room temperature).

—Single reduced electrolytically chromium- or tin-coated steel in the gauges of 0.0040 inch nominal, 0.0045 inch nominal, 0.0050 inch nominal, 0.0061 inch nominal (55 pound base box weight), 0.0066 inch nominal (60 pound base box weight), and 0.0072 inch nominal (65 pound base box weight), regardless of width, temper, finish, coating or other properties.

—Single reduced electrolytically chromium coated steel in the gauge of 0.024 inch, with widths of 27.0 inches or 31.5 inches, and with T–1 temper properties.

—Single reduced electrolytically chromium coated steel, with a chemical composition of 0.005% max carbon, 0.030% max silicon, 0.25% max manganese, 0.025% max phosphorous, 0.025% max sulfur, 0.070% max aluminum, and the balance iron, with a metallic chromium layer of 70–130 mg/m^2, with a chromium oxide layer of 5–30 mg/m^2, with a tensile strength of 260–440 N/mm^2 , with an elongation of 28–48%, with a hardness (HR–30T) of 40–58, with a surface roughness of 0.5–1.5 microns Ra, with magnetic properties of Bm (KG)10.0 minimum, Br (KG) 8.0 minimum, Hc (Oe) 2.5–3.8, and MU 1400 minimum, as measured with a Riken Denshi DC magnetic characteristic measuring machine, Model BHU–60.

—Bright finish tin-coated sheet with a thickness equal to or exceeding 0.0299 inch, coated to thickness of 3/4 pound (0.000045 inch) and 1 pound (0.00006 inch).

—Electrolytically chromium coated steel having ultra flat shape defined as oil can maximum depth of 5/64 inch (2.0 mm) and edge wave maximum of 5/64 inch (2.0 mm) and no wave to penetrate more than 2.0 inches (51.0 mm) from the strip edge and coilset or curling requirements of average maximum of 5/64 inch (2.0 mm) (based on six readings, three across each cut edge of a 24 inches (61 cm) long sample with no single reading exceeding 4/32 inch (3.2 mm) and no more than two readings at 4/32 inch (3.2 mm)) and (for 85 pound base box item only: crossbuckle maximums of 0.001 inch (0.0025 mm) average having no reading above 0.005 inch (0.127 mm)), with a camber maximum of 1/4 inch (6.3 mm) per 20 feet (6.1 meters), capable of being bent 120 degrees on a 0.002 inch radius without cracking, with a chromium

coating weight of metallic chromium at 100 mg/m^2 and chromium oxide of 10 mg/m^2, with a chemistry of 0.13% maximum carbon, 0.60% maximum manganese, 0.15% maximum silicon, 0.20% maximum copper, 0.04% maximum phosphorous, 0.05% maximum sulfur, and 0.20% maximum aluminum, with a surface finish of Stone Finish 7C, with a DOS-A oil at an aim level of 2 mg/square meter, with not more than 15 inclusions/foreign matter in 15 feet (4.6 meters) (with inclusions not to exceed 1/32 inch (0.8 mm) in width and 3/64 inch (1.2 mm) in length), with thickness/temper combinations of either 60 pound base box (0.0066 inch) double reduced CADR8 temper in widths of 25.00 inches, 27.00 inches, 27.50 inches, 28.00 inches, 28.25 inches, 28.50 inches, 29.50 inches, 29.75 inches, 30.25 inches, 31.00 inches, 32.75 inches, 33.75 inches, 35.75 inches, 36.25 inches, 39.00 inches, or 43.00 inches, or 85 pound base box (0.0094 inch) single reduced CAT4 temper in widths of 25.00 inches, 27.00 inches, 28.00 inches, 30.00 inches, 33.00 inches, 33.75 inches, 35.75 inches, 36.25 inches, or 43.00 inches, with width tolerance of #1/8 inch, with a thickness tolerance of #0.0005 inch, with a maximum coil weight of 20,000 pounds (9071.0 kg), with a minimum coil weight of 18,000 pounds (8164.8 kg) with a coil inside diameter of 16 inches (40.64 cm) with a steel core, with a coil maximum outside diameter of 59.5 inches (151.13 cm), with a maximum of one weld (identified with a paper flag) per coil, with a surface free of scratches, holes, and rust.

—Electrolytically tin coated steel having differential coating with 1.00 pound/base box equivalent on the heavy side, with varied coating equivalents in the lighter side (detailed below), with a continuous cast steel chemistry of type MR, with a surface finish of type 7B or 7C, with a surface passivation of 0.7 mg/square foot of chromium applied as a cathodic dichromate treatment, with coil form having restricted oil film weights of 0.3–0.4 grams/base box of type DOS-A oil, coil inside diameter ranging from 15.5 to 17 inches, coil outside diameter of a maximum 64 inches, with a maximum coil weight of 25,000 pounds, and with temper/coating/dimension combinations of : (1) CAT 4 temper, 1.00/.050 pound/base box coating, 70 pound/base box (0.0077 inch) thickness, and 33.1875 inch ordered width; or (2) CAT5 temper, 1.00/0.50 pound/base box coating, 75 pound/base box (0.0082 inch) thickness, and 34.9375 inch or 34.1875 inch ordered width; or (3) CAT5 temper, 1.00/0.50 pound/base box coating, 107 pound/base box (0.0118 inch) thickness, and 30.5625 inch or 35.5625 inch ordered width; or (4) CADR8 temper, 1.00/0.50 pound/base box coating, 85 pound/base box (0.0093 inch) thickness, and 35.5625 inch ordered width; or (5) CADR8 temper, 1.00/0.25 pound/base box coating, 60 pound/base box (0.0066 inch) thickness, and 35.9375 inch ordered width; or (6) CADR8 temper, 1.00/0.25 pound/base box coating, 70 pound/base box (0.0077 inch) thickness, and 32.9375 inch, 33.125 inch, or 35.1875 inch ordered width.

—Electrolytically tin coated steel having differential coating with 1.00 pound/base box equivalent on the heavy side, with varied coating equivalents on the lighter side (detailed below), with a continuous cast steel chemistry of type MR, with a surface finish of type 7B or 7C, with a surface passivation of 0.5 mg/square foot of chromium applied as a cathodic dichromate treatment, with ultra flat scroll cut sheet form, with CAT 5 temper with 1.00/0.10 pound/base box coating, with a lithograph logo printed in a uniform pattern on the 0.10 pound coating side with a clear protective coat, with both sides waxed to a level of 15–20 mg/216 sq. in., with ordered dimension combinations of (1) 75 pound/base box (0.0082 inch) thickness and 34.9375 inch × 31.748 inch scroll cut dimensions; or (2) 75 pound/base box (0.0082 inch) thickness and 34.1875 inch × 29.076 inch scroll cut dimensions; or (3) 107 pound/base box (0.0118 inch) thickness and 30.5625 inch × 34.125 inch scroll cut dimension.

—Tin-free steel coated with a metallic chromium layer between 100–200 mg/m^2 and a chromium oxide layer between 5–30 mg/m^2; chemical composition of 0.05% maximum carbon, 0.03% maximum silicon, 0.60% maximum manganese, 0.02% maximum phosphorous, and 0.02% maximum sulfur; magnetic flux density (''Br'') of 10 kg minimum and a coercive force (''Hc'') of 3.8 Oe minimum.

The merchandise subject to this order is classified in the Harmonized Tariff Schedule of the United States (''HTSUS''), under HTSUS subheadings 7210.11.0000, 7210.12.0000, 7210.50.0000, 7212.10.0000, and 7212.50.0000 if of non-alloy steel and under HTSUS subheadings 7225.99.0090, and 7226.99.0000 if of alloy steel. Although the subheadings are provided for convenience and Customs purposes, our written description of the scope of this review is dispositive.

Preliminary Results of Review and Intent to Revoke in Part the Antidumping Duty Order

Pursuant to sections 751(d)(1) of the Act, the Department may revoke an antidumping or countervailing duty order, in whole or in part, based on a review under section 751(b) of the Act (*i.e.,* a changed circumstances review). Section 751(b)(1) of the Act requires a changed circumstances review to be conducted upon receipt of a request which shows changed circumstances sufficient to warrant a review. Section 351.222(g) of the Department's regulations provides that the Department will conduct a changed circumstances administrative review under 19 CFR 351.216, and may revoke an order (in whole or in part), if it determines that (i) producers accounting for substantially all of the production of the domestic like product to which the order pertains have expressed a lack of interest in the relief provided by the order, in whole or in part, or (ii) if other changed circumstances sufficient to warrant revocation exist. Since the Department did not receive any comments during the comment period opposing the exclusion of certain laminated tin-free steel from the antidumping duty order, the Department is preliminarily revoking the order on certain tin mill products from Japan, in part, for all future entries with regard to the products which meet the specifications above.

Interested parties wishing to comment on these results may submit briefs to the Department no later than 14 days after the publication of this notice in the **Federal Register**. Parties will have five days subsequent to this due date to submit rebuttal comments, limited to the issues raised in those comments. Parties who submit comments or rebuttal comments in this proceeding are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument (no longer than five pages, including footnotes). Any requests for hearing must be filed within 14 days of the publication of this notice in the **Federal Register**.

All written comments must be submitted in accordance with 19 CFR 351.303, and must be served on all interested parties on the Department's service list. The Department will also

issue its final results of review within 270 days after the date on which the changed circumstances review is initiated, in accordance with 19 CFR 351.216(e), and will publish these results in the **Federal Register**. While the changed circumstances review is underway, the current requirement for a cash deposit of estimated antidumping duties on all subject merchandise, including the merchandise that is the subject of this changed circumstances review, will continue unless and until it is modified pursuant to the final results of this changed circumstances review or an administrative review.

This notice is in accordance with sections 751(b)(1) and 777(i)(1) of the Act and 19 CFR 351.216 and 351.222 of the Department's regulations.

Dated: December 10, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–31626 Filed 12–16–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No.021114276–2276–01; I.D. 120302C]

RIN 0648–ZB31

Financial Assistance for Environmental Education Projects in the Chesapeake Bay Watershed

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

ACTION: Notice of availability of funds.

SUMMARY: The purpose of this document is to invite the public to submit new proposals and to reapply for projects considered for continuation for available funding to implement environmental education projects in the following two priority areas: ''Meaningful'' Chesapeake Bay or Stream Outdoor Experience and Professional Development in the Area of Environmental Education for Teachers Within the Chesapeake Bay Watershed. Potential recipients may submit separate proposals for each priority area or may submit one proposal that addresses both priority areas. Funds are available to K-through–12 public and independent schools and school systems, institutions of higher education, community-based and nonprofit organizations, state or local government agencies, interstate agencies, and Indian tribal governments. This document describes the conditions under which project proposals will be accepted and criteria under which proposals will be evaluated for funding consideration. Selected recipients will enter into either a cooperative agreement or a grant. It is the intent of the NOAA Chesapeake Bay Office to continue with several existing relationships and to make awards through this program for projects pending successful progress reports and review. Therefore, funding for some proposals may be limited to ongoing projects.

DATES: Preliminary proposals must be received by 5 p.m. eastern standard time on January 16, 2003. Preliminary proposals received after that time will not be accepted. Full proposals must be received by 5 p.m. eastern standard time on March 17, 2003. Full proposals received after that time will not be considered for funding. Preliminary and full proposals will not be accepted electronically nor by facsimile machine submission.

ADDRESSES: You can obtain a proposal package from and send completed preliminary and full proposals to: Seaberry J. Nachbar, NOAA Chesapeake Bay Office, 410 Severn Avenue, Suite 107A, Annapolis, MD 21403. You can also obtain the proposal package from the NOAA Chesapeake Bay Office Education Home Page *http://noaa.chesapeakebay.net/education.*

FOR FURTHER INFORMATION CONTACT: Seaberry J. Nachbar, Education Coordinator, NOAA Chesapeake Bay Office, telephone: (410) 267–5664, or e-mail: *seaberry.nachbar@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Authority

The Fish and Wildlife Act of 1956, as amended, at 16 U.S.C. 753a, authorizes the Secretary of Commerce (Secretary), to develop adequate, coordinated, cooperative research and training programs for fish and wildlife resources, to continue to enter into cooperative agreements with colleges and universities, with game and fish departments of several states, and with nonprofit organizations relating to cooperative research units. The Secretary of Commerce, acting through the Under Secretary of Commerce for Oceans and Atmosphere, is authorized by 15 U.S.C. 1540 to enter into cooperative agreements and other financial agreements with any nonprofit organization to aid and promote scientific and educational activities to foster public understanding of the National Oceanic and Atmospheric Administration or its programs. This announcement is subject to the availability of funding under the Departments of Commerce (DOC), State, the Judiciary, and Related Agencies Appropriations Act of 2003 make funds available to the Secretary.

B. Catalog of Federal Assistance (CFDA)

The projects to be funded are in support of the Chesapeake Bay Studies (CFDA 11.457), under the Chesapeake Bay Watershed Education and Training Program.

C. Program Description

The NOAA Chesapeake Bay Office's (NCBO)Bay Watershed Education and Training (B-WET) Program was established in 2002 to provide environment-based education to students, teachers, and communities throughout the Chesapeake Bay watershed. Using the environment as the context for learning has been shown to increase a student's academic achievement performance, enthusiasm and engagement for learning, and encourages greater pride and ownership in accomplishments. The environment can provide a platform upon which educators can create a curriculum that interests learners and revitalizes teachers.

The B-WET grant program is a competitively based program that supports existing environmental education programs, fosters the growth of new programs, and encourages the development of partnerships among environmental education programs throughout the entire Chesapeake Bay watershed. Funded projects assist in meeting the Stewardship and Community Engagement goals of the *Chesapeake 2000 agreement* (see Stewardship and Meaningful Watershed Educational Experiences document for details *http://www.chesapeakebay.net/pubs/subcommittee/cesc/c2k.pdf).* Projects support organizations that provide students ''meaningful'' Chesapeake Bay or stream outdoor experiences and teachers professional development opportunities in the area of environmental education. The B-WET Program has an opportunity to create a population that is knowledgeable about the Chesapeake Bay watershed environment. Environmentally educated individuals can become effective future workers, problem solvers, and thoughtful community leaders and participants.

II. Priority Areas and Evaluation Criteria

All projects must address State (DE, MD, NY, PA, VA, WV) and/or District (DC) academic learning standards. Proposals should address one or both of the two priority areas: (1) ''Meaningful'' Chesapeake Bay or Stream Outdoor Experience; or (2) Professional Development in the Area of Environmental Education for Teachers Within the Chesapeake Bay Watershed. Potential recipients may submit separate proposals for each priority area or may submit one proposal that addresses both priority areas.

A. ''Meaningful'' Chesapeake Bay or Stream Outdoor Experience

The NCBO seeks proposals for projects that provide opportunities for students (K through 12) to participate in a ''meaningful'' Chesapeake Bay or stream outdoor experience. The Chesapeake Bay, with its tributaries, provides an excellent opportunity for environmental education. In many cases, its tidal and non-tidal waters and the surrounding landscape provide ''hands-on'' laboratories where students can see, touch, and learn about the Chesapeake Bay watershed and the greater environment. In other cases, the Bay watershed can be brought alive to the classroom through a strong complement of outdoor and classroom experiences. The Chesapeake Bay and its tributaries should be considered a living resource that provides a genuine, locally relevant source of environmental knowledge that can be used to help advance student learning skills and problem-solving abilities across the entire school curriculum.

Total anticipated funding is about $925,000. Of the amount available for this priority area, about $825,000 will be awarded to larger organizations that provide environmental education programs and up to $100,000 to smaller, community-based organizations that work at a local level to provide environmental education programs.

Proposals will be evaluated on the following seven criteria. Reviewers will assign scores ranging from 0 to 100 points.

1. *Experiences follow the scope and sequence of a ''meaningful'' Chesapeake Bay or stream outdoor experience*: This part of the program comprises a series of concepts and perceptions appropriate for K- through 12–grade students. See also the Stewardship and Meaningful Watershed Educational Experiences document (*http://www.chesapeakebay.net/pubs/subcommittee/cesc/c2k.pdf).* (15 points)

a. From K to 5. Experiences should be neighborhood-based and reinforce such basic concepts as maps and models, habitat principles, and the concept of the water cycle and watersheds.

b. From 6 to 8. Experiences should focus on team and class projects and investigations, conducted in or near water. Experiences should reinforce science, mathematics, and technology skills developed in middle school.

c. From 9 to 12. Experiences should be first-hand knowledge in or near water and should relate to the earth and biological sciences, concepts developed in civics and government, and attitudes reinforcing responsible citizenship.

2. *''Meaningful'' Chesapeake Bay or stream outdoor experiences are hands-on and investigative or project-oriented:* Experiences should include activities where questions, problems, and issues are investigated through data collection, observation, and hands-on activities. Experiences should stimulate observation, motivate critical thinking, develop problem-solving skills, and instill confidence in students. Experiences should not be limited to tours, gallery visits, simulations, demonstrations, or ''nature'' walks but should encourage the student to assist, share, communicate, and connect directly with the outdoors. Experiences do not have to be water-based activities directly on the Bay, tidal rivers, streams, creeks, ponds, wetlands, or other bodies of water. As long as there is an intentional connection to water quality, watershed, and the larger ecological system, outdoor experiences may include terrestrial activities (e.g., erosion control, buffer creation, groundwater protection, and pollution prevention). (15 points)

3. ''Meaningful'' Chesapeake Bay or stream outdoor experiences are richly structured: Experiences should consist of three general parts, not necessarily occurring in this order- a preparation phase; an outdoor phase; and an analysis, reporting phase. Projects should provide teachers with the support, materials, resources, and information needed to conduct these three parts. The preparation phase should focus on a question, problem, or issue and involve students in discussions about it. The action phase should include one or more outdoor experiences sufficient to conduct the project, make the observations, or collect the data required. The reflection phase should refocus on the question, problem, or issue; analyze the conclusions reached; evaluate the results; and assess the activity and the learning. (15 points)

4. Projects are new or significantly enhanced: Proposals should consist of a project that is new to an organization's environmental education program or includes additions that significantly enhance an existing project. For example, projects could include different participants, focus on a new audience, concentrate on a different geographic location, or employ new techniques, methods, or ideas. (10 points)

5. Projects demonstrate partnerships: Project proposals should include partners involving any of the eligible applicants. Partnerships refers to the forming of a collaborative working relationship between two or more organizations. The B-WET Program strongly encourages applicants to partner with schools and/or school systems. All partners should be actively involved in the project, not just supply equipment or curricula. (20 points)

6. Justification and allocation of the proposed budget: Proposals will be evaluated on the reasonableness of the proposed budget. (15 points)

7. Project evaluation: Explain how you will ensure that you are meeting the goals and objectives of your project. Evaluation plans may be quantitative and/or qualitative and may include, for example, evaluation tools, observation, or outside consultation.(10 points)

B. Professional Development in the Area of Environmental Education for Teachers within the Chesapeake Bay Watershed

The NCBO seeks proposals for projects that provide Kthrough–12 teachers within the Chesapeake Bay watershed opportunities for professional development in the area of environmental education. As the purveyors of education, teachers can ultimately make meaningful environmental education experiences for students by weaving together classroom and field activities within the context of their curriculum and of current critical issues that impact the watershed. Systematic, long-term professional development opportunities will reinforce a teacher's ability to teach, inspire, and lead young people toward thoughtful stewardship of our natural resources.

Total anticipated funding is about $925,000. Proposals will be evaluated on the following six criteria. Reviewers will assign scores ranging from 0 to 100 points.

1. *Projects should be developed to provide teachers with the teaching of a ''meaningful'' Chesapeake Bay or stream outdoor experience and promote follow-through by encouraging teachers*

to implement a ''meaningful'' Bay or stream outdoor experience in their classroom: Projects should ensure that professional development experiences for the teacher ultimately benefit the student. Professional development opportunities should instruct teachers about a ''meaningful'' Chesapeake Bay or stream outdoor experience (for details see the Stewardship and Meaningful Watershed Educational Experiences document *http://www.chesapeakebay.net/pubs/subcommittee/cesc/c2k.pdf*) and encourage teachers to implement a ''meaningful'' Chesapeake Bay or stream outdoor experience in their classroom. For example, professional development courses could result in a lesson plan; provide teachers with materials, or resources needed for carrying out a ''meaningful'' Chesapeake Bay or stream outdoor experience in their classroom; and/or require teachers to document how they will incorporate what they have just learned into the classroom. A point of contact should be provided to the teacher for technical support during the school year. (30 points)

2. Projects involve external sharing and communication: Projects should promote peer-to-peer sharing and emphasize the need for external sharing and communication. Projects should include a mechanism that encourages teachers to share their experiences with other teachers and with the environmental education community. (15 points)

3. Projects are new or significantly enhanced: Proposals should consist of a project that is new to an organization's environmental education program or that includes additions that significantly enhance an existing project. For example, projects could include different participants, focus on a new audience, concentrate on a different geographic location, or employ new techniques, methods, or ideas. (10 points)

4. Projects demonstrate partnerships: Project proposals should include partners involving any of the eligible applicants. Partnerships refers to the forming of a collaborative working relationship between two or more organizations. The B-WET Program strongly encourages applicants to partner with schools and/or school systems. All partners should be actively involved in the project, not just supply equipment or curricula. (20 points)

5. Justification and allocation of the proposed budget: Proposals will be evaluated on the reasonableness of the proposed budget. (15 points)

6. Project evaluation: Explain how you will ensure that you are meeting the goals and objectives of your project. Evaluation plans may be quantitative and/or qualitative and may include, for example, evaluation tools, observation, or outside consultation. (10 points)

III. Funding

A. Funding Availability

This solicitation announces that approximately $1.85M may be available in FY 2003, in award amounts to be determined by the proposals and available funds. Applicants are hereby given notice that funds have not yet been appropriated for this program.

About $925,000 will be for proposals that provide opportunities for students (K through 12) to participate in a ''Meaningful'' Chesapeake Bay or Stream Outdoor Experience. Of the amount available for this priority area, about $825,000 will be awarded to larger organizations that provide environmental education programs and about $100,000 will be awarded to smaller, community-based organizations that work at a local level to provide environmental education programs. About $925,000 will be for proposals that provide opportunities for Professional Development in the area of Environmental Education for Teachers within the Chesapeake Bay Watershed.

It is the intent of the NOAA Chesapeake Bay Office to continue with several existing relationships and to make awards through this program for projects pending successful progress reports and review. Therefore, funding for some proposals may be limited to ongoing projects.

There is no guarantee that sufficient funds will be available to make awards for all qualified projects. The exact amount of funds that may be awarded will be determined in pre-award negotiations between the applicant and the NOAA representatives. Publication of this notice does not oblige NOAA to award any specific project or to obligate any available funds. If one incurs costs prior to receiving an award agreement signed by an authorized NOAA official, one would do so solely at one's own risk of these costs not being included under the award.

The Department of Commerce Pre-Award Notification of Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), as amended by the **Federal Register** notice published October 30, 2002 (67 FR 66109), is applicable to this solicitation.

B. Award Limits

The NCBO anticipates that typical project awards for ''Meaningful'' Bay or Stream Outdoor Experiences and Professional Development in the Area of Environmental Education for Teachers will range from $10,000 to $150,000. Proposals will be considered for funds greater than the specified ranges.

C. Continuation of Projects

Proposals may be considered eligible for continuation beyond the first project and budget period. Proposals may be submitted up to 3 years. However, funds will be made available for only a 12–month award period and any continuation of the award period will be subject to an approved scope of work, satisfactory progress, a panel review, and available funding to continue the award. No assurance for a funding continuation exists; funding will be at the complete discretion of NOAA.

First-year proposals must include a full description of the activities and budget for the first year as described in this announcement, and should include a summary description of the proposed work for each subsequent year and a estimated budget by line item (without the supporting budget detail pages) for review and analysis. If selected for funding the applicant will be required to submit a full proposal for the second year by the deadline announced in the following year's competitive cycle. Proposals will be evaluated through a review panel process, but will not be subject to competition with new proposals.

D. Funding Instrument

Whether the funding instrument is a grant or a cooperative agreement will be determined by the amount of NCBO's involvement in the project. A cooperative agreement will be used if NCBO is involved substantially in:

1. Monitoring the progress of each funded project; and

2. Working with the recipients to prepare annual reports summarizing current accomplishments of the project.

E. Cost-sharing Requirements

The NCBO strongly encourages applicants applying for either priority area to leverage as much investment as possible. Federal funds may not be considered matching funds. The nature of the contribution (cash versus in-kind) and the amount of matching funds will be taken into consideration in the final selection process.

IV. Instructions for Application

A. Eligible Applicants

Eligible applicants for both priority areas (i.e., ''Meaningful'' Chesapeake Bay or Stream Outdoor Experience and Professional Development in the Area of

Environmental Education for Teachers Within the Chesapeake Bay Watershed) are K-through–12 public and independent schools and school systems, institutions of higher education, community-based and nonprofit organizations, state or local government agencies, interstate agencies, and Indian tribal governments in the Chesapeake Bay watershed.

The Department of Commerce/National Oceanic and Atmospheric Administration (DOC/NOAA) is strongly committed to broadening the participation of historically black colleges and universities, Hispanic serving institutions, tribal colleges and universities, and institutions that work in undeserved areas. The NCBO encourages proposals involving any of the above institutions.

B. Project Start Dates

Projects should not begin before August 1, 2003.

C. Preliminary Proposals

Applicants may submit a preliminary proposal prior to submitting a full proposal. Preliminary proposals will undergo an assessment to be reviewed by program staff and other reviewers to determine if the proposed project is aligned with program priorities. This assessment process is intended to form the basis for providing feedback as to how the proposal may more closely align with program priorities. Under this type of process, regardless of any feedback that a potential applicant may receive in response to a preliminary proposal, the applicant still has a right to submit a complete new application under the program.

It is strongly encouraged that applicants are involved in the preliminary proposal process and incorporate preliminary proposal feedback into the full proposal. Participation in this process will be taken into consideration in the final selection process. Applicants will receive feedback approximately four weeks after the preliminary proposal deadline.

D. Format and Requirements

Preliminary and full proposals must be complete and must follow the format described in this notice. Potential recipients may submit separate proposals for each priority areas (i.e., ''Meaningful'' Chesapeake Bay or Stream Outdoor Experience or Professional Development in the Area of Environmental Education for Teachers Within the Chesapeake Bay Watershed) or may submit one proposal that addresses both priorities. Applicants should not assume prior knowledge on the part of the NCBO as to the relative merits of the project described in the application.

1. *Preliminary proposal format:* Applicants are required to submit two copies of the preliminary proposal. Preliminary proposal format must be in at least a 10–point font, one-sided, and no more than two pages in length. Preliminary proposals that are longer than two pages will not be considered. No institutional signatures or Federal government forms are needed while submitting preliminary proposals. The following information should be included:

(1) Organization title.

(2) Principal Investigator (PI).

(3) Address, telephone number, and email address of applicant.

(4) Priority area(s) for which you are applying (i.e., ''Meaningful'' Chesapeake Bay or Stream Outdoor Experience; Professional Development in the Area of Environmental Education for Teachers in the Chesapeake Bay Watershed).

(5) Project title.

(6) Geographical area of focus.

(7) Project objectives.

(8) Explain how your project addresses State (DE, MD, NY, PA, VA, WV) and/or District (DC) academic learning standards and the definition of a ''meaningful'' watershed educational experience.

(9) Summary of work to be performed (include demographics of the audience to be served and the number of students and/or teachers to be involved).

(10) Total Federal funds requested.

(11) Tentative partners involved in project.

2. *Full proposal format:* Applicants are required to submit one signed original and two copies of the full proposal. Proposal format must be in at least a 10–point font, double-spaced, unbound, and one-sided. Brevity will assist reviewers and program staff in dealing effectively with proposals. Therefore, the Project Description may not exceed 15 pages. Tables and visual materials, including charts, graphs, maps, photographs, and other pictorial presentations are not included in the 15–page limitation. Appendices may be included but must not exceed a total of 10–pages in length. Appendices may include information such as curriculum, resumes, and/or letters of endorsement. Additional informational material will be disregarded. Proposals must include the following information:

a. *Project summary (1–page limit):* It is recommended that each proposal contain a summary of no more than one page that provides the following:

(1) Organization title.

(2) Address, telephone number, and email address of applicant.

(3) Priority area(s) for which you are applying (i.e., ''Meaningful'' Chesapeake Bay or Stream Outdoor Experience; Professional Development in the Area of Environmental Education for Teachers in the Chesapeake Bay Watershed).

(4) Project title.

(5) Project duration (one year project period beginning to end dates, starting on the first of the month and ending on the last day of the month). Please note if projects are being submitted with the intent of continuation beyond the first year.

(6) Principal Investigator(s) (PI).

(7) Project objectives.

(8) Summary of work to be performed (include number of teachers and/or students that will be involved in your project).(9) Total Federal funds requested.

(10) Cost-sharing to be provided from non-Federal sources, if any. Specify whether contributions are project-related cash or in-kind.

(11) Total project cost.

b. *Project description (15–page limit):* Describe precisely what your project will achieve why, how, who, and where. The project description should include results from prior B-WET Program support, if applicable.

(1) Why: Explain the purpose of your project. This should include a clear statement of the work to be undertaken and include the following:

–Explain specifically how your project addresses State (DE, MD, NY, PA, VA, WV) and/or District (DC) academic learning standards and how it is integrated into the current school curriculum.

–Explain which priority area(s) your project addresses (i.e., (1)≥Meaningful'' Chesapeake Bay or Stream Outdoor Experience;(2) Professional Development in the Area of Environmental Education for Teachers Within the Chesapeake Bay Watershed).

–Specifically describe how your project addresses each of the evaluation criteria listed in that priority area (i.e., each of the seven criteria for the ''Meaningful'' Chesapeake Bay or Stream Outdoor Experience priority area or each of the six criteria for the Professional Development in the area of Environmental Education for Teachers within the Chesapeake Bay Watershed priority area).

(2) How: Outline a plan of action pertaining to the scope and detail of how the proposed work will be accomplished. Explain your strategy, objectives, activities, delivery methods, and accomplishments to establish for reviewers that you have realistic goals

and objectives and that you will use effective methods to achieve them. When accomplishments cannot be quantified, list the activities in chronological order to show the schedule of accomplishments and target completion dates.

–Project Objectives: Objectives should be simple and understandable; as specific and quantitative as possible; clear as to the ''what and when,'' but should avoid the ''how and why.'' Projects should be accomplishment oriented and identify specific performance measures.

(3) Who: Explain who will conduct the project. Include the following:

–List each organization, cooperator, or other key individuals who will work on the project, along with a short description of the nature of their effort or contribution.

–Identify the target audience and demonstrate an understanding of the needs of that audience (include specifically how many students and/or teachers are involved in your project).(4) Where: Give a precise location of the project and area(s) to be served.

c. Need for government financial assistance: Demonstrate the need for assistance. Explain why other funding sources cannot fund all the proposed work.

d. *Benefits or results expected:* Identify and document the results or benefits to be derived from the proposed activities.

e. *Total project costs:* Total project costs are the amount of funds required to accomplish what is proposed in the Project Description and include contributions and donations.

Explain the calculations and provide a narrative to support specific items or activities, such as personnel/salaries, fringe benefits, travel, equipment, supplies, contract costs, and indirect costs. The budget detail and narrative submitted with the application should match the dollar amounts on all required forms. Additional cost detail may be required prior to a final analysis of overall cost allowability, allocability, and reasonableness. Please Note the following funding restrictions:

–The budget may include an amount for indirect costs if the applicant has an established indirect cost rate with the Federal government, see Administrative Requirements, Section VI, B.

–Funds for salaries and fringe benefits may be requested only for those personnel who are directly involved in implementing the proposed project and whose salaries and fringe benefits are directly related to specific products or outcomes of the proposed project. NOAA strongly encourages applicants to request reasonable amounts of funding for salaries and fringe benefits to ensure that your proposal is competitive.

f. *Letters of support from partners:* Letters of support should be included for partners that are making a significant contribution to the project, if applicable.

3. *Federal forms:* Applicants may obtain required Federal forms from the NOAA Chesapeake Bay Office Web site (see **ADDRESSES**) or from the NOAA Grants Web site: *http://www.rdc.noaa.gov/grants/index.html.*

a.*Cover sheet:* All applicants must use Office of Management and Budget (OMB) Standard Form 424 (revised 7/97) as the cover sheet for each project.

b. *Budget form:* All applicants must use a Standard Budget Form (SF–424A) required for all Federal grants.

c. *Form CD–511:* All applicants must submit a CD–511, ''Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying''.

d. *SF–424B:* All applicants must submit a SF–424B, ''Assurances of Non-Construction Programs''.

e. *CD–346 ''Applicant for Funding Assistance'':* Required for the following individuals–Sole Proprietorship, Partnerships, Corporations, Joint Venture, Non-profit Organizations.

V. Selection Procedures

A. Initial Evaluation of the Applications

NOAA will review all applications to assure that they meet all the requirements of this announcement, including eligibility and relevance to the Bay Watershed Education and Training (B-WET) Program.

B. Technical Review

New applications meeting the requirements of this solicitation will undergo an external technical review. This review will normally involve individuals in the field of environmental education from both NOAA and non-NOAA organizations. Proposals will be scored based on the evaluation criteria as defined in Section II (A) and II (B). Reviewers will be asked to review independently and to provide a score and comments on each proposal. No consensus advice will be given by the technical reviewers.

C. Review Panel

The NCBO will convene a review panel consisting of at least three experts in the field of environmental education.

1. *Projects considered for continuation:* The review panel will discuss existing proposals that were awarded with the possibility of continuation. Review panel members will take into consideration the successful completion of the project within the defined project period, whether the goals of the project were achieved, and the cost effectiveness of the project. Review panel members will then independently determine whether the projects should be considered for continuation. No consensus advice will be given by the reviewer panel members.

2. *New proposals:* The review panel will then discuss new proposals as a panel, incorporating the evaluation provided by the technical reviewers. The reviewers may then take into account the following: (a) diversity of geographic location, (b) diversity of applicants, and (c) proposed budget. Each review panel member will then score the submitted new applications individually on a scale from 1 (poor) to 5 (excellent). No consensus advice will be given by the review panel members.

D. Funding Decision

New proposals will then be evaluated and ranked numerically for funding based upon the technical and the panel review scores by the Program staff. After the new proposals have been ranked, the Chief of the NCBO, in consultation with Program staff, will determine which projects will be recommended for funding. Existing proposals with the possibility of continuation will take priority over new proposals.

Numerical ranking will be the primary consideration for deciding which of the new proposals will be selected for funding. However, in making the final selections, the Chief of the NCBO may also consider matching leverage, duplication with other projects, participation of the projects in the preliminary proposal process, and program goals. Accordingly, numerical ranking is not the sole factor in deciding which new proposals will be selected for funding. The Chief of the NCBO will prepare a written justification for any recommendations for funding that fall outside the ranking order, or any cost adjustments. The exact amount of funds awarded to each project will be determined in pre-award negotiations among the applicant, the Grants Office, and the NCBO staff. Potential grantees should not initiate projects in expectation of Federal funding until an award document signed by an authorized NOAA official has been received.

Unsuccessful applications will be kept on file in the Program office for a period of at least 12 months, then destroyed.

VI. Administrative Requirements

A. Pre-award Notification Requirements

The Department of Commerce Pre-Award Notification of Requirements for Grants and Cooperative Agreements contained in the **Federal Register** Notice of October 1, 2001 (66 FR 49917), as amended by the **Federal Register** Notice published October 30, 2002 (67 FR 66109) is applicable to this solicitation.

B. Indirect Cost Rates

Regardless of any approved indirect cost rate applicable to the award, the maximum dollar amount of allocable indirect costs for which the Department of Commerce will reimburse the recipient shall be the lesser of the line item amount for the Federal share of indirect costs contained in the approved budget of the award, or the Federal share of the total allocable indirect costs of the award based on the indirect cost rate approved by an oversight or cognizant Federal agency and current at the time the cost was incurred, provided the rate is approved on or before the award end date. However, the Federal share of the indirect costs may not exceed 25 percent of the total proposed direct costs for this Program. Applicants with indirect costs above 25 percent may use the amount above the 25 percent level as cost sharing. If the applicant does not have a current negotiated rate and plans to seek reimbursement for indirect costs, documentation necessary to establish a rate must be submitted within 90 days of receiving an award.

C. Allowable Costs

Funds awarded cannot necessarily pay for all the costs that the recipient might incur in the course of carrying out the project. Allowable costs are determined by reference to the OMB Circulars A–122, ''Cost Principles for Nonprofit Organizations≥; A–21, ''Cost Principles for Education Institutions≥; and A–87, ''Cost Principles for State, Local and Indian Tribal Governments.'' Generally, costs that are allowable include salaries, equipment, supplies, and training, as long as these are ''necessary and reasonable.≥

Classification

This action has been determined to be ''not significant'' for purposes of Executive Order 12866. Applications under this program are subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.≥

Under section 553 (a)(2) of the Administrative Procedure Act, prior notice and an opportunity for public comment are not required for this notice concerning grants, benefits, and contracts. Therefore, a regulatory flexibility analysis is not required for the purposes of the Regulatory Flexibility Act.

This notice contains collection-of-information requirements subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, and 424B has been approved by OMB under the respective control numbers 0348–0044, 0348–0044, and 0348–0040.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection displays a currently valid OMB control number.

Dated: December 10, 2002.

Rebecca Lent

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

[FR Doc. 02–31697 Filed 12–16–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 021127289–2289–01, I.D. 091002E]

RIN 0648–ZB34

Financial Assistance for Research and Development Projects in the Gulf of Mexico and off the U.S. South Atlantic Coastal States; Cooperative Research Program (CRP)

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

ACTION: Notice of solicitation for applications.

SUMMARY: Subject to the availability of funds, NMFS (hereafter referred to as ''we'' or ''us'') announces the availability of Federal assistance under the Cooperative Research Program (CRP) Grant Program. This announcement provides guidelines, evaluations criteria and selection procedures for the program.

Under the CRP program, we provide financial assistance for research and development projects that optimize the use of fisheries in the Gulf of Mexico and along the Atlantic coast involving the U.S. fishing industry (commercial and recreational), including fishery biology, resource assessment, socio-economic assessments, management and conservation, selected harvest methods, and fish handling and processing.

DATES: We must receive your application by close of business (5 p.m. eastern standard time) on February 18, 2003. Applications received after that time will not be considered for funding.

ADDRESSES: You can obtain an application package from, and send your completed applications to: Ellie Francisco Roche, Chief, State/Federal Liaison Office, Southeast Regional Office, NMFS, 9721 Executive Center Drive, N., St. Petersburg, FL 33702. You can also obtain the application package from the SERO homepage at: *http://caldera.sero.nmfs.gov/grants/programs/.*

You must submit one signed original and two copies of the completed application (including supporting information). We will accept neither facsimile applications, nor electronically forwarded applications.

FOR FURTHER INFORMATION CONTACT: Ellie Francisco Roche, Chief, State/Federal Liaison Office, (727)570–5324.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Background

The CRP is a competitive Federal assistance program that funds projects seeking to increase and improve the working relationship between researchers from the NMFS, state fishery agencies, universities, and fishermen. Congress has initiated the cooperative research funding to assist the NMFS to improve the confidence that both commercial and recreational fishermen have in the data and analyses performed in support of fisheries management. The CRP has as its principal goal to provide a means of involving commercial and recreational fishermen in the collection of fundamental fisheries information to support the development and evaluation of management and regulatory options.

B. Funding

We are soliciting applications for Federal assistance pursuant to 15 U.S.C. 713c 3(d). This document describes how you can apply for a grant or cooperative agreement under the CRP Grant Program and how we determine which applications we will fund.

Approximately $2.0 million may be available in fiscal year (FY) 2003 for funding projects. This amount includes possible in-house projects. Publication of this notice obligates neither NMFS to award any specific grant or cooperative agreement nor all or any parts of the available funds.

Project proposals accepted for funding will need to be completed within 18 months.

C. Catalog of Federal Domestic Assistance

This program is described in the ''Catalog of Federal Domestic Assistance'' under program number 11.454 entitled Unallied Management.

II. Funding Priorities

Your proposal must address one of the priority areas listed below as they pertain to federally-managed species or species relevant to Federal fisheries management plans. If you select more than one priority, you should list first on your application the priority that most closely reflects the objectives of your proposal.

Projects should focus on the greatest probability of collecting data that aids in recovering, maintaining, or improving the status of stocks upon which fisheries depend; improving the understanding of factors affecting recruitment success and long-term sustainability of fisheries; and/or generating increased values and opportunities for fisheries. Projects are evaluated as to the likelihood of achieving these objectives, with consideration of the magnitude of the eventual economic or social benefits that may be realized. Priority is given to funding projects in the subject areas listed in this section, but proposals in other areas are considered on a funds-available basis.

A. Commercial Finfish

There are several priorities within this general category that relate to the collection of catch, effort, size frequency, bycatch, and detailed data on fishing area by vessels in the commercial fisheries for finfish species. The following general categories are identified in priority order:

1. *Monitor the effects of closed Marine Protected Areas.* Research is needed to identify methods to measure the response of marine resource to changes in regulations for Marine Protected Areas (MPAs). (a) Projects are needed to thoroughly assess the impacts of times/area closures in the Southeast Region that have been designated to protect finfish spawning aggregations and/or concentrations of sub-legal fish. (b) Projects to collect fine-scale data for catch-effort are needed to help refine the definition (spatial and temporal) of MPAs. (c) Projects should include use of fishermen's knowledge about critical habitat for the range of species harvested. An example is the large MPA intended to protect small swordfish and other highly migratory species off the US southeastern coast.

2. *Characterize the total catch (from all fleets affecting the stocks), including catch composition and disposition of the catch.* (a) Projects are needed to collect detailed information on the composition and disposition of bycatch and discards. (b) Investigations are needed to determine more efficient and effective methods to record catches more accurately and on a real-time basis during the actual fishing (e.g. electronic logbooks). (c) Projects are needed to develop methods to increase the amount of at-sea observation with the application of imaging systems. (d) Projects are needed to fully utilize scientific observers on-board vessels as a means of collecting detailed catch, effort and disposition data. In cases where vessel space does not permit adding an observer, it might be possible to designate the captain or a crew member as the responsible individual on-board for recording these data. Projects need to evaluate the type of training and equipment that are required to assure that scientifically reliable data are collected. (e) Data collection projects are needed to determine the effects of increasing size limits or reducing possession limits on discard rates. If discard mortalities are high, such management measures might counteract the intended conservation benefits to the stock. Discard mortality rates currently used in assessments are generally based on small numbers of observations or are unknown. Research is needed to develop estimates of discard mortality rates as a function of size, gear, area, season and depth of fishing is needed to improve the basis for estimating the conservation benefits or losses associated with size limits for a wide range of stocks. (f) Data collection projects are needed to help improve the information on life history and biological investigations on commercial finfish species are needed. Improved information about the age-structure of the catch (both retained and discarded) based on otolith or other hard-part age readings provide an improved basis for monitoring the stock's resilience to fishing. Improved information on the reproductive characteristics of the stock provides a basis for refining estimates of long-term potential productivity of the stock. Collection of biological specimens from the catch is necessary for improving our understanding of the life history characteristics that influence the stock's resilience to fishing and potential for production. Research activities which provide life history biological specimens are encouraged.

3. *Monitoring stock abundance through study-fleet applications.* This type of cooperative research requires long-term commitment in terms of funding and application. (a) The objective is to develop a consistent sampling methodology that will permit tracking relative abundance of a fishery resource across time. The initial step for such applications is the development of sampling designs and protocols to be applied by the fleet, including intercalibration studies between vessels, if needed. (b) Projects are needed to develop methods to determine the appropriate sampling designs and pilot studies are needed. An example is the potential development of a recruitment index for swordfish, sampling in regions with high abundance of Young of the Year, generally in the areas that are now closed to longlining in the Gulf and along the southeastern US coast.

4. *Projects to develop and test gear and fishing strategy modifications to reduce or eliminate unintended catch are needed.*

5. Fishing capacity investigations. There appears to be a wide-spread mismatch between the current capacity of the regional fishing fleets and the productivity of the stocks. Cooperative research into methods to optimize capacity to better match the long-term potential productivity of the regional stocks is needed. A number of possibilities ranging from Individual Quota Systems to Vessel Capacity Control programs could be considered. It was noted that there are likely regional/fishery differences that would require different approaches.

B. Caribbean Fisheries

Orientation meetings have recently been conducted between the Caribbean Fisheries Management Council and the fishing industry. These meetings focused upon closing fisheries in portions of the Exclusive Economic Zone (EEZ) by establishing additional Marine Protected Areas (MPAs). It was evident that representatives from the Caribbean were clearly in touch with concerns expressed by user groups from their region and were attuned to potentials for cooperative research. Two areas, (1) habitat and fisheries and (2) corals, were identified as principal research topics.

1. *Habitat and fisheries.* (a) Research and data collection to estimate the social and economic impacts that are related to closures of MPAs are a high priority. Currently the Caribbean has five seasonal closures in the EEZ for spawning aggregates of fish and one no-

take zone consisting of an annual closure. The size of these areas is not as vast as areas established on the mainland, but for the size of the fishing grounds in the Caribbean, they are significant. Although research has been conducted on the biological impacts of several no-take zones, little or no research has been done to estimate the impacts on the fishing communities and the economics of these fisheries. (b) Although research has been done by scientists, research should focus on industry being utilized as a conduit to take scientists to locations for study. The commercial sector can avail the scientific community tremendous assistance in generating information and knowledge about area closure times and spawning areas. (c) Enormous potential exists for cooperative research between industry and the scientific community. Significant research of closed areas can be effectively achieved by incorporating commercial fishermen with scientific investigations. Commercial fishermen could also assist the scientific community to locate areas of recruitment. (d) Projects are also needed to investigate the benefits of rotating MPAs (either temporal or spatial). Once an area is closed, it remains closed forever, but research is needed to determine the biological and socioeconomic benefits of alternating MPAs between open and closed.

2. *Corals.* (a) Research is needed to determine the impact on coral reefs from both commercial and recreational fishing activity. Industry participation is needed to research the impacts of gear on coral reefs. (b) Research is needed to determine the impacts to coral resulting from recreational fishing activities. Overall the information on recreational fishing activities on coral reefs is sparse, even though there are approximately 60,000 recreational vessels in the Caribbean. Research should focus on diving, recreational boating and anchoring on coral reefs.

C. Recreational and Charter Fishery

1. *Socioeconomic research.* (a) Research needs to be performed to determine the numbers of recreational fishermen and related trips need to be accurately defined. (b) Data needs to be collected to expand the information base for the socioeconomic characteristics or the recreational and charter boat industries. (c) In addition to data collection activities, research needs to be done to investigate the potential economic impacts and costs associated with recreational fishing.

2. *Research on Management Alternatives.* (a) Research into the effects of seasonal closures or MPAs on the recreational and charter boat industries are a priority. (b) Investigations should include benefits and costs to the stocks, as well as socioeconomic benefits/costs to participants in the fishery. (c) One key element is research into the potential impact of closures and/or MPAs to improve spawning stocks. The biological impact of such management alternatives should be more clearly understood regarding impact to spawning stocks. (d) Another key question is the potential impacts of closures on the recruitment of stocks that are important for recreational and charter boat industries. (e) Research is also needed to determine the potential of bag and size limits on species that are important to recreational and charter boat industries. Emphasis of the research should be on looking at alternatives to size limits. (f) Bycatch post-release mortality closely relates to alternative management measures and research is needed to adequately measure these mortality rates. At-sea observers on recreational and charter boat trips are a possible means of performing this type of research and should be considered for this research topic.

3. *Catch/Effort Data.* Data collection projects are needed to improve the data on catch and effort from the private recreational fishermen. Research is needed to determine whether and at what level an increase in the numbers of intercept interviews are needed to improve better resolution in the estimates of the catch and effort for the private recreational fishery.

4. *Habitat research.* (a) Research is needed to evaluate the effectiveness of artificial reefs, what can artificial reefs do for the fishing community, and estimate associated impacts. (b) Research is needed to determine the impacts and effects of harmful algal blooms such as red tide on recreational and charter boat fisheries. (c) Investigations are needed into requirements for essential fisheries habitat for certain species - gag group, goliath grouper and sharks.

1. *Social and economic impact of fluctuations in domestic shrimp values.* (a) Research is needed on the effects on the domestic shrimp fishery by high quantities of imports from foreign countries. (b) Research is also needed to investigate the social and economic impacts. This type of research should include impacts on communities, both local fishery-dependent areas and the industry as a whole.

2. *Identifying non-trawlable areas.* Research is needed to investigate how habitat enhancements of non-trawlable areas could benefit shrimp fisheries. For example, artificial reefs could be an important method to improve certain fisheries. Such research could include investigations to determine if enhancements could increase habitat for juvenile fish, i.e. red snapper, and not only sub-adult and adult species.

3. *Quantification of effort.* Research is needed to continue recent effort to improve and better quantitate fishing effort. Such research needs to incorporate the conditions and recommendations negotiated with the shrimp industry. Areas of concern are insurance for at-sea observers, acceptable gear and protecting confidential data that are collected by the projects.

4. *BRD testing protocols.* Research needs to be continued to develop more efficient methods to certify finfish reduction devices. It would be beneficial for the shrimp industry if certification protocol that is more desirable for both the resource and the user could be developed.

5. *Quantification of bycatch rates.* Research is needed to expand existing methods of extrapolating trawl bycatch data for a broad range of conditions and fishing grounds. Use of scientific fishery observers should be expanded to collect bycatch information for a wide a range of fishing area and conditions as possible.

III. How to Apply

To apply for grants or cooperative agreements, you must follow the instructions in this document.

A. Eligibility

Eligible applicants include institutions of higher education, other nonprofits, commercial organizations, state governments, and private citizens. Federal agencies or institutions are not eligible. Foreign governments, organizations under the jurisdiction of foreign governments, and international organizations are excluded for purposes of their solicitation since the objective of the CRP is to optimize research and development benefits from U.S. marine fishery resources.

B. Duration and Terms of Funding

We will award grants or cooperative agreements for a maximum period of up to 18 months. For the extent of substantial involvement, *see* Section III. D. The award period depends upon the duration of funding requested in the applications, the decision of the NMFS selecting official on the amount of funding, the results of post-selection negotiations between the applicant and NOAA officials, and pre-award review

of the application by NOAA and Department of Commerce (DOC) officials.

C. Cost Sharing

Cost-sharing is not required for the CRP. Applications must provide the total budget necessary to accomplish the project, including contributions and/or donations. Because 15 U.S.C. 713c 3(c)(4)(B) provides that the amount of Federal funding must be at least 50 percent of the estimated cost of the project, the total costs shown in the proposal will be evaluated for appropriateness according to the administrative rules, including 15 CFR 14.23 and 15 CFR 24.24, as appropriate. If an applicant chooses to cost-share, and if that application is selected for funding, the applicant is bound by the percentage of the cost share reflected in the grant or cooperative agreement award. Note: Costs incurred in either the development of a project or the financial assistance application, or time expended in any subsequent discussions or negotiations prior to the award, are neither reimbursable nor recognizable as part of the recipient's cost share.

D. Application Format and Requirements

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), as amended by the **Federal Register** notice published on October 30, 2002 (67 FR 66109), is applicable to this solicitation. Your application must be complete and must follow the format described in the CRP Application Package. Applicants should contact the NMFS Southeast Regional Office for a copy of this solicitation's CRP Application Package (*see* **ADDRESSES**). You may also obtain the application package from the SERO Home Page at: *ttp// caldera.sero.nmfs.gov/grants/programs/.*

Project applications must identify the principal participants, and include copies of any agreements describing the specific tasks to be performed by participants. Project applications should give a clear presentation of the proposed work, the methods for carrying out the project, its relevance to managing and enhancing the use of Gulf of Mexico and Atlantic fishery resources, and cost estimates as they relate to specific aspects of the project. Budgets must include a detailed breakdown, by category of expenditures, with appropriate justification for both the Federal and non-Federal shares. The budget must include estimates of the time and cost to the government required of the SEFSC partner. The cost of the SEFSC partner is not to be included as part of the project cost, but should be included as a separate budget item.

Applications should exhibit familiarity with related work that is completed or ongoing. Proposals should state whether the research applies to the Gulf of Mexico, South Atlantic or North Atlantic for highly migratory species or multiple areas. Successful applicants are required to collect and manage data in accordance with standardized procedures and format approved or specified by NMFS and to participate with NMFS in specific cooperative activities that are determined by consultations between NMFS and successful applicants before project grants are awarded. All data collected as part of an awarded grant must be provided to the National Marine Fisheries Service/Southeast Fisheries Science Center. Data must be edited and specified as accurate by the Principal Investigator.

All applicants must either be a commercial or recreational fisherman or have a written agreement that the proposed research includes a commercial or recreational fisherman or fishermen.

All applicants must include a written agreement with a person employed by the Southeast Fisheries Science Center (SEFSC) that will act as a partner in the proposed research project. The SEFSC partner will assist the applicant to develop a design for the project to assure that the outcome will provide suitable, scientific data and results to support needed fisheries management information.

Applications must be one-sided and unbound. All incomplete applications are returned to the applicant. Three copies (one original and two copies) of each application are required and should be submitted to the NMFS Southeast Regional Office, State/Federal Liaison Office (*see* **ADDRESSES**).

E. Indirect Costs

The total dollar amount of the indirect costs awarded under this program will not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 25 percent of the Federal share of the total proposed direct costs dollar amount in the application, whichever is less. A copy of the current, approved, negotiated Indirect Cost Agreement with the Federal Government must be included with the application.

IV. Screening, Evaluation, and Selection Procedures

A. Initial Screening of Applications

When we receive applications we will screen them to ensure that they were received by the deadline date (*see* **DATES**); include SF 424 signed and dated by an authorized representative; were submitted by an eligible applicant, either a commercial or recreational fisherman or contains a written agreement with a commercial or recreational fisherman; includes a written agreement with an SEFSC partner; address one of the funding priorities for federally managed species; and include a budget, statement of work, and milestones, and identify the principal investigator. We do not have to screen applications before the submission deadline in order to identify deficiencies that would cause your application to be rejected so that you would have an opportunity to correct them. However, should we do so and provide you information about deficiencies, or should you independently decide it is desirable to do so, you may correct any deficiencies in your application before the deadline. After the deadline, the application must remain as submitted; no changes can be made to it. If your application does not conform to these requirements and the deadline for submission has passed, the application will be returned without further consideration.

B. Evaluations of Proposed Projects

1. Technical evaluation. Application responsive to this solicitation will be evaluated by three or more appropriate private and public sector experts to determine their technical merit. These reviewers will provide individual evaluations of the proposals. No consensus advice will be given. These reviewers provide comments and assign scores to the applications based on the following criteria, with the weights shown in parentheses:

a. Does the proposal have a clearly stated goals(s) with associated objectives that meet the needs outlined in the project narrative? (30 points maximum)

b. Does the proposal clearly identify and describe, in the project outline and statement of work, scientific methodologies and analytical procedures that will adequately address project goals and objectives? (30 points maximum)

c. Do the principal investigators provide a realistic timetable to enable full accomplishment of all aspects of the research? (20 points maximum)

d. How effective are the proposed methods in enabling the principal

investigators to maintain stewardship of the project performance, finances, cooperative relationships, and reporting requirements? (10 points maximum)

e. Does the budget appropriately allocate and justify costs? (10 points maximum)

2. *Scientific Panel.* Applications together with the technical reviewers' comments and scores are presented to a Scientific Panel composed of NMFS scientific experts. This panel provides comments and rates each proposal as either ''Recommended for Funding'' or ''Not Recommended for Funding'' based on merits of the science, the necessity of the information that would be gained by the project, and the likelihood of assisting industry or fisheries management.

3. *CRP Panel.* Proposals that are ''Recommended for Funding'' by the Scientific Panel are presented to a panel of non-NOAA Fishery experts known as the CRP Panel. Each member of the Panel individually considers if needs of the Agency are addressed in each proposal, if the project assists industry, and if the project addresses issues that are important to regional fisheries management. The individuals on the Panel provide comments and rate each of these proposals as either ''Recommended for Funding'' or ''Not Recommended for Funding.'' No consensus advice will be given by the Panel. The Program Manager ranks the proposals in the order of preferred funding based on the number of Panel members recommending the proposal for funding.

4. *Science Center Director.* The ranked proposals are provided to the Science Center Director, who is the selecting official, in the order of preferred funding, based on the number of Panel members recommending the proposal for funding. If there are ties in the rankings, those ties will be distinguished by the peer review score. The Science Center Director also receives the Panel members' individual comments, and comments from the Scientific Panel for projects it rated as ''Recommended for Funding.≥

The Science Center Director, in the consultation with the Regional Administrator, determines the projects to be recommended for funding. Though rarely used, the Science Center Director has an option to make a selection that falls outside the CRP Panel's order of preferred funding on the following grounds: for geographic diversity, if not enough projects have addressed a priority, or because of duplication with other funded grants within NOAA. The Science Center Director will justify in writing any such selection.

The exact amount of funds awarded, the final scope of activities, the project duration, and specific NMFS cooperative involvement with the activities of each project are determined in pre-award negotiations between the applicant, the NOAA Grants Office and the NMFS Program Office. Projects must not be initiated by recipients until a signed award is received from the NOAA Grants Office. Successful applications generally are recommended within 210 days from the date of publication of this notice. The earliest start date of awards average 90 days after each project is selected and after all NMFS/applicant negotiations of cooperative activities have been completed. The earliest start date of awards is about 300 days after the date of publication of this notice. Applicants should consider this selection and processing time in developing requested start dates for their applications. Unsuccessful applications will be returned to the applicant.

V. Administrative Requirements

A. Your Obligations as an Applicant

You must:

1. Meet all application requirements and provide all information necessary for the evaluation of the proposal, including one signed original and nine signed copies of the application.

2. Be available to respond to questions during the review and evaluation of the proposal(s).

B. Your Obligations as a Successful Applicant (Recipient)

If you are selected to receive a grant award for a project, you must:

1. Manage the day-to-day operations of the project, be responsible for the performance of all activities for which funds are granted, and be responsible for the satisfaction of all administrative and managerial conditions imposed by the award.

2. Keep records sufficient to document any costs incurred under the award, and allow access to these records for audit and examination by the Secretary of Commerce, the Comptroller General of the United States, or their authorized representatives; and submit financial status reports (SF 269) to NOAA Grants in accordance with the award conditions.

3. Submit semiannual project status reports on the use of funds and progress of the project to us within 30 days after the end of each 6–month period. You will submit these reports to the individual identified as the NMFS Program Officer in the funding agreement.

4. Submit a final report within 90 days after completion of each project to the NMFS Program Officer. The final report must describe the project and include an evaluation of the work you performed and the results and benefits in sufficient detail to enable us to assess the success of the completed project.

5. Submit all data collected as part of the project to the SEFSC partner. Project data must be edited and verified as accurate by the applicant prior to being submitted to the SEFSC. Data must be submitted in the agreed upon format.

6. In addition to the final report, we request that you submit any publications printed with grant funds (such as manuals, surveys, etc.) to the NMFS Program Office for dissemination to the public.

C. Other Requirements of Recipients

If a grant is made that specifically requires the collection of information from the public, there will be a delay to allow NMFS to obtain the required Paperwork Reduction Act (PRA) approval prior to the start of the collection. This approval process takes a minimum of 4 months. Information on the PRA process can be found at the following Web site address: *www.rdc.noaa.gov@pra.*

Applications under this program are subject to the provisions of Executive Order 12372, ''Intergovernmental Review of Federal Programs.≥

Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act (5 U.S.C. 553a(2)) or any other law for this notice concerning grants, benefits, and contracts. Therefore, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This action has been determined to be not significant for purposed of Executive Order 12866.

Notwithstanding any other provisions of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information requirements subject to the Paperwork Reduction Act, unless that collection displays a currently valid OMB control number.

This notice contains collection-of-information requirements subject to the Paperwork Reduction Act. The use of Standard Forms 424, SF-LLL, SF–424B, and SF–269 have been approved by OMB under the respective control numbers 0348–0043, 0348–0040, 0348–0046 and 0348–0039. Public reporting burden for the latter collections of information is estimated to average 4 hours for an application, 1 hour for a semi-annual report, and 1 hour for a

final report. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of these collection of information, including suggestions for reducing this burden to Ellie Francisco Roche (*see* **ADDRESSES**).

Authority: 15 U.S.C. 713c–3(d)

Dated: December 9, 2002.

Rebecca Lent,

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

[FR Doc. 02–31698 Filed 12–16–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 120902G]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene public meetings of the Reef Fish Advisory Panel (AP) and the Standing and Special Reef Fish Scientific and Statistical Committee (SSC) from January 6 through January 9, 2003.

DATES: The Council's Reef Fish AP will convene at 9 a.m. on Monday, January 6, 2003 and conclude by 4 p.m. on Tuesday, January 7, 2003. The SSC will convene at 9 a.m. on Wednesday, January 8, 2003 and will conclude by 4 p.m. on Thursday, January 9, 2003.

ADDRESSES: The meetings will be held at the Hilton Tampa Airport Westshore Hotel, 2225 Lois Avenue, Tampa, FL; telephone: 813–877–6688.Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Mr. Steven Atran, Population Dynamics Statistician, Gulf of Mexico Fishery Management Council; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The AP and the SSC will review reports of the Council's Reef Fish Stock Assessment Panel (RFSAP) and Socioeconomic Panel (SEP) on the stock assessments and status of the red grouper and yellowedge grouper stocks in the Gulf of Mexico. These stock assessments were prepared by the NMFS and were presented to the RFSAP during their September 17–19, 2002 meeting. Red grouper assessments were previously conducted in 1991, 1993, and 1999. This is the first time that a stock assessment has been conducted on yellowedge grouper.

In October 2000, NMFS declared red grouper to be overfished, based on the 1999 assessment plus additional analyses conducted at the request of the RFSAP. In September 2002, the Council submitted a red grouper rebuilding plan to NMFS (Secretarial Amendment 1 to the Reef Fish Fishery Management Plan), which is currently being reviewed by NMFS. Based on the results of the 2002 red grouper stock assessment and the recommendations of the RFSAP, SEP, AP, and SSC, the Council may choose to modify its proposals for rebuilding the red grouper stock. The AP and SSC will provide recommendations to the Council on both red grouper and yellowedge grouper regulations.

Although other non-emergency issues not on the agenda may come before the AP/SSC for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Actions of the AP/SSC will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Copies of the agendas of these meetings and the stock assessments can be obtained by calling the Council office at 813–228–2815 (toll-free 888–833–1844). Additional materials, including the RFSAP report and the SEP report, can also be obtained from the Council office or downloaded from the Council Web site (*http://www.gulfcouncil.org*) but the SEP report may not be available until just prior to the meetings.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see ADDRESSES) by December 27, 2002.

Dated: December 10, 2002.

Richard W. Surdi,

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

[FR Doc. 02–31692 Filed 12–16–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 120902H]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a public meeting of the Shrimp Advisory Panel (AP).

DATES: The Shrimp AP meeting is scheduled to begin at 8:30 a.m. on Tuesday, January 7, 2003.

ADDRESSES: The meeting will be held at the at the New Orleans Airport Hilton, 901 Airline Highway, Kenner, LA; telephone: 504–469–5000.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Leard, Senior Fishery Biologist, Gulf of Mexico Fishery Management Council; telephone: 813-228-2815.

SUPPLEMENTARY INFORMATION: The Shrimp AP will convene to receive reports from NMFS on the biological and economic aspects of the 2002 Cooperative Shrimp Closure with the state of Texas. The Shrimp AP may make recommendations for a cooperative closure with Texas for 2003. The Shrimp AP will also review a revised Options Paper for Amendment 13 to the Shrimp Fishery Management Plan (FMP) addressing maximum sustainable yield (MSY), optimum yield (OY), maximum stock size threshold (MSST), and maximum fishing mortality threshold (MFMT) for shrimp stocks, as well as vessel monitoring systems (VMS), and bycatch issues.

The Shrimp AP consists principally of commercial shrimp fishermen, dealers, and association representatives.

Although other non-emergency issues not on the agenda may come before the AP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act,

those issues may not be the subject of formal action during these meetings. Actions of the AP will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency. Copies of the agenda can be obtained by calling 813–228–2815.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (*see* **ADDRESSES**) by December 27, 2002.

Dated: December 10, 2002.

Richard W. Surdi,

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

[FR Doc. 02–31693 Filed 12–16–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 120902I]

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene public meetings.

DATES: The meetings will be held on January 13–16, 2003.

ADDRESSES: These meetings will be held at the Holiday Inn Riverwalk, 217 North St Mary's, San Antonio, TX 78205; telephone: 210–224–2500.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 228–2815.

SUPPLEMENTARY INFORMATION:

Council

January 15

8:30 a.m.—Convene.

8:45 a.m. - 12 noon—Receive public testimony on the Cooperative Texas Shrimp Closure and on yellowedge and red grouper total allowable catch (TAC). Final action on these TACs will be taken at a subsequent meeting.

1:30 p.m. - 5:30 p.m.—Receive the report of the Reef Fish Management Committee.

January 16

8:30 a.m. - 9:30 a.m.—Receive the report of the Shrimp Management Committee.

9:30 a.m. - 11:30 a.m.—Receive the report of the Habitat Protection Committee.

11:30 a.m. - 12 noon—Receive the Mackerel Management Committee Report.

1:30 p.m. - 3 p.m. -Complete action on the Draft Red Snapper Individual Fishing Quota (IFQ) profile.

3 p.m. - 3:45 p.m.—Receive the South Atlantic Fishery Management Council liaison report.

3:45 p.m. - 4 p.m.—Receive Enforcement Reports.

4 p.m. - 4:15 p.m.—Receive the NMFS Regional Administrator's Report.

4:15 p.m. - 4:45 p.m.—Receive Director's Reports.

4:45 p.m. - 5 p.m.—Other Business.

January 13

8 a.m. - 10:30 a.m.—Convene the Shrimp Management Committee to hear a review of the economic condition of the Texas shrimp industry by Mike Haby of Texas A&M University and biological and economic reports by National Marine Fisheries Service (NMFS) on the cooperative Texas Shrimp Closure. The committee will also review the Draft Amendment 13 Options Paper addressing maximum sustainable yield (MSY), optimum yield (OY), maximum stock size threshold (MSST), and maximum fishing mortality threshold (MFMT) for shrimp stocks; vessel monitoring systems (VMS); and bycatch. The committee will make recommendations for full Council review on Thursday morning.

10:30 a.m. - 11:30 a.m.—Convene the Mackerel Management Committee to review a draft regulatory amendment/ environmental assessment (EA) which addresses MSY, OY, MSST, and MFMT for the coastal migratory pelagic species.

1 p.m. - 5:30 p.m.—Convene the Reef Fish Management Committee to to hear the Reef Fish Stock Assessment Panel (RFSAP) report and Socioeconomic Panel (SEP) report on red and yellowedge groupers. They will also review the Draft Reef Fish Amendment 18 Options Paper and the Draft Reef Fish Amendment 21. The Reef Fish Amendment 18 Options Paper considers additional alternatives for management of the grouper stocks. The Reef Fish Amendment 21 considers alternatives related to the marine reserves established as gag aggregation sites off central west Florida. The Committee will also suggest to NMFS and NOAA General Counsel the types of penalties that should be used to deter violations of the provisions of an individual fishing quota (IFQ) system for red snapper. The committee will hear a presentation by NMFS enforcement on violations of the western longline prohibited area.

January 14

8:30 a.m. - 12 noon—Continue the Reef Fish Management Committee if necessary.

1:30 p.m. - 5:30 p.m.—Convene the Habitat Protection Committee to review and comment on the Draft Environmental Impact Statement (DEIS) for the Essential Fish Habitat (EFH) Generic Amendment.

Although non-emergency issues not contained in the agenda may come before the Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305 (c) of the MSFCMA, provided the public has been notified of the Council's intent to take final action to address the emergency. A copy of the Committee schedule and agenda can be obtained by calling (813) 228–2815.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (*see* **ADDRESSES**) by January 6, 2003.

Dated: December 10, 2002.

Richard W. Surdi,

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

[FR Doc. 02–31694 Filed 12–16–02; 8:45 am]

BILLING CODE 3510–22–S

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 18, 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: December 11, 2002.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: Revision.

Title: Federal Perkins/NDSL Loan Assignment Form.

Frequency: On occasion.

Affected Public: Not-for-profit institutions; businesses or other for-profit; individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 21,262.

Burden Hours: 8,505.

Abstract: This form is used to collect pertinent data regarding student loans from institutions participating in the Federal Perkins Loan Program. The Perkins Assignment Form serves as the transmittal document in the assignment of such loans to the Federal government.

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 Joseph Schubart at his e-mail address *Joe.Schubart@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. 02–31645 Filed 12–16–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.116N]

Fund for the Improvement of Postsecondary Education—Special Focus Competition (Institutional Cooperation and Student Mobility in Postsecondary Education among the United States, Canada and Mexico); Notice Inviting Applications for New Awards for Fiscal Year (FY) 2003

Purpose of Program: To provide grants or enter into cooperative agreements to improve postsecondary education opportunities by focusing on problem areas or improvement approaches in postsecondary education.

Eligible Applicants: Institutions of higher education or combinations of institutions and other public and private nonprofit institutions and agencies.

Applications Available: December 17, 2002.

Deadline for Transmittal of Applications: April 11, 2003.

Deadline for Intergovernmental Review: July 15, 2003.

Available Funds: Approximately $300,000 for FY 2003.

Estimated Range of Awards: $30,000 for FY 2003. $200,000–$215,000 for four-year duration of grant.

Estimated Average Size of Awards: $30,000 for FY 2003. $210,000 for four-year duration of grant.

Estimated Number of Awards: 10.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit your narrative to the equivalent of no more than twenty (20) double-spaced 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 the title page, the budget section, including the narrative budget justification, the assurances and certifications, the resumes, the bibliography, or the letters of support.

Our reviewers will not read any pages of your application narrative that—

- Exceed the page limit if you apply these standards; or
- Exceed the equivalent of the page limit if you apply other standards.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 85, 86, 97, 98, and 99.

SUPPLEMENTARY INFORMATION: This program is a Special Focus Competition to support projects addressing a particular problem area or improvement approach in postsecondary education. The competition also includes an invitational priority to encourage proposals designed to support the formation of educational consortia of American, Canadian and Mexican institutions to encourage cooperation in the coordination of curricula, the exchange of students and the opening of educational opportunities throughout North America. The invitational priority is issued in cooperation with Canada and Mexico. Canadian and Mexican institutions participating in any consortium proposal responding to the invitational priority may apply, respectively, to Human Resources Development Canada and the Mexican Department of Public Education for

additional funding under separate Canadian and Mexican competitions.

Priority

We are particularly interested in applications that meet the following invitational priority.

Under 34 CFR 75.105(c)(1) we do not give an application that meets the invitational priority a competitive or absolute preference over other applications.

Invitational Priority

Projects that support consortia of institutions of higher education that promote institutional cooperation and student mobility among the United States, Canada, and Mexico.

Methods for Applying Selection Criteria

We give equal weight to the listed criteria. Within each of the criteria, we give equal weight to each of the factors.

Selection Criteria

In evaluating applications for grants under this program competition, we use selection criteria chosen from those listed in 34 CFR 75.210 of EDGAR.

FOR APPLICATIONS OR FURTHER INFORMATION CONTACT: Fund for the Improvement of Postsecondary Education (FIPSE), U.S. Department of Education, 1990 K Street, NW, 8th Floor, Washington, DC 20006–8544. You may also request application forms by calling 732–544–2504 (fax on demand), or application guidelines by calling 202–358–3041 (voice mail) or submitting the name of the competition and your name and postal address to *FIPSE@ED.GOV* (e-mail).

Applications are also listed on the FIPSE Web Site: *http://www.ed.gov.FIPSE*.

e-APPLICATIONS are available at: *http://e-grants.ed.gov*.

If you use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. For additional program information call the FIPSE office 202–502–7500 between the hours of 8 a.m. and 5 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact number listed under **FOR APPLICATIONS OR FURTHER INFORMATION CONTACT**.

Individuals with disabilities also may obtain a copy of the application package in an alternative format by contacting that number. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Application Procedures:

Note: Some of the procedures in these instructions for transmitting electronic applications differ from those in the Education Department General Administrative Regulations (EDGAR)(34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C.553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications

In FY 2003, the U.S. Department of Education is continuing to expand its project of electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Program for North American Mobility in Higher Education (CFDA No. 84.116N) is one of the programs included in this project. If you are an applicant under the Program for North American Mobility in Higher Education, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application) portion of the Grant Administration and Payment System (GAPS). Users of e-Application will be entering data on-line while completing their applications. You may not e-mail a soft copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter on-line will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in this e-Application pilot, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value or penalty because you submit a grant application in electronic or paper format, nor will we penalize you if you submit an application in paper format. When you enter the e-Application system, you will find information about its hours of operation.
- You may submit all documents electronically, including the Title Page, (substitutes for the ED Form 424), Budget Summary Form (substitutes for the ED Form 524), and all necessary assurances and certifications.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days of submitting your electronic application, fax a signed copy of the Title Page (replaces ED 424) to the Application Control Center after following these steps:

(1) Print the Title Page from the e-Application system.

(2) The institution's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the Title Page.

(4) Fax the Title page to the Application Control Center at 202 260–1349 within three working days of submitting your electronic application.

- We may request that you give us original signatures on all other forms at a later date.
- *Closing Date Extension in Case of System Unavailability:* If you elect to participate in the e-Application pilot for the Program for North American Mobility in Higher Education and you are prevented from submitting your application on the closing dates because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. For us to grant this extension—

(1) You must be a registered user of e-Application, and have initiated an e-Application for this competition; and

(2) (a) The e-Application system must be unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the deadline date; or

(b) The e-Application system must be unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 and 4:30 p.m., Washington, DC time) on the deadline date. The Department must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension you must contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** or (2) the e-Grants help desk at 1–888–336-8930.

You may access the electronic grant application for the Program for North American Mobility in Higher Education at: *http://e-grants.ed.gov*.

We have included additional information about the e-Application pilot project (see Parity Guidelines between Paper and Electronic

Applications) in the application package.

Note: Due to the upgrading of software, we anticipate that the e-Application system will be unavailable for several days in mid-December.

The tentative schedule for this down time is from 7 p.m., December 12 until 6 a.m., December 16, Washington, DC time. Please check *http://e-grants.ed.gov* for any updates on the unavailability of the e-Application system.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO) toll free at 1–888–293–6498; or in the Washington, DC area at 202 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: 20 U.S.C. 1138–1138d.

Dated: December 12, 2002.

Sally Stroup,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 02–31690 Filed 12–16–02; 8:45 am]

BILLING CODE 4001–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.116M]

Fund for the Improvement of Postsecondary Education—Special Focus Competition: US-Brazil Higher Education Consortia Program (Institutional Cooperation and Student Mobility in Postsecondary Education Between the United States and Brazil)

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year (FY) 2003.

Purpose of Program: To provide grants or enter into cooperative agreements to improve postsecondary education opportunities by focusing on problem areas or improvement approaches in postsecondary education.

Eligible Applicants: Institutions of higher education or combinations of institutions and other public and private nonprofit institutions and agencies.

Applications Available: December 17, 2002.

Deadline for Transmittal of Applications: March 28, 2003.

Deadline for Intergovernmental Review: May 27, 2003.

Estimated Available Funds: $300,000. The estimated amount of funds available for 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 if Congress appropriates funds for this program.

Estimated Range of Awards: $28,000–$32,000 for FY 2003; $190,000–$210,000 for 4-year duration of grant.

Estimated Average Size of Awards: $30,000 for FY 2003; $200,000 for 4-year duration of grant. (The first year grant is a preparatory phase. The grant amounts in subsequent years will be higher during the implementation phase of the grant).

Estimated Number of Awards: 10.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 85, 86, 97, 98, and 99.

SUPPLEMENTARY INFORMATION: This program is a Special Focus Competition under the Fund for the Improvement of Postsecondary Education (Title VII, Part B of the Higher Education Act of 1965, as amended) to support projects addressing a particular problem area or improvement approach in postsecondary education. The competition also includes an invitational priority to encourage proposals designed to support the formation of educational consortia of American and Brazilian institutions to encourage cooperation in the coordination of curricula, the exchange of students, and the opening of educational opportunities between the United States and Brazil. The invitational priority is issued in cooperation with Brazil. These awards support only the participation of U.S. institutions and students in these consortia. Brazilian institutions participating in any consortium proposal responding to the invitational priority may apply, respectively, to the Coordination of Improvement of Personnel of Superior Level (CAPES), Brazilian Ministry of Education, for additional funding under a separate but parallel Brazilian competition.

Priority

Invitational Priority

We are particularly interested in applications that meet the following invitational priority:

Projects that support consortia of institutions of higher education that promote institutional cooperation and student mobility between the United States and Brazil.

Under 34 CFR 75.105(c)(1) we do not give an application that meets the priority a competitive or absolute preference over other applications.

Methods for Applying Selection Criteria: The Secretary gives equal weight to the listed criteria. Within each of the criteria, the Secretary gives equal weight to each of the factors.

Selection Criteria

In evaluating applications for grants under this program competition, the Secretary uses the following selection criteria chosen from those listed in 34 CFR 75.210.

(1) The significance of the proposed project, as determined by—

(a) The extent to which the proposed project involves the development or demonstration of promising new strategies that build on, or are alternatives to, existing strategies;

(b) The likely utility of the products (such as information, materials, processes, or techniques) that will result from the proposed project, including the potential for their being used effectively in a variety of other settings; and

(c) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in teaching and student achievement.

(2) The quality of the design of the proposed project, as determined by—

(a) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable; and

(b) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(3) The adequacy of resources, as determined by—

(a) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project;

(b) The potential for continued support of the project after Federal funding ends, including, as appropriate, the demonstrated commitment of

appropriate entities to such support; and

(c) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project.

(4) The quality of the project personnel, as determined by—

(a) The qualifications, including relevant training and experience, of key project personnel; and

(b) The extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

Application Procedures:

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications

In Fiscal Year 2003, the U.S. Department of Education is continuing to expand its pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The US-Brazil Higher Education Consortia Program—CFDA No. 84.116M is one of the programs included in the pilot project. If you are an applicant under the US-Brazil Higher Education Consortia Program—CFDA No. 84.116M, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application) portion of the Grant Administration and Payment System (GAPS). Users of e-Application will be entering data on-line while completing their applications. You may not e-mail a soft copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter on-line will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in e-Application, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format. When you enter the e-Application system, you will find information about its hours of operation.
- You may submit all documents electronically, including the Application for Federal Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Assistance (ED 424) to the Application Control Center after following these steps:

(1) Print ED 424 from the e-Application system.

(2) The institution's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.

(4) Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on all other forms at a later date.
- *Closing Date Extension in Case of System Unavailability:* If you elect to participate in the e-Application pilot for the US-Brazil Higher Education Consortia Program—CFDA No. 84.116M and you are prevented from submitting your application on the closing date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery.

For us to grant this extension—

(1) You must be a registered user of e-Application, and have initiated an e-Application for this competition; and

(2) (a) The e-Application system must be unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the deadline date; or

(b) The e-Application system must be unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 and 4:30 p.m., Washington, DC time) on the deadline date. The Department must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension you must contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** or (2) the e-Grants help desk at 1–888–336–8930.

You may access the electronic grant application for the US-Brazil Higher Education Consortia Program—CFDA No. 84.116M at: *http://e-grants.ed.gov.*

We have included additional information about the e-Application pilot project (see Parity Guidelines between Paper and Electronic Applications) in the application package.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html*.

Or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov*.

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.116M.

FOR FURTHER INFORMATION CONTACT: Copies of the application materials and further program information may also be obtained from Cindy Fisher, Fund for the Improvement of Postsecondary Education (FIPSE), U.S. Department of Education, 1990 K Street, NW., 8th Floor, Washington, DC 20006–8544. Telephone: (202) 502–7500. You may also request application guidelines by submitting the name of the competition (US-Brazil) and your name and postal address to: *fipse@ed.gov*.

Applications are also available on the FIPSE Web site at: *http://www.ed.gov/offices/OPE/FIPSE/Brazil/*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.* Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Electronic Access to This Document

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Register, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*.

Program Authority: 20 U.S.C. 1138–1138d.

Dated: December 12, 2002.

Sally L. Stroup,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 02–31691 Filed 12–16–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice 03–16: Catalysis Science

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), hereby announces its interest in receiving grant applications for high-risk, long-term, multi-investigator, multidisciplinary research on the science of catalysis. See Supplementary Information below for specific guidelines. The goal of the Catalysis Science research effort is to develop combined experimental and theoretical approaches to enable molecular-level understanding of catalytic reaction mechanisms, ultimately enabling the prediction of catalytic reactivity at multiple time and length scales. Strongly encouraged are: (a) Applications containing synergistic integration of physical, chemical, and/or biochemical experimentation with solid state and molecular reactivity theories; (b) applications that integrate atomistic design of catalytically active sites; molecular, supramolecular or solid-state synthesis; and in-situ, time- and space-resolved, spectroscopy and microscopy; (c) applications to identify mechanisms and principles common to homogeneous, heterogeneous, and bio catalysis for the purpose of advancing the understanding of catalysis and developing novel chemical or physical functionalities; and (d) applications to understand and manage catalyst complexity arising from the combination of diverse functionalities, namely chemical, biological, electronic, optical, magnetic, mechanical, thermal, etc. DOE National Laboratory investigators should refer to the complementary request for proposals announced under: *http://www.sc.doe.gov/production/grants/grants.html.*

DATES: Letters of intent are required and must include the information specified under Application Guidelines, and must be submitted by 4:30 p.m., E.S.T., February 5, 2003. Full applications must be preceded by the letters of intent and must be submitted by 4:30 p.m., E.S.T., March 26, 2003, in order to be accepted for merit review and consideration for award during Fiscal Year 2003.

ADDRESSES: Letters of intent must be sent as email attachment in PDF format to Drs. Raul Miranda (*raul.miranda@science.doe.gov*) and William Millman (*william.millman@science.doe.gov*). Formal applications referencing Program Notice 03–16 must be sent electronically by an authorized institutional business official through DOE's Industry Interactive Procurement System (IIPS) at: *http://e-center.doe.gov* (*see* also *http://www.sc.doe.gov/production/grants/grants.html.*) 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 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.sc.doe.gov/production/grants/grants.html.*

If you are unable to submit the 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 instruction on how to submit printed applications.

FOR FURTHER INFORMATION CONTACT: Dr. Raul Miranda by telephone at: (301) 903–8014, or Dr. William Millman at: (301) 903–5805, or at the E-mail addresses mentioned above, or by mail at U.S. Department of Energy, Office of Science, SC–14/Germantown Building, 1000 Independence Avenue, SW., Washington, DC 20585–1290.

SUPPLEMENTARY INFORMATION:

General and Particular Goals of This Notice

The general goals of the Catalysis Science research effort at the Office of Basic Energy Sciences are the following: (1) Attain a fundamental scientific understanding of catalytic reactivity of molecular, supramolecular or nanoscale, and condensed matter; (2) acquire basic knowledge of the structural, dynamic, and electronic aspects of multi-atom assemblies that are associated with materials undergoing chemical transformations and converting or transferring energy or mass; and (3) develop the methodology and tools to design and synthesize hard, soft (macromolecular and biological), and hybrid materials at the atomic level to achieve controlled reactivity, multi-functionality, and time-dependent behavior.

The particular goal of the Catalysis Science effort is to dramatically accelerate the development of a predictive science of chemical catalysis by means of appropriate theoretical and experimental collaborations. To that end, focused and joint activities among complementary scientists and engineers will be supported to discover structure-property relationships and set the foundations for comprehensive theories of catalyst reactivity and time-dependent behavior. Consequently, support will be given for the use of advanced experimental and theoretical tools, as well as the development of new synthetic, spectroscopic, structural, theoretical and information management tools, for achieving systematic probing and exacting control of structure-reactivity relationships.

Expected Long-Term Impact of the Research Funded Under This Notice

The fundamental understanding sought with this research should, in the long term, lead to novel molecular or nanoscale constructs endowed with designed chemical reactivity. As

catalysts, such materials should possess, by definition, the ability to direct chemical transformations quickly, selectively, and repeatedly, toward desired sets of products, without themselves suffering degradation. To convert selected species that may be components of complex mixtures, future catalysts will also possess enzyme-like reactant specificity and chemo-, regio- and stereo-selectivity. Acting in environments with various types of heterogeneity, future synthetic catalysts will be self-adaptive or externally controllable, by incorporating both sensing and acting functionalities in the same structure. Future catalysts will have self-healing capabilities in order to reverse degradation and prevent deactivation. They might be tunable to absorb energy in specific spectral ranges and deliver such energy to selected chemical bonds. These complex structures will efficiently convert currently intractable fossil and renewable feedstocks into clean fuels, chemical commodities, fine chemicals and special materials. They will also dramatically purify our environment, protect our security, balance our body chemistry, and impact a number of industries: power, food, transportation, electronics, housing, etc. The objective of this research effort is to develop fundamental scientific understanding of the physicochemical mechanisms and discovery of the principles that will allow the design and controlled synthesis of the catalysts that will achieve this vision.

Emphasis on Research Teams

Note: Single investigators wishing to submit an application in response to the goals stated in this notice should contact an appropriate program manager in the Office of Basic Energy Sciences. *See* above for contact information.

Applications are sought from multi-investigator teams that focus on the creation of new approaches to research in catalysis. Thus, applications that present novel approaches to integrating or coordinating the various aspects of catalysis (heterogeneous, homogeneous and biological) are particularly encouraged, as are applications that integrate advanced experimental techniques, synthetic methodology, and theory and modeling. Participation by investigators who are new to catalysis science research is strongly encouraged.

In particular, this notice targets imaginative multidisciplinary research efforts coordinating some or all of the following disciplines: chemistry, biology, physics, materials science, engineering; molecular and solid state synthesis, structural and spectroscopic instrumentation, reaction mechanisms and dynamics; chemical and materials theory, applied mathematics, information science and computation. The application should describe how that coordination may lead to a predictive science of catalysis.

Applicants are invited, but not required, to partner with multiple institutions: universities, DOE National Laboratories (FFRDCs) and Nanoscale Science Research Centers, when appropriate and necessary for the intellectual and operational benefit of the collaboration. Applications must include a management plan describing the intellectual responsibility of each investigator and how each of them is essential to achieving the overall project milestones (see Application Guidelines for detailed instructions.)

In multi-institutional applications, only the leading institution must submit the original application, including separate and detailed budgets from each institution. Research collaboration with DOE FFRDCs is welcome, but funds will be provided to these organizations under a separate notice *(http://www.sc.doe.gov/production/grants/grants.html.)* A guide for submitting a collaborative application with a national laboratory can be accessed via the web at: *http://www.sc.doe.gov/production/grants/Colab.html.* International collaborations are also welcome, but the international partner will not receive funding under this notice. Use of national and international user facilities is encouraged but not required. All projects will be evaluated using the same criteria, regardless of the submitting institution.

Program Funding

It is anticipated that up to $4 million will be available for up to 6 new grant awards during Fiscal Year 2003, contingent upon the availability of appropriated funds. For this initial funding period, three-year grants are expected, also contingent upon the availability of appropriated funds, progress of the research, and continuing program need.

Merit Review

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) *(http://www.sc.doe.gov/production/grants/605index.html):*

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.

In addition, applications will be evaluated in terms of the organizational plan and the research coordination. The evaluation will also include program policy factors such as the relevance of the proposed research to the terms of the announcement and programmatic needs.

External peer reviewers will be selected with regard to both their scientific expertise and the absence of conflict of interest. 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.

Application Guidelines

Note: Each university investigator is limited to only one application as either principal investigator/project director or co-principal investigator.

Information about the development and submission of applications, eligibility, limitations, evaluation, 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 via the World Wide Web at: *http://www.sc.doe.gov/production/grants/grants.html.* The application Face Page, form DOE F 4650.2, must contain the principal investigator/project director's name, institution, phone number, fax number, and E-mail address. Requests for three-year grants are expected. For multi-institutional applications, see further instructions below.

The letter of intent should be brief and contain a project title, principal investigator/project director, co-principal investigators, external collaborators not included in the budget, institutions involved, estimated total budget, purpose and innovative aspects of the research, and primary role of each principal investigator. The letters of intent are not binding and will be used by program managers exclusively for preliminary identification of potential peer reviewers, conflicts of interest, and duplications of effort.

The full application shall contain a research description limited to a maximum of 40 pages per application, including figures, tables, and previous results. It must also contain a research

management and coordination plan, limited to 10 pages. The application must have a short abstract focusing on the goals of the research and an executive summary that includes research methodology and coordination plan for the research team. Attachments must include a brief biography for each investigator and external collaborator; a listing of all current and pending federal, state, and private support for each investigator listed in the budget; and letters of commitment from external collaborators not included in the budget. The required page and font format are: 8.5 inch x 11 inch page size; 1 inch top, bottom and right margins; 1.25 inch left margin; single, 1.5 or double line spacing; 12 pt font size for text and appropriate fonts for equations and symbolic notation. DOE is under no obligation to pay for any costs associated with the preparation or submission of applications.

The application must have the following ordered format:

1—Face page (DOE F 4650.2).

2—Table of contents.

3—Project abstract (400 word maximum).

4—Executive summary (3 page maximum).

5—Budget for each year and cumulative budget (DOE F 4620.1).

6—Budget explanation.

7—Cover page(s) with project title, names of project director and co-principal investigators and their affiliations. For multi-institutional applications, list the investigator names, their institutions, the yearly amount request from each institution and the yearly total request.

8—Research description (40 page maximum, including goals, background, research plan, previous results (if any), and research methodology).

9—Research management and coordination plan (10 page maximum).

10—References (including full titles).

11—Biographical sketches (3 page maximum per principal investigator and external collaborator).

12—Description of main facilities to be used in the research.

13—Current and pending support for each investigator listed in the budget(s).

14—Letters of commitment from external collaborators.

15—Federal certification pages for the submitting institution.

16—Appendix 1 (For multi-institutional applications only): original signed pages.

17—Appendix 2 (For multi-institutional applications only): combined budget sheets.

Specific Instructions for Multi-Institutional Applications

The leading institution project director/principal investigator is responsible for the management and coordination of the overall effort and for submitting the application. If the application were funded, each institution would receive a separate grant or contract and there would be no subcontracts. Therefore, each institution must prepare and sign its own face page (item 1 listed above), budget sheets and explanation (items 5–6 above) and federal certification pages (item 15 above). On the face page, each institution should identify its principal investigator and specify its amount request. The project director/principal investigator of the leading institution must electronically or otherwise submit the application using the following format: (item 1) leading institution face page citing the amount requested by the leading institution; (items 2–15) body of the application including the leading institution's budget and explanation (items 5–6); (item 16) Appendix 1, containing all original budgets, explanations and federal certification pages from the other institutions; and (item 17) Appendix 2, containing a spreadsheet that combines the budgets from the multiple institutions in an easily readable format.

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 December 10, 2002.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 02–31649 Filed 12–16–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–244–000, et al.]

California Independent System Operator Corporation, et al.; Electric Rate and Corporate Filings

December 9, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. California Independent System Operator Corporation

[Docket No. ER03–244–000]

Take notice that on December 5, 2002, the California Independent System Operator Corporation (ISO), submitted an informational filing in accordance with Article IX, Section B of the Stipulation and Agreement approved by the Commission on May 28, 1999, California Independent System Operator Corp., 87 FERC ¶ 61,250. ISO states that this provision requires the ISO to provide on a confidential basis to the Commission (I) information regarding any notice from an RMR Unit requesting a change of Condition; (ii) the date the chosen Condition will begin; and (iii) if the change is from Condition 2, the applicable level of Fixed Option Payment.

The ISO also states that unredacted copies of this filing have been served, subject to the applicable Non-Disclosure and Confidentiality Agreement in the RMR Contract, on the designated RMR contact persons at the California Public Utilities Commission and the California Electricity Oversight Board. The ISO adds that redacted copies of this filing have been served, subject to the Non-Disclosure and Confidentiality Agreement in the RMR Contract, on the designated RMR contact persons at the relevant Responsible Utilities and the relevant RMR Owners. Moreover, the ISO indicates that redacted copies of this filing have been served on the California Public Utilities Commission, the California Electricity Oversight Board, the California Energy Commission and all parties with effective Scheduling Coordinator Agreements under the ISO Tariff.

Comment Date: December 26, 2002.

2. PECO Energy Company

[Docket No. ER03–245–000]

Take notice that on December 5, 2002 PECO Energy Company (PECO) filed a Notice of Cancellation of FERC Electric Tariff, Volume 5 that was filed on July 9, 1996 in Docket No. OA96–13.

PECO requests that the cancellation be effective on February 3, 2003. PEPCO states that notice of the cancellation has been served to all 32 parties who have executed service under the Tariff.

Comment Date: December 26, 2002.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211

and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–31637 Filed 12–16–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL00–95–071, et al.]

San Diego Gas & Electric Company, et al.; Electric Rate and Corporate Filings

December 10, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. San Diego Gas & Electric Company, Complainant, v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange, Respondents

[Docket No. EL00–95–071]

Investigation of practices of the California Independent System Operator and the California Power Exchange.

[Docket No. EL00–98–060]

Public meeting in San Diego, California.

[Docket No. EL00–107–013]

Reliant Energy Power Generation, Inc., Dynegy Power Marketing, Inc., and Southern Energy California, L.L.C., Complainants, v. California Independent System Operator Corporation, Respondent.

[Docket No. EL00–97–007]

California Electricity Oversight Board, Complainant, v. all sellers of energy and ancillary services into the energy and ancillary services markets operated by the California Independent System Operator and the California Power Exchange, Respondents.

[Docket No. EL00–104–012]

California Municipal Utilities Association, Complainant, v. all jurisdictional sellers of energy and ancillary services into markets operated by the California Independent System Operator and the California Power Exchange, Respondents.

[Docket No. EL01–1–013]

Californians for Renewable Energy, Inc. (CARE), Complainant, v. Independent Energy Producers, Inc., and all sellers of energy and ancillary services into markets operated by the California Independent System Operator and the California Power Exchange; all scheduling coordinators acting on behalf of the above sellers; California Independent System Operator Corporation; and California Power Exchange Corporation, Respondents.

[Docket No. EL01–2–007]

Investigation of wholesale rates of public utility sellers of energy and ancillary services in the Western System Coordinating Council.

[Docket No. EL01–68–026]

Take notice that on December 2, 2002, the California Independent System, Operator Corporation (ISO) tendered for filing a compliance filing made in compliance with the Commission's October 31, 2002, Order on Compliance Filing and Compliance Report. The compliance filing revises section 5.11 of the ISO's tariff, in accordance with the October 31 Order.

The ISO states that this filing has been served on all entities that are on the official service list for these dockets.

Comment Date: January 2, 2002.

2. New York Independent System Operator, Inc.

[Docket Nos. ER00–3591–015, ER00–1969–017, ER00–3038–008, ER02–2081–002and EL00–70–009]

Take notice that on December 2, 2002, the New York Independent System Operator, Inc. (NYISO) tendered for filing a compliance filing in accordance with the Commission's October 31, 2002, order in the above-captioned proceedings.

The NYISO has served a copy of this filing upon all parties designated on the official service lists compiled by the Secretary in these proceedings.

Comment Date: December 23, 2002.

3. Southern California Edison Company

[Docket No. ER03–247–000]

Take notice that on December 6, 2002, Southern California Edison Company (SCE) tendered for filing a three-party letter agreement between SCE, Pure Power Energy Company, LLC (Pure Power Energy), and Wintec Energy, Ltd. (Wintec).

The purpose of the letter agreement is for SCE, Pure Power Energy and Wintec to agree upon a short-term arrangement pursuant to which SCE will engineer, design, and install additional protection equipment necessary to interconnect the demonstration project at SCE's Buckwind Substation; and for SCE to provide short-term, temporary interconnection service via the existing interconnection facilities at Buckwind Substation. SCE respectfully requests that the letter agreement become effective on November 29, 2002.

Copies of this filing were served upon the Public Utilities Commission of the State of California, Pure Power Energy, and Wintec.

Comment Date: December 27, 2002.

4. Pacific Gas and Electric Company

[Docket No. ER03–248–000]

Take notice that on December 6, 2002, Pacific Gas and Electric Company (PG&E) tendered for filing a revised Appendix B to service agreement no. 42 for Network Integration Transmission Service (NITS) and an agreement for installation or allocation of special facilities, both between PG&E and the San Francisco Bay Area Rapid Transit District (BART).

The revised NITS Appendix B reflects changes due to the BART-San Francisco International Airport Extension Project. The SFA permits PG&E to recover the ongoing costs associated with owning, operating and maintaining certain special facilities required by BART for interconnection with PG&E's system. As detailed in the special facilities agreement, PG&E proposes to charge BART an equivalent one-time payment cost of ownership charge equal to the rates for transmission-level, customer-financed facilities in PG&E's currently effective electric rule 2, as filed with the California Public Utilities Commission (CPUC). PG&E's currently effective rate of 0.31% for transmission-level, customer-financed special facilities is

contained in the CPUC's advice letter 1960-G/1587-E, effective August 5, 1996, a copy of which is included as attachment 3 of this filing.

PG&E has requested certain waivers. Copies of this filing have been served upon BART, the California Public Utilities Commission and the California Independent System Operator Corporation.

Comment Date: December 27, 2002.

5. Illinois Power Company

[Docket No. ER03–249–000]

Take notice that on December 6, 2002, Illinois Power Company (Illinois Power), filed an interconnection and operating agreement entered into with Franklin County Power of Illinois, LLC and subject to Illinois Power's open access transmission tariff.

Illinois Power requests an effective date of November 17, 2002, for the agreement and seeks a waiver of the Commission's notice requirement. Illinois Power has served a copy of the filing on Franklin County Power of Illinois, LLC.

Comment Date: December 27, 2002.

6. Northern Indiana Public Service Company

[Docket No. ER03–250–000]

Take notice that on December 6, 2002, Northern Indiana Public Service Company (Northern Indiana) filed a service agreement for network integration transmission service, a network operating agreement, and an electric distribution service agreement with the Indiana Municipal Power Agency (IMPA).

Northern Indiana has requested an effective date of February 1, 2003. Copies of this filing have been sent to IMPA, the Indiana Utility Regulatory Commission, and the Indiana Office of Utility Consumer Counselor.

Comment Date: December 27, 2002.

7. CinCap IX, LLC.

[Docket No. ER03–251–000]

Take notice that on December 6, 2002, Cincap IX, LLC tendered for filing a notice of cancellation, pursuant to 18 CFR 35.15, giving notice of cancellation of its market-based electric tariff filed with the Commission.

Comment Date: December 27, 2002.

8. Tampa Electric Company.

[Docket No. ER03–252–000]

Take notice that on December 6, 2002, Tampa Electric Company (Tampa Electric) tendered for filing notices of cancellation of a power sales agreement with Hardee Power Partners Limited (HPP) and two related transmission service agreements with HPP under Tampa Electric's open access transmission tariff. Tampa Electric proposes that the cancellations be made effective on January 1, 2003.

Copies of the filing have been served on HPP and the Florida Public Service Commission.

Comment Date: December 27, 2002.

9. PJM Interconnection, L.L.C.

[Docket No. ER03–254–000]

Take notice that on December 6, 2002, PJM Interconnection, L.L.C. (PJM), submitted for filing amendments to the amended and restated PJM operating agreement (operating agreement) to amend the ''Membership Requirements'' provisions (1) to delete the requirement that the additional member agreements executed by new members of PJM be filed with the FERC; and (2) to permit entities to become members of PJM effective as of the date the supplemental membership agreements are countersigned by the president of PJM rather than the date specified by the Commission. A new schedule 12 also is added to the operating agreement listing all current of PJM members.

Pursuant to section 35.15 of the Commission's regulations, 18 CFR 35.15, and sections 4.1(C) and 18.18.2 of the operating agreement, PJM also submits for filing notice that several entities have withdrawn their memberships in PJM and a notice of cancellations for the additional member agreements that have FERC rate schedule designations and are being cancelled due to the PJM member withdrawals.

Copies of this filing were served upon all PJM members and each state electric utility regulatory commission in the PJM region.

Comment Date: December 27, 2002.

10. Midwest Energy, Inc.

[Docket No. ES03–15–000]

Take notice that on December 3, 2002, Midwest Energy, Inc. submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to incur up to and including $37,714,286 of debt and requesting an exemption from the Commission's competitive bidding requirements in order to purchase certain regulated electric transmission and distribution systems from Westar Energy, Inc.

Comment Date: January 2, 2003.

11. ISO New England Inc.

[Docket No. OA97–237–000]

Take notice that on December 5, 2002, ISO New England Inc. tendered for filing with the Federal Energy Regulatory Commission (Commission) its ''Quarterly Report for Regulators,'' as required by New England Power Pool Market rules and procedures 17, for the fourth quarter.

Comment Date: December 26, 2002

Standard Paragraph

Any person desiring to be hear or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 18 CFR 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–31636 Filed 12–16–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Meeting, Notice of Vote, Explanation of Action Closing Meeting and List of Persons to Attend

December 11, 2002.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

Agency Holding Meeting: Federal Energy Regulatory Commission.

Date and Time: November 20, 2002 (Within a relatively short time before or after the regular Commission Meeting).

Place: Hearing Room 6, 888 First Street, NE., Washington, DC 20426.

Status: Closed.

Matters to be Considered: Non-Public Investigations and Inquiries and Enforcement Related Matters.

For Further Information Contact: Magalie R. Salas, Secretary, Telephone (202) 502–8400.

Chairman Wood and Commissioners Massey and Brownell voted to hold a closed meeting on December 18, 2002. The certification of the General Counsel explaining the action closing the meeting is available for public inspection in the Commission's Public Reference Room at 888 First Street, NE., Washington, DC 20426.

The Chairman and the Commissioners, their assistants, the Commission's Secretary and her assistant, the General Counsel and members of her staff, and a stenographer are expected to attend the meeting. Other staff members from the Commission's program offices who will advise the Commissioners in the matters discussed will also be present.

Magalie R. Salas,

Secretary.

[FR Doc. 02–31816 Filed 12–13–02; 11:29 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting Notice

December 11, 2002.

The following notice of meeting is published pursuant to section 3(A) of the Government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: December 18, 2002, 10 a.m.

PLACE: Room 2C, 888 First Street, NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

NOTE: Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Magalie R. Salas, Secretary, Telephone (202) 502–8400.

For a recording listing items stricken from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

813th—Meeting, December 18, 2002, Regular Meeting, 10 a.m.

Administrative Agenda

A–1.
DOCKET# AD02–1 000, Agency Administrative Matters

A–2.
DOCKET# AD02–7, 000, Customer Matters, Reliability, Security and Market Operations

A–3.
DOCKET# AD03–2, 000 Report on Market Monitoring Workshop

Markets, Tariffs and Rates—Electric

E–1.
DOCKET# EC03–14, 000 Ameren Services Company, FirstEnergy Corp., Northern Indiana Public Service Company, National Grid USA, and Midwest Independent Transmission System Operator, Inc.
OTHER#S ER02–2233 001 Ameren Services Company, FirstEnergy Corp., Northern Indiana Public Service Company, National Grid USA, and Midwest Independent Transmission System Operator, Inc.

E–2. DOCKET# ER03–86, 000, Midwest Independent Transmission System Operator, Inc.

E–3.
DOCKET# ER02–1420, 006, Midwest Independent Transmission System Operator, Inc.
OTHER#S ER02–1420, 003, Midwest Independent Transmission System Operator, Inc.; ER02–1420 004, Midwest Independent Transmission System Operator, Inc.

E–4.
DOCKET# ER03–83, 000, TRANSLink Development Company, LLC

E–5.
DOCKET# RT01–35, 009, Avista Corporation, Bonneville Power Administration, Idaho Power Company, Nevada Power Company, North Western Energy, L.L.C., PacifiCorp, Portland General Electric Company, Puget Sound Energy, Inc., Sierra Pacific Power Company, and British Columbia Hydro and Power Authority

E–6.
DOCKET# RT02–1, 003, Arizona Public Service Company, El Paso Electric Company, Public Service Company of New Mexico and Tucson Electric Power Company
OTHER#S EL02–9, 001, WestConnect RTO, LLC

E–7. OMITTED

E–8.
DOCKET# EC02–113, 000, Cinergy Services, Inc., on behalf of PSI Energy, Inc., CinCap Madison, LLC and CinCap VII, LLC

E–9.
DOCKET# EL02–60, 003, *Public Utilities Commission of the State of California* v. *Sellers of Long Term Contracts to the California Department of Water Resources*
OTHER#S EL02–62, 003, *California Electricity Oversight Board* v. *Sellers of Energy and Capacity Under Long-Term Contracts with the California Department of Water Resources*

E–10.
DOCKET# RT01–2, 001, PJM Interconnection L.L.C., Allegheny Electric Cooperative, Inc., Atlantic City Electric Company, Baltimore Gas & Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company Metropolitan Edison Company, PECO Energy Company, Pennsylvania Electric Company, PPL Electric Utilities Corporation, Potomac Electric Power Company, Public Service Electric & Gas Company and UGI Utilities Inc.
OTHER#S RT01–2, 002, PJM Interconnection L.L.C., Allegheny Electric Cooperative, Inc., Atlantic City Electric Company, Baltimore Gas & Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company Metropolitan Edison Company, PECO Energy Company, Pennsylvania Electric Company, PPL Electric Utilities Corporation, Potomac Electric Power Company, Public Service Electric & Gas Company and UGI Utilities Inc.

E–11.
DOCKET# OA97–261, 003, Pennsylvania-New Jersey-Maryland Interconnection
OTHER#S EC96–28, 004, Atlantic City Electric Company, Baltimore Gas and Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power & Light Company, Potomac Electric Power Company and Public Service Electric and Gas Company; EC96–29, 004, PECO Energy Company; EL96–69, 004, Atlantic City Electric Company, Baltimore Gas and Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power & Light Company, Potomac Electric Power Company and Public Service Electric and Gas Company; ER96–2516, 004, Atlantic City Electric Company, Baltimore Gas and Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power & Light Company, Potomac Electric Power Company and Public Service Electric and Gas Company; ER96–2668, 004, PECO Energy Company; EC97–38, 002, Pennsylvania Electric Company, Pennsylvania Power & Light Company, Potomac Electric Power Company, Public Service Electric and Gas Company, Atlantic City Electric

Company, Baltimore Gas and Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, and Metropolitan Edison Company; EL97–44, 002, Pennsylvania-New Jersey-Maryland Interconnection Restructuring; OA97–678, 002, PJM Interconnection, L.L.C.; ER97–1082, 005, Pennsylvania-New Jersey-Maryland Interconnection; ER97–3189, 031, Atlantic City Electric Company, Baltimore Gas and Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, and Metropolitan Edison Company; ER97–3273 002 Pennsylvania Electric Company, Pennsylvania Power & Light Company, Potomac Electric Power Company, Public Service Electric and Gas Company, and Pennsylvania-New Jersey-Maryland Interconnection Restructuring

E–12.
DOCKET# PL03–1, 000, Proposed Pricing Policy for Transmission Independence

E–13.
DOCKET# ER02–2014, 000, Entergy Services, Inc.
OTHER#S ER02–2014, 003, Entergy Services, Inc. ER02–2014 004 Entergy Services, Inc.

E–14.
DOCKET# EC02–91, 000, UBS AG
OTHER#S EL02–105, 000, UBS AG; EC02–120, 000, Bank of America, N.A.; EL02–130, 000, Bank of America, N.A.

E–15.
DOCKET# ER03–147, 000, ISO New England Inc.

E–16.
DOCKET# EL01–10, 000, Puget Sound Energy, Inc.
OTHER#S EL01–10, 001, Puget Sound Energy, Inc.

E–17.
DOCKET# EL03–19, 000, *Southern California Edison Company* v. *Enron Generating Facilities:* Victory Garden Phase IV Partnership, Sky River Partnership, Cabazon Power Partners LLC, Zond Wind System Partners, Ltd. Series 85–A and Zond Wind System Partners, Ltd. Series 85–B
OTHER#S QF85–686, 002, *Southern California Edison Company* v. *Enron Generating Facilities:* Victory Garden Phase IV Partnership, Sky River Partnership, Cabazon Power Partners LLC, Zond Wind System Partners, Ltd. Series 85–A and Zond Wind System Partners, Ltd. Series 85–B; QF85–687, 002, *Southern California Edison Company* v. *Enron Generating Facilities:* Victory Garden Phase IV Partnership, Sky River Partnership, Cabazon Power Partners LLC, Zond Wind System Partners, Ltd. Series 85–A and Zond Wind System Partners, Ltd. Series 85–B; QF87–365, 005, Zond Windsystems Holding Company; QF90–43 004 Victory Garden Phase IV Partnership; QF90–43, 005, *Southern California Edison Company* v. *Enron Generating Facilities:* Victory Garden Phase IV Partnership, Sky River Partnership, Cabazon Power Partners LLC, Zond Wind System Partners, Ltd. Series 85–A and Zond Wind System Partners, Ltd. Series 85–B; QF91–59, 005, Sky River Partnership; QF91–59, 006, *Southern California Edison Company* v. *Enron Generating Facilities:* Victory Garden Phase IV Partnership, Sky River Partnership, Cabazon Power Partners LLC, Zond Wind System Partners, Ltd. Series 85–A and Zond Wind System Partners, Ltd. Series 85–B; QF95–186, 005, *Southern California Edison Company* v. *Enron Generating Facilities:* Victory Garden Phase IV Partnership, Sky River Partnership, Cabazon Power Partners LLC, Zond Wind System Partners, Ltd. Series 85–A and Zond Wind System Partners, Ltd. Series 85–B; EL03–17, 000, Investigation of Certain Enron-Affiliated QFs

E–18.
DOCKET# OA97–237, 000, New England Power Pool
OTHER#S OA97–608, 000, New England Power Pool; ER97–1079, 000, New England Power Pool; ER97–3574, 000, New England Power Pool; ER97–4421, 000, New England Power Pool; ER98–499, 000, NEW England Power Pool;

E–19.
DOCKET# ER02–1326, 001, PJM Interconnection L.L.C.
OTHER# ER02–1326, 002, PJM Interconnection L.L.C.

E–20.
DOCKET# ER02–2015, 002, Southern Company Services, Inc.

E–21.
DOCKET# ER96–399, 000, Northern Indiana Public Service Company, Inc.

E–22.
DOCKET# ER02–648, 000, Sithe New Boston, LLC
OTHER# ER02–648, 001, Sithe New Boston, LLC

E–23.
OMITTED

E–24.
DOCKET# ER00–1053, 006, Maine Public Service Company
OTHER# ER00–1053, 007, Maine Public Service Company

E–25.
DOCKET# ER03–140, 000, Concord Electric Company, Exeter & Hampton Electric Company, and Unitil Energy Systems, Inc.

E–26.
DOCKET# ER02–2463, 000, ISO New England Inc.
OTHER# ER02–2463, 001, ISO New England Inc.

E–27.
DOCKET# ER02–994, 003, Duke Energy Corporation

E–28.
DOCKET# EL98–36, 002, *Aquila Power Corporation* v. *Entergy Services, Inc.,* Entergy Arkansas, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., Entergy New Orleans, Inc., and Entergy Gulf States, Inc.

E–29.
DOCKET# EL01–68, 013, Investigation of Wholesale Rates of Public Utility Sellers of Energy and Ancillary Services in the Western Systems Coordinating Council

E–30.
DOCKET# RM01–12, 001, Remedying Undue Discrimination Through Open Access Transmission Service and Standard Electricity Market Design

E–31.
DOCKET# ER02–2170, 000, Aquila, Inc.
OTHER# ER02–2170, 001, Aquila, Inc.

E–32.
DOCKET# ER02–2234, 002, California Power Exchange Corporation
OTHER# ER02–2234, 003, California Power Exchange Corporation; ER02–2234, 004, California Power Exchange Corporation

E–33.
DOCKET# ER03–93, 000, El Paso Electric Company

E–34.
OMITTED

E–35.
OMITTED

E–36.
DOCKET# EL00–62, 053, New England Power Pool and ISO New England, Inc.
OTHER# EL00–62, 052, New England Power Pool and ISO New England, Inc.; ER02–2330, 001, New England Power Pool and ISO New England, Inc.; ER02–2330, 002, New England Power Pool and ISO New England, Inc.; ER02–2330, 003, New England Power Pool and ISO New England, Inc.

E–37.
DOCKET# RM00–7, 007, Revision of Annual Charges Assessed to Public Utilities

E–38.
OMITTED

E–39.
DOCKET# EL03–10, 000, *Northeast Utilities Service Company* v. *NRG Energy, Inc.*

E–40.
DOCKET# RM01–8, 003, Filing Requirements for Electric Utility Service Agreements

E–41.
DOCKET# OA02–9, 000, CED Rock Springs, Inc., and Rock Springs Generation, LLC

E–42.
OMITTED

E–43.
DOCKET# EL03–14, 000, City of Azusa, California
OTHER# EL00–105, 006, City of Vernon, California; ER00–2019, 005, California Independent System Operator Corporation; EL03–15, 000, City of Anaheim, California; EL03–20, 000, City of Riverside, California; EL03–21, 0003, City of Banning, California

E–44.
OMITTED

E–45.
OMITTED

E–46.
DOCKET# EL02–6, 000, *Dynegy Midwest Generation, Inc., and Dynegy Power Marketing, Inc.,* v. *Commonwealth Edison Company*

E–47.
DOCKET# EL02–108, 000, *Truckee Donner Public Utility District* v. *Idaho Power Company, IDACORP Energy, L.P., and IDACORP, Inc.*

E–48.
OMITTED
E–49.
DOCKET# EL01–23, 000, *Dynegy Power Marketing, Inc., El Segundo Power, LLC, Long Beach Generation LLC, Cabrillo Power I LLC, and Cabrillo Power II LLC* v. *California Independent System Operator Corporation*
E–50.
DOCKET# EL03–16, 000, PPL Electric Utilities Corporation
E–51.
DOCKET# ER02–250, 000, California Independent System Operator Corporation
OTHER# ER02–479, 000, Pacific Gas and Electric Company; ER02–527, 003, California Independent System Operator Corporation
E–52.
DOCKET# EL03–11, 000, *Wisvest-Connecticut, LLC* v. *ISO New England, Inc.*
E–53.
OMITTED
E–54.
OMITTED
E–55.
DOCKET# EL00–105, 006, City of Vernon, California
OTHER# ER00–2019, 005, California Independent System Operator Corporation
E–56.
OMITTED
E–57.
OMITTED
E–58.
DOCKET# ER02–851, 005, Southern Company Services, Inc.
OTHER# ER02–851, 006, Southern Company Services, Inc.
E–59.
DOCKET# ER02–925, 000, Southern California Edison Company
OTHER# ER02–925, 001, Southern California Edison Company; ER02–925, 002, Southern California Edison Company
E–60.
DOCKET# RM02–9, 001, Electronic Filing of Form 1, and Elimination of Certain Designated Schedules in Form Nos. 1 and 1–F
E–61.
DOCKET# EL01–50, 001, *KeySpan-Ravenswood, Inc.* v. *New York ISO*

Miscellaneous Agenda

M–1.
DOCKET# PL02–5, 000, Statement of Administrative Policy on Separation of Function
M–2.
DOCKET# RM02–10, 000, Electronic Registration

Markets, Tariffs and Rates—Gas

G–1.
OMITTED
G–2.
OMITTED
G–3.
DOCKET# GT02–35, 002, Tennessee Gas Pipeline Company
G–4.
DOCKET# RP00–467, 001, Midwestern Gas Transmission Company
OTHER#S RP00–467, 000, Midwestern Gas Transmission Company; RP01–19, 000, Midwestern Gas Transmission Company; RP01–19, 001, Midwestern Gas Transmission Company
G–5.
DOCKET# RP01–205, 003, Southern Natural Gas Company
G–6.
DOCKET# RP03–17, 000, Missouri Interstate Gas, LLC
G–7.
DOCKET# RP02–114, 001, Tennessee Gas Pipeline Company
G–8.
DOCKET# RP02–361, 001, Gulfstream Natural Gas System, L.L.C.
OTHER#S RP02–361, 003, Gulfstream Natural Gas System, L.L.C.; RP02–361, 004, Gulfstream Natural Gas System, L.L.C.
G–9.
DOCKET# RP02–382, 002, Crossroads Pipeline Company
OTHER#S RP02–382, 001, Crossroads Pipeline Company
G–10.
OMITTED
G–11.
OMITTED
G–12.
OMITTED
G–13.
DOCKET# RP00–341, 002, Egan Hub Partners, L.P.
OTHER#S RP01–48, 001, Egan Hub Partners, L.P.
G–14.
DOCKET# RP99–274, 006, Kern River Gas Transmission Company
OTHER#S RP99–274, 007, Kern River Gas Transmission Company
G–15.
OMITTED
G–16.
DOCKET# RP01–612, 003, ANR Pipeline Company
OTHER#S RP01–612, 000, ANR Pipeline Company; RP01–612, 001, ANR Pipeline Company; RP01–612, 002, ANR Pipeline Company
G–17.
DOCKET# RP02–396, 001, Great Lakes Gas Transmission Limited Partnership
G–18.
DOCKET# RP00–336, 007, El Paso Natural Gas Company
G–19.
DOCKET# RP00–497, 001, Viking Gas Transmission Company
OTHER#S RP01–47, 001, Viking Gas Transmission Company; RP00–497, 000, Viking Gas Transmission Company; RP01–47, 002, Viking Gas Transmission Company; RP01–47, 003, Viking Gas Transmission Company; RP01–47, 000, Viking Gas Transmission Company
G–20.
DOCKET# RP02–196, 004, Reliant Energy Gas Transmission Company
OTHER#S RP02–196, 000, Reliant Energy Gas Transmission Company; RP02–196, 001, Reliant Energy Gas Transmission Company; RP02–196, 002, Reliant Energy Gas Transmission Company; RP02–196, 003, Reliant Energy Gas Transmission Company
G–21.
OMITTED
G–22.
OMITTED
G–23.
OMITTED
G–24.
OMITTED
G–25.
DOCKET# RP02–383, 002, Columbia Gas Transmission Corporation
OTHER#S RP02–383, 001, Columbia Gas Transmission Corporation
G–26.
DOCKET# RP02–384, 002, Columbia Gulf Transmission Company
OTHER#S RP02–384, 001, Columbia Gulf Transmission Company
G–27.
OMITTED
G–28.
OMITTED
G–29.
DOCKET# RP00–495, 002, Texas Gas Transmission Corporation
OTHER#S RP01–97, 001, Texas Gas Transmission Corporation
G–30.
DOCKET# RP00–315, 000, Gulf South Pipeline Company, LP.
G–31.
DOCKET# RP03–66, 000, MIGC, INC.
G–32.
DOCKET# RP02–533, 000, Kinder Morgan Interstate Gas Transmission LLC
G–33.
OMITTED
G–34.
DOCKET# RM03–3, 000, Elimination of Paper Filing Requirements of Form Nos. 2, 2A and 6
G–35.
DOCKET# RP02–365, 000, Northern Natural Gas Company
G–36.
DOCKET# RP03–41, 000, *e prime, inc* v. *PG&E Transmission, Northwest Corporation*
G–37.
OMITTED
G–38.
DOCKET# PR03–1, 000, ONEOK Field Services Company
G–39.
DOCKET# RP99–166, 000, Stingray Pipeline Company, L.L.C.
G–40.
DOCKET# RP99–381, 000, Wyoming Interstate Company, Ltd.
G–41.
DOCKET# RP03–46, 000, Enbridge Pipelines (UTOS) L.L.C.
G–42.
OMITTED
G–43.
OMITTED
G–44.
DOCKET# PR02–21, 000, Duke Energy Guadalupe Pipeline, Inc
OTHER#S PR02–21, 001, Duke Energy Guadelupe Pipeline, Inc
G–45.

DOCKET# PR02–17, 001, Gulf States Pipeline Corporation
OTHER#S PR02–17, 000, Gulf States Pipeline Corporation
G–46.
DOCKET# RP95–197, 047, Transcontinental Gas Pipe Line Corporation
OTHER#S RP97–71, 039, Transcontinental Gas Pipe Line Corporation
G–47.
DOCKET# RP02–232, 001, Great Lakes Gas Transmission Limited Partnership
G–48.
OMITTED
G–49.
DOCKET# GT95–11, 002, Williams Gas Pipelines Central, Inc.
OTHER#S RI83–9, 003, Colorado Interstate Gas Company and Northern Natural Gas Company; GP83–11, 002, Colorado Interstate Gas Company and Northern Natural Gas Company
G–50.
DOCKET# RP98–52, 000, Williams Gas Pipelines Central, Inc.
OTHER#S GP98–3, 000, OXY USA Inc.; GP98–4, 000, Amoco Production Co.; GP98–13, 000, ExxonMobil; GP98–16, 000, Union Pacific Resources Inc.; SA98–33, 000, Pioneer Natural Resources USA, Inc.
G–51.
DOCKET# RP98–40, 000, Panhandle Eastern Pipe Line Company
OTHER#S GP98–6, 000, Anadarko Petroleum Corp. GP98–7, 000, OXY USA Inc.; GP98–27, 000, Oneok Exploration Co.; GP98–32, 000, Anadarko Production Co.; SA99–7, 000, Charlotte Hill Gas Co.; SA99–14, 000, Green Wolf Oil Co.
G–52.
DOCKET# GP99–15, 000, Burlington Resources Oil & Gas Company
OTHER#S RP98–39, 000, Northern Natural Gas Company; SA98–101, 000, Continental Energy
G–53.
DOCKET# RP98–53, 000, Kinder Morgan Interstate Gas Transmission L.L.C.
OTHER#S GP98–29, 000, ONEOK Resources Co.
G–54.
DOCKET# SA98–96, 000 Partnership Properties Co.
OTHER# SA98–4, 000 Edgar W. White; RP98–54, 000, Colorado Interstate Gas Company
G–55.
OMITTED
G–56.
DOCKET# RP98–54, 000, Colorado Interstate Gas Company
G–57.
DOCKET# RP98–39, 000, Northern Natural Gas Company
G–58.
DOCKET# RP98–39, 024, Northern Natural Gas Company
OTHER# SA98–7, 000, Dorchester Hugoton, Ltd.; RP98–40, 030, Panhandle Eastern Pipe Line Company; RP98–54, 034, Colorado Interstate Gas Company; SA98–100, 000, IMC Global Inc.; SA99–1, 000, Burlington Resources Oil & Gas Company; GP99–16, 000, Joel T. Strohl, Scott T. Strohl, and Sid Strohl; GP99–17, 000, Joel T. Strohl, Scott T. Strohl, and Sid Strohl; GP99–18, 000, Kansas Independent Oil & Gas Association, a/k/a Robert E. Krehbiel
G–59.
DOCKET# RP03–104, 000, Colorado Interstate Gas Company
G–60.
DOCKET# RP95–197, 048, Transcontinental Gas Pipe Line Corporation
OTHER# RP95–197, 049, Transcontinental Gas Pipe Line Corporation; RP97–71, 040, Transcontinental Gas Pipe Line Corporation; RP03–84, 000, Transcontinental Gas Pipe Line Corporation

Energy Projects—Hydro

H–1.
DOCKET# P–2566, 031, Consumers Energy Company
H–2.
OMITTED
H–3.
DOCKET# DI02–2, 001, Sheldon Jackson College
H–4.
OMITTED
H–5.
DOCKET# P–11162, 005, Wisconsin Power & Light Company

Energy Projects—Certificates

C–1.
DOCKET# CP02–374, 000, Hackberry LNG Terminal, LLC
OTHER# CP02–376, 000, Hackberry LNG Terminal, LLC; CP02–377, 000, Hackberry LNG Terminal, LLC; CP02–378, 000, Hackberry LNG Terminal, LLC
C–2.
DOCKET# CP02–60, 001, CMS Trunkline LNG Company, LLC
OTHER# CP02–60, 000, CMS Trunkline LNG Company, LLC
C–3.
DOCKET# CP02–142, 000, Columbia Gas Transmission Corporation
OTHER# CP01–260, 000, Columbia Gas Transmission Corporation; CP01–260, 001, Columbia Gas Transmission Corporation; CP02–142, 001, Columbia Gas Transmission Corporation
C–4.
DOCKET# CP02–116, 000, Tennessee Gas Pipeline Company
OTHER# CP02–117, 000, Tennessee Gas Pipeline Company
C–5.
DOCKET# CP02–204, 000, Transcontinental Gas Pipe Line Corporation
C–6.
DOCKET# CP02–391, 000, Natural Gas Pipeline Company of America
C–7.
DOCKET# CP03–8, 000, Regent Resources Ltd.
C–8.
OMITTED
C–9.
DOCKET# CP02–417, 000, Colorado Interstate Gas Company
OTHER#S CP02–424, 000, Westpan Resources L.P.
C–10.
DOCKET# CP02–434, 000, ANR Pipeline Company
C–11.
DOCKET# CP01–439, 002, Columbia Gas Transmission Corporation
C–12.
DOCKET# CP02–399, 001, Missouri Interstate Gas, LLC
OTHER# CP02–400, 001, Missouri Interstate Gas, LLC; CP02–401, 001, Missouri Interstate Gas, LLC

Magalie R. Salas,

Secretary.

[FR Doc. 02–31817 Filed 12–13–02; 11:29 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

December 6, 2002.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication should serve the document on all parties listed on the official service list for the applicable

proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications recently received in the Office of the Secretary. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Exempt

Docket No.	Date filed	Presenter or requester
1. Project No. 2042–013	11–25–02	Lloyd K. Harding.
2. RP00–241–000	11–29–02	R. D. Milam.
3. CP02–396–000	12–02–02	Edward L. Smith, Jr.
4. RP00–241–000	12–02–02	Diane Pibbs.
5. RP00–241–000	12–03–02	Mark G. Papa, Wayne Gibbons.
6. Project No. 1494–220	12–03–02	Larry D. Hogue, P.E.
7. CP01–415–000	12–03–02	Ellen Fulcher.
8. RP00–241–000	12–03–02	F. Brian Bradstreet.
9. Project No. 2017–011	12–05–02	Hon. Ron W. Goode.
10. Project No. 2726–000	12–06–02	Fred Winchell.

Magalie R. Salas,

Secretary.

[FR Doc. 02–31579 Filed 12–16–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

FRL–7422–7]

Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or Superfund, Section 104(k)(6); Announcement of Proposal Deadlines for the Competition for the 2003 National Brownfields Job Training Grants

AGENCY: Environmental Protection Agency.

ACTION: Notice of the availability of Brownfields grant application guidelines and deadlines for submissions of proposals.

SUMMARY: The Environmental Protection Agency (EPA) will begin to accept proposals for the National Brownfields Job Training Grants on December 17, 2002. Proposals are due on January 24, 2003. This notice provides information on how to obtain the application guidelines.

Funding for the brownfields job training grants is authorized under section 104(k)(6) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, (CERCLA), 42 U.S.C. 9604(k). These grants provide training to facilitate site assessment, remediation of brownfields sites, or site preparation. (See Catalogue of Federal Domestic Assistance Number: 66.811; a revised CFDA number entry has been submitted for approval). Eligibility for Brownfields job training grants is limited to ''eligible entities'' as defined in section 104(k)(1) of CERCLA and non profit organizations.

The National brownfields job training grants will be awarded on a competitive basis using a one step proposal selection process. EPA expects to make up 10 Brownfields job training grant awards in fiscal year 2003, contingent upon the availability of funds. The maximum funding level for each grant will be $ 200,000. Applicants are encouraged to contact and, if possible, meet with EPA Regional Brownfields Contacts.

DATES: This action is effective as of December 17, 2002. The application deadline for Proposals for the 2003 job training grants is January 24, 2003. All Proposals must be postmarked by USPS or delivered to U.S. EPA Headquarters no later than January 24, 2003, and a duplicate copy sent to the appropriate U.S. EPA Regional Office.

Obtaining Proposal Guidelines: The proposal guidelines are available via the Internet: *http://www.epa.gov/brownfields/.*

Copies of the Proposal Guidelines will also be mailed upon request. Requests should be made by calling the U.S. EPA Call Center at the following numbers:

Washington, DC Metro Area at 703–412–9810

Outside Washington, DC Metro at 1–800–424–9346

TDD for the Hearing Impaired at 1–800–553–7672

In order to ensure that the Guidelines are received in time to be used in the preparation of the proposal, applicants should request a copy as soon as possible and in any event no later than seven (7) working days before the proposal due date. Applicants who request copies after that date might not receive the proposal guidelines in time to prepare and submit a responsive proposal.

ADDRESSES: Mailing addresses for U.S. EPA Regional Offices and U.S. EPA Headquarters are provided in the Proposal Guidelines.

FOR FURTHER INFORMATION CONTACT: The U.S.EPA's Office of Solid Waste and Emergency Response, Office of Brownfields Cleanup and Redevelopment, (202) 566–2777.

SUPPLEMENTARY INFORMATION: On January 11, 2002, President George W. Bush signed into law the Small Business Liability Relief and Brownfields Revitalization Act. This act amended the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA) to authorize federal financial assistance for brownfields revitalization, including grants for assessment, cleanup, and job training. Funding for the brownfields job training grants is authorized under section 104(k)(6) of CERCLA, 42 U.S.C. 9604(k)(6). Eligibility for Brownfields job training grants is limited to ''eligible entities'' as defined in section 104(k)(1) of CERCLA and non profit organizations.

Eligible governmental entities include a General Purpose Unit of Local Government; Land Clearance Authority or other quasi-governmental entity that operates under the supervision and control of, or as an agent of, a general purpose unit of local government; Governmental Entity Created by State Legislature; Regional council or group of general purpose units of local government; Redevelopment Agency

that is chartered or otherwise sanctioned by a state; State; Indian Tribe other than in Alaska; and Alaska Native Regional Corporation, Alaska Native Village Corporation, and Metlakatla Indian Community. In addition, Intertribal Consortia, other than those composed of ineligible Alaskan tribes, are eligible to apply for the brownfields job training grants.

For the purposes of determining a nonprofit organization's eligibility for the brownfields job training grant program, EPA will use the definition of nonprofit organizations contained in section 4(6) of the Federal Financial Assistance Management Improvement Act of 1999, Public Law 106–107. The term ''nonprofit organization'' means any corporation, trust, association, cooperative, or other organization that is operated primarily for scientific, educational, service, charitable, or similar purpose in the public interest; is not organized primarily for profit; and uses net proceeds to maintain, improve, or expand the operation of the organization.

To ensure a fair selection process, evaluation panels consisting of EPA Regional and Headquarters staff and other federal agency representatives will assess how well the proposals meet the selection criteria outlined in the application booklet, Proposal Guidelines for Brownfields Job Training Grants (November 2002). Proposals will be evaluated and ranked by National Evaluation Panels. The evaluation panels will review the proposals carefully and assess each response based on how well it addresses the criteria, briefly outlined below. There are two different types of criteria—threshold criteria and ranking criteria. Applicants must meet the threshold criteria to be considered for an award of a grant. Responses to the evaluation criteria will be utilized to determine whether to make an award and the amount of funds to be awarded.

Job Training Grants

Threshold Criteria

A. Location of Project
B. Applicant Eligibility
C. Proof of Non-Duplication of effort

Ranking Criteria

A. Community Need (a maximum of 10 points may be received for this criterion)
B. Institutional Capacity (a maximum of 15 points may be received for this criterion)
C. Training Program Objectives and Plans (a maximum of 20 points may be received for this criterion)
D. Budget, Schedule and Leveraging (a maximum of 25 points may be received for this criterion)
E. Community Involvement and Partnerships (a maximum of 20 points may be received for this criterion)
F. Measures of Success (a maximum of 10 points may be received for this criterion)

Final selections will be made by EPA senior management after considering the ranking of Final Proposals by the National Evaluation Panels EPA decisions may take into account other statutory and policy considerations, such as urban and non-urban distribution and other geographic factors; compliance with the statutory petroleum funding allocation; designation as a Federal Empowerment Zone, Enterprise Community, or Renewal Community; population; and whether the applicant is a federally recognized Indian tribe. There is no guarantee of an award.

Dated: December 5, 2002.

Sven Kaiser,

Acting Director, Office of Brownfields Cleanup and Redevelopment, Office of Solid Waste and Emergency Response.

[FR Doc. 02–31677 Filed 12–16–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7423–2]

Chesapeake Bay Program

The U.S. Environmental Protection Agency's Chesapeake Bay Program Office, on behalf of the partners of the Chesapeake Bay Program, announces an extension to the comment period for the Draft Chesapeake Bay Comprehensive Oyster Management Plan until January 15, 2003. The draft plan addresses both habitat restoration and oyster fishery management. It emphasizes biologically based, strategic decision making, enables an adaptive management approach, and provides for better coordination among key agencies, organizations, and institutions involved in oyster restoration in Maryland and Virginia waters of Chesapeake Bay and its tidal tributaries. The Chesapeake Bay oyster partners include the U.S. Environmental Protection Agency, the U.S. Army Corps of Engineers, the National Oceanic and Atmospheric Administration, the Maryland Department of Natural Resources, the Virginia Marine Resources Commission, the Maryland Oyster Recovery Partnership, the Virginia Oyster Heritage Program, the Chesapeake Bay Foundation, the University of Maryland, and the Virginia Institute of Marine Science. Following receipt of comments, a final draft plan will be circulated to Chesapeake Bay Program signatory partners for approval. It is expected that the final plan will be adopted by the Chesapeake Executive Council in 2003. The draft plan is available on-line at the EPA Region III Web site *http://www.epa.gov/r3chespk/,* or at the Chesapeake Bay Program Web site *http://www.chesapeakebay.net* or by regular mail from the EPA Chesapeake Bay Program Office (Phone: 410–267–5700).

Comments should be postmarked no later than January 15, 2003. Comments can be sent either by email to fritz.mike@epa.gov or by regular mail to Michael Fritz, U.S. EPA, 410 Severn Avenue, Suite 109, Annapolis, MD 21403. Further information about the Chesapeake Bay Program and oysters and other living resources in the bay is available at *http://www.chesapeakebay.net.*

Diana Esher,

Deputy Director, Chesapeake Bay Program Office.

[FR Doc. 02–31670 Filed 12–16–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL –7423–1]

Intent to Grant a Co-Exclusive Patent License

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to grant a co-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 a co-exclusive, royalty-bearing, revocable license to practice the invention 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 Sensors, Inc., Saline, Michigan and to Horiba Instruments, Inc., Irvine, California, including its parent, subsidiaries, affiliates and companies controlled by Horiba. The patents are:

U.S. Patent No. 6,148,656, entitled ''Real-time On-road Vehicle Exhaust Gas Modular Flowmeter and Emissions Reporting System,'' issued November 21, 2000.

U.S. Patent No. 6,382,014, entitled ''Real-time On-road Vehicle Exhaust Gas

Modular Flowmeter and Emissions Reporting System,'' issued May 7, 2002.

U.S. Patent No. 6,470,732, entitled ''Real-time Exhaust Gas Modular Flowmeter and Emissions Reporting System for Mobile Apparatus,'' issued October 29, 2002.

The invention was announced as being available for licensing in the March 1, 1999 issue of the **Federal Register** (64 FR 9990) as U.S. Patent Application No. 09/226,920, filed January 5, 1999, and claiming priority from a provisional application filed January 5, 1998.

The proposed co-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 co-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 or Deputy Director of the Office of Transportation and Air Quality, who have been delegated the authority to issue patent licenses under EPA Delegation 1–55.

DATES: Comments on this notice must be received by EPA at the address listed below by January 2, 2003.

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.

Dated: December 6, 2002.

Marla E. Diamond,

Associate General Counsel, Finance and Operations Law Office.

[FR Doc. 02–31671 Filed 12–16–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7422–8]

Clean Water Act Section 303(d): Availability of 12 Modified Total Maximum Daily Loads (TMDLs)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability for comment of the administrative record file for 12 modified TMDLs and the calculations for these TMDLs prepared by EPA Region 6 for waters listed in the Mermentau and Vermilion/Teche river basins, under section 303(d) of the Clean Water Act (CWA). These TMDLs were completed in response to the lawsuit styled *Sierra Club, et al.* v. *Clifford et al.*, No. 96–0527, (E.D. La.).

DATES: Comments must be submitted in writing to EPA on or before January 16, 2003.

ADDRESSES: Comments on the 12 modified TMDLs should be sent to Ellen Caldwell, Environmental Protection Specialist, Water Quality Protection Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, TX 75202–2733. For further information, contact Ellen Caldwell at (214) 665–7513. The administrative record file for these TMDLs are available for public inspection at this address as well. Documents from the administrative record file may be viewed at *www.epa.gov/region6/water/tmdl.htm*, or obtained by calling or writing Ms. Caldwell at the above address. Please contact Ms. Caldwell to schedule an inspection.

FOR FURTHER INFORMATION CONTACT: Ellen Caldwell at (214) 665–7513.

SUPPLEMENTARY INFORMATION: In 1996, two Louisiana environmental groups, the Sierra Club and Louisiana Environmental Action Network (plaintiffs), filed a lawsuit in Federal Court against the United States Environmental Protection Agency (EPA), styled *Sierra Club, et al.* v. *Clifford et al.*, No. 96–0527, (E.D. La.). Among other claims, plaintiffs alleged that EPA failed to establish Louisiana TMDLs in a timely manner. EPA originally established these TMDLs pursuant to a consent decree entered in this lawsuit. EPA is now modifying these TMDLs.

EPA Seeks Comments on 12 Modified TMDLs

By this notice EPA is seeking comment on the following 12 modified TMDLs for waters located within the Mermentau and Vermilion/Teche river basins:

Subsegment	Waterbody name	Pollutant
050102	Bayou Joe Marcel	Pathogen indicators.
060204	Bayou Courtableau—Origin to West Atchafalaya Borrow Pit Canal.	Pathogen indicators.
060212	Chatlin Lake Canal and Bayou Dulac	Pathogen indicators.
060701	Tete Bayou	Pathogen indicators.
060703	Bayou Portage	Pathogen indicators.
060901	Bayou Petite Anse	Pathogen indicators.
060909	Lake Peigneur	Pathogen indicators.
060911	Dugas Canal	Pathogen indicators.
060204	Bayou Courtableau—Origin to West Atchafalaya Borrow Pit Canal.	Sulfates.
050201	Bayou Plaquemine Brule—Headwaters to Bayou Des Cannes.	TDS.
050501	Bayou Queue de Tortue—Headwaters to Mermentau River.	TDS.
060208	Bayou Boeuf—Headwaters to Bayou Courtableau	TDS.

EPA previously requested the public to provide EPA with any significant data or information that might impact the original 12 TMDLs in Federal Register Notices: Volume 65, Number 173, pages 54032–54034 (September 6, 2000) and Volume 65, Number 196, page 60189 (October 10, 2000).

EPA now requests that the public provide any water quality related data and information that may be relevant to the calculations for these 12 modified

TMDLs. EPA will review all data and information submitted during the public comment period and revise the modifications to the TMDLs where appropriate. EPA will then forward the modified TMDLs to the Louisiana Department of Environmental Quality (LDEQ). LDEQ will incorporate the modified TMDLs into its current water quality management plan.

Dated: December 9, 2002.

Miguel I. Flores,

Director, Water Quality Protection Division, Region 6.

[FR Doc. 02–31678 Filed 12–16–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7421–3]

Final NPDES General Permit for Reject Water from Reverse Osmosis Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final NPDES general permits—MAG450000.

SUMMARY: The Director of the Office of Ecosystem Protection, Environmental Protection Agency-New England (EPA–NE), is issuing Notice of Final National Pollutant Discharge Elimination System (NPDES) general permits for reject water from reverse osmosis units to certain waters in the State of Massachusetts. These final NPDES general permits establish Notice of Intent (NOI) requirements, effluent limitations, standards, prohibitions, and management practices for reverse osmosis reject water.

Owners and/or operators of sites that discharge reject water from reverse osmosis units will be required to submit an NOI to EPA–NE to be covered by the appropriate general permit and will receive a written notification from EPA–NE of permit coverage and authorization to discharge under one of these general permits. The eligibility requirements are discussed in detail in sections II and III in the fact sheet to this **Federal Register** Notice and the reader is strongly urged to go to that section before reading further. These general permits do not cover new sources as defined under 40 CFR 122.2.

DATES: The general permits shall be effective on the date specified in the final general permits published in the **Federal Register** and will expire five years from the date that the final permits are published in the **Federal Register**. If the general permits are not reissued prior to the expiration date, they will be administratively continued and remain in effect as long as the permittee submits a new notice of intent two months prior the expiration date of the general permit.

ADDRESSES: Notice of Intent to be authorized to discharge under these permits should be sent to: United States Environmental Protection Agency (CPE), 1 Congress Street, Suite 1100, Boston, Massachusetts 02114–2023, and Massachusetts Department of Environmental Protection, Division of Watershed Management, 627 Main Street, 2nd floor, Worcester, Massachusetts 01608.

FOR FURTHER INFORMATION CONTACT: Additional information concerning these final permits may be obtained between the hours of 8 a.m. and 4 p.m. Monday through Friday excluding holidays from: Betsy Davis, Office of Ecosystem Protection, Environmental Protection Agency, 1 Congress Street, Suite 1100, Boston, MA 02114–2023; telephone: 617–918–1576.

SUPPLEMENTARY INFORMATION: The following Fact Sheet and Supplementary Information section sets forth principal facts and the significant factual, legal and policy questions considered in the development of these final general permits. A reasonable fee may be charged for copying requests.

Table of Contents

Fact Sheet and Supplementary Information

I. Introduction
II. Coverage of General Permits
III. Exclusions
IV. Permit Basis and Other Conditions of the General NPDES Permits
  A. Statutory Requirements
  B. Antidegradation Provisions
  C. Effluent Limitations
  1. Technology based limitations
  2. Water quality based limitations
  a. Background
  b. pH
  c. Copper
  d. Ammonia
  D. Monitoring and Reporting Requirements
  E. Endangered Species Act
  F. Standard Permit Conditions
  G. State (401) Certification
  H. Environmental Impact Statement Requirements
  I. National Historic Preservation Act of 1966
  J. Essential Fish Habitat
V. Other Legal Requirements
  A. Executive Order 12866
  B. Paperwork Reduction Act
  C. Regulatory Flexibility Act
  D. Unfunded Mandates Reform Act

Final General Permits

Part I—General Permits

A. Massachusetts General Permit, Permit No. MAG450000 for minor facilities discharging from reverse osmosis units to freshwater with a dilution factor between 10 and 99
  1. Effluent Limitations and Monitoring Requirements
B. Massachusetts General Permit, Permit No. MAG450000 for minor facilities discharging from reverse osmosis units to freshwater with a dilution factor between 100 and 1000
  1. Effluent Limitations and Monitoring Requirements
C. Common Elements for All Permits
  1. Conditions of the General Permits
  a. Geographic Area
  b. Exclusions
  c. Notification by Permittee
  2. Administrative Aspects
  a. Request to be Covered
  b. Eligibility to Apply
  c. Continuation of General Permits After Expiration
D. Monitoring and Reporting
E. Additional General Permit Conditions
F. Summary of Response to Public Comments

Part II Standard Conditions

A. State Conditions
B. General Requirements
C. Operation and Maintenance of Pollution Control Equipment
D. Monitoring and Records
E. Reporting Requirements
F. Other Conditions
Appendix A Dilution Factor
Appendix B Copper Calculation

Fact Sheet and Supplemental Information

I. Introduction

The Director of the Office of Ecosystem Protection, EPA-New England, is issuing general permits for the discharge of reject water from reverse osmosis units to certain waters in the State of Massachusetts. This document contains Part I, the Draft General NPDES Permits and, Part II, Standard Conditions.

II. Coverage of General Permits

Section 301(a) of the Clean Water Act (the Act) provides that the discharge of pollutants is unlawful except in accordance with a National Pollutant Discharge Elimination System (NPDES) permit unless such a discharge is otherwise authorized by the Act. EPA's regulations authorize the issuance of ''general permits'' to one or more categories or subcategories of discharges (*see* 40 CFR 122.28). EPA may issue a single, general permit to a category of point sources located within the same geographic area whose discharges warrant similar pollution control measures.

A. The Director of an NPDES permit program is authorized to issue a general permit if there are a number of point sources operating in a geographic area that:

1. Involve the same or substantially similar types of operations;

2. Discharge the same types of wastes;

3. Require the same effluent limitations or operating conditions;

4. Require the same or similar monitoring requirements; and

5. In the opinion of the Director, are more appropriately controlled under a general permit than under individual permits.

Authorization under these general permits shall require prior submittal of certain facility information. Upon receipt of all required information, the permit issuing authority may allow or disallow coverage under these general permits.

B. The similarity of the discharge is prompting EPA to issue these general permits. When issued, these permits will enable facilities to maintain compliance with the Act, will extend environmental and regulatory controls to new dischargers, and will avoid a backlog of individual permit applications. The issuing of these general permits in Massachusetts is warranted by the similarity of environmental conditions; State regulatory requirements applicable to the discharges and receiving waters; and the technology employed.

Violations of a condition of a general permit constitute a violation of the Clean Water Act and subjects the discharger to the penalties in section 309 of the Act.

III. Exclusions

These general permits will not be available to:

1. Facilities whose discharge(s) could cause or contribute to adverse water quality impacts.

2. Mobile water purification units using reverse osmosis as a means of water treatment.

3. Facilities whose wastewater is treated with a reverse osmosis system, that are required to follow established effluent guidelines and standards pursuant to 40 CFR Subchapter N.

4. Facilities when the Director requires an individual permit, based on considerations of the following:

a. The variability of the pollutants or pollutant parameters in the effluent based on chemical specific information.

b. Recommendations from the State.

c. Other considerations which the Director determines could cause or contribute to adverse water quality impacts.

EPA has determined that these general permits will not be available to ''New Source'' dischargers as defined in 40 CFR 122.2 due to the site specific nature of the environmental review required by the National Environmental Policy Act of 1969 (NEPA), 33 U.S.C. 4321 *et seq.* for those facilities. ''New Sources'' must comply with New Source Performance Standards (NSPS) and are subject to the NEPA process in 40 CFR 6.600. Consequently, EPA has determined that it would be more appropriate to address ''New Sources'' through the individual permit process.

Any owner or operator authorized by a general permit may request to be excluded from coverage of a general permit by applying for an individual permit. This request may be made by submitting a NPDES permit application together with reasons supporting the request. The Director may also require any person authorized by a general permit to apply for and obtain an individual permit. Any interested person may petition the Director to take this action. However, individual permits will not be issued for sources covered by these general permits unless it can be clearly demonstrated that inclusion under one of these general permits is inappropriate. The Director may consider the issuance of individual permits when:

1. The discharger is not in compliance with the terms and conditions of the general permit;

2. A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;

3. Effluent limitation guidelines are subsequently promulgated for the point sources covered by the general NPDES permit;

4. A Water Quality Management Plan or Total Maximum Daily Load (TMDL) containing requirements applicable to such point sources is approved;

5. Circumstances have changed since the time of the request to be covered so that the discharger is no longer appropriately controlled under the general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary;

6. The discharge(s) is a significant contributor of pollution or in violation of State Water Quality Standards for the receiving water; or

7. The discharge(s) is into an impaired water of the Federal Clean Water Act 303 (d) list, and the pollutant/stressor listed on the section 303 (d) list is one of the parameters limited in the permit.

In accordance with 40 CFR 122.28(b)(3)(iv), the applicability of the general permit is automatically terminated on the effective date of the individual permit.

IV. Permit Basis and Other Conditions of the General NPDES Permit

A. Statutory Requirements

Section 301(a) of the Clean Water Act (CWA or the Act), 33 U.S.C. 1311(a), makes it unlawful to discharge pollutants to waters of the United States without a permit. Section 402 of the Act, 33 U.S.C. 1342, authorizes EPA to issue NPDES permits allowing discharges that will meet certain requirements, including CWA sections 301, 304, and 401 (33 U.S.C. 1331, 1314, and 1341). Those statutory provisions state that NPDES permits must include effluent limitations requiring authorized discharges to: (1) Meet standards reflecting specified levels of technology-based treatment requirements; (2) comply with State Water Quality Standards; and (3) comply with other state requirements adopted under authority retained by states under CWA section 510, 33 U.S.C. 1370.

EPA is required to consider technology and water quality requirements when developing permit limits. 40 CFR part 125, subpart A sets the criteria and standards that EPA must use to determine which technology-based requirements, requirements under section 301(b) of the Act and/or requirements established on a case by case basis under section 401(a)(1) of the Act, should be included in the permit.

B. Antidegradation Provisions

The conditions of the permit reflect the goal of the CWA and EPA to achieve and maintain water quality standards. The environmental regulations pertaining to the State Antidegradation Policies which protect the State's surface waters from degradation of water quality is found in the following provision: Massachusetts Water Quality Standards 314 CMR 4.04 *Antidegradation Provisions.*

These general permits do not apply to any new or increased discharge to receiving waters unless the discharge is shown to be consistent with the State's antidegradation policies. This determination shall be made in accordance with the appropriate State antidegradation implementation procedures for these general permits. EPA will not authorize discharges under these general permits until it receives a favorable antidegradation review and certification from the States. (Concurrent to the publication of these general permits in the **Federal Register**, EPA has formally requested the State to make an antidegradation certification determination). The Commonwealth of Massachusetts will conduct antidegradation reviews for notices of

intent to discharge, under these general permits, into Class A waters.

C. Effluent Limitations

1. *Technology-based Effluent Limitations:* EPA has not promulgated National Effluent Guidelines for reverse osmosis reject water discharges. EPA also believes that the limits established to meet the water quality standards discussed below are sufficient to satisfy Best Available Technology Economically Achievable/Best Conventional Pollutant Control Technology (BAT/BCT) described in section 304(a) of the Act. Therefore, as provided in section 402(a)(1) of the Act, EPA has determined to issue these general permits utilizing Best Professional Judgement (BPJ) to meet the above stated criteria for BAT/BCT described in section 304(b) of the Act. Accordingly, monthly average and maximum daily limitations for Total Suspended Solids (TSS) and Total Residual Chlorine are established based upon Best Professional Judgement pursuant to section 402(a)(1) of the CWA.

2. *Water Quality Based Effluent Limitations:* Under section 301(b)(1)(C) of the Act, discharges are subject to effluent limitations based on water quality standards when EPA and the State determine that effluent limits more stringent than technology-based limits are necessary to maintain or achieve state or federal water quality standards. A water quality standard consists of three elements: (1) Designated beneficial uses, (2) a numeric or narrative water-quality criteria sufficient to protect the assigned designated use(s), and (3) an antidegradation policy that ensures that water quality improvements are conserved, maintained, and protected. Receiving stream requirements are established according to numerical and narrative standards adopted under state and/or federal law for each stream use classification. Section 401 of the CWA requires that EPA obtain State certification which ensures that all water quality standards and other appropriate requirements of state law will be satisfied. Regulations governing State certification are set forth in 40 CFR 124.53 and 124.55. The State of Massachusetts has narrative criteria in their water quality regulations. *See* Massachusetts 314 CMR 4.05(5)(e) that prohibits toxic discharges in toxic amounts. These permits do not allow for the addition of materials or chemicals which would produce a toxic effect to any aquatic life. Reverse osmosis reject water shall not contain or come in contact with raw materials, intermediate products, finished products or process wastes. Therefore, it could be assumed that the discharges do not contain toxic or hazardous pollutants or oil or grease. Nevertheless, toxic effects may still occur as a result of toxic source water, toxic pollutants due to the use of chlorine or due to dissolution of the piping in the local water systems that is typically the source of water used in reverse osmosis. Any reverse osmosis reject water which would violate water quality standards established for toxic or hazardous pollutants would not qualify for these general permits and an individual permit would be required. Water quality criteria applicable to reverse osmosis reject water discharges covered by these general permits include pH, copper, and ammonia. A summary of the effluent limitations are described below:

pH

These general permits include proposed pH limitations which are required by state water quality standards and are at least as stringent as pH limitations set forth at 40 CFR 133.102. The water quality criteria for the pH limitations for Massachusetts can be found at 314 CMR 4.05.

Copper, Total

EPA is required to limit any pollutant that is or may be discharged at a level that has caused, or has reasonable potential to cause, or contributes to an excursion above any water quality criterion. Copper may be toxic to aquatic life at low concentrations, so the permits contain numerical limits for total recoverable copper and specifies an appropriate method of analysis. The copper limits have been calculated (see Attachment B) to reflect the water quality criteria published in the **Federal Register** on December 10, 1998. The maximum daily limit for copper based on the acute water quality criteria is 73 ug/l and the average monthly limit, based on the chronic criteria, is 52 ug/l when the dilution factor is between 10 and 99. The maximum daily limit for copper based on the acute water quality criteria is 730 ug/l and the average monthly limit, based on the chronic criteria, is 516 ug/l when the dilution factor is between 100 and 1000.

Nitrogen, Total Ammonia

Chloromines are introduced into the water source used in reverse osmosis units when the units are bleached or cleaned with hypochlorite. Ammonia in the source water reacts with hypochlorite creating chloromines causing the reject water to contain ammonia. Therefore, Total Ammonia Nitrogen is required to be monitored monthly. This parameter will be used in conjunction with additional water quality data to evaluate whether ammonia from reverse osmosis units has a potential impact on the receiving water.

D. Monitoring and Reporting Requirements

Effluent limitations and monitoring requirements which are included in the general permits describe the requirements to be imposed on the facilities to be covered. Facilities covered by the final general permits will be required to submit to EPA New England and the Massachusetts Department of Environmental Protection a Discharge Monitoring Report (DMR) containing effluent data. The frequency of reporting is determined in accordance with the State's provisions.

The monitoring requirements have been established to yield data representative of the discharge under authority of section 308(a) of the Act and 40 CFR 122.41(j), 122.44(i) and 122.48, and as certified by the State.

E. Endangered Species

The proposed limits are sufficiently stringent to assure that water quality standards for both aquatic life protection and human health protection will be met. The effluent limitations established in these permits ensure protection of aquatic life and maintenance of the receiving water as an aquatic habitat. The Region finds that adoption of these final permits are unlikely to adversely affect any threatened or endangered species or its critical habitat. EPA will consult with the United States Fish and Wildlife Service and National Marine Fisheries Service on this determination. The U.S. Fish and Wildlife Service and the National Marine Fisheries Service will notify EPA for any new listings.

The National Marine Fisheries Service has indicated that the endangered shortnose sturgeon (*Acipenser brevirostrum*) inhabits certain sections of the Merrimack and Connecticut Rivers in Massachusetts. Any facility whose discharge may adversely effect the sturgeon or any other threatened or endangered species or its habitat, is required to contact the National Marine Fisheries at the following address: U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NMFS), Habitat and Protected Resources Division, One Blackburn Drive, Gloucester, MA 01903–2298.

F. Standard Permit Conditions

40 CFR 122.41 and 122.42 establish requirements which must be in all NPDES permits. Specific language will be provided to permittees in part II of the permit.

G. State (401) Certification

Section 401 of the CWA provides that no Federal license or permit, including NPDES permits, to conduct any activity that may result in any discharge into navigable waters shall be granted until the State in which the discharge originates certifies that the discharge will comply with the applicable provisions of sections 301, 302, 303, 306, and 307 of the CWA. EPA–NE will request that the Commonwealth of Massachusetts conduct section 401 reviews and issue a State certification. In addition, EPA and the Commonwealth of Massachusetts will jointly issue the final permits.

H. Environmental Impact Statement Requirements

These general permits do not authorize discharges from any new sources as defined under 40 CFR 122.2. Therefore, the National Environmental Policy Act, 33 U.S.C. 4321 *et seq.*, does not apply to the issuance of these general NPDES permits.

I. National Historic Preservation Act of 1966, 16 U.S.C. SS470 et seq.

Facilities which adversely affect properties listed or eligible for listing in the National Registry of Historic Places under the National Historic Preservation Act of 1966, 16 U.S.C. SS470 *et seq.* are not authorized to discharge under this permit.

J. Essential Fish Habitat

Under the 1996 Amendments (Pub. L. 104–267) to the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.* (1998)), EPA is required to consult with NMFS if EPA's action or proposed actions that it funds, permits or undertakes, ''may adversely impact any essential fish habitat.'' 16 U.S.C. 1855(b). The Amendments broadly define ''essential fish habitat'' (EFH) as ''waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity.'' 16 U.S.C. 1802(10). Adverse impact means any impact which reduces the quality and/or quantity of EFH. 50 CFR 600.910(a). Adverse effects may include direct (*e.g.*, contamination or physical disruption), indirect (*e.g.*, loss of prey, reduction in species' fecundity), site-specific or habitat-wide impacts, including individual, cumulative or synergistic consequences of actions.

Essential Fish Habitat is only designated for fish species for which federal Fisheries Management Plans exist. 16 U.S.C. 1855(b)(1)(A). EFH designations for New England were approved by the U.S. Department of Commerce on March 3, 1999.

The proposed limits for these general permits are sufficiently stringent to assure that state water quality standards will be met. The effluent limitations established in these permits ensure protection of aquatic life and maintenance of the receiving water as an aquatic habitat. The Region finds that adoption of the proposed permit is unlikely to adversely affect any fish or shellfish currently listed with a Fisheries Management Plan or its critical habitat. EPA will seek written concurrence from the National Marine Fisheries Service on this determination.

V. Other Legal Requirements

A. Executive Order 12866

EPA has determined that the general permits are not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

The information collection requirements of these permits were previously approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. 44 U.S.C. 3501 *et seq.*, and assigned OMB control number 2040–0086 (NPDES permit application) and 2040–0004 (Discharge Monitoring Reports).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires that EPA prepare a regulatory flexibility analysis for rules subject to the requirements of 5 U.S.C. 553(b) that have a significant impact on a substantial number of small entities. The permits issued today, however, are not a ''rule'' subject to the requirements of 5 U.S.C. 553(b) and, are therefore, not subject to the Regulatory Flexibility Act.

D. Unfunded Mandates Reform Act

Section 201 of the Unfunded Mandates Reform Act (UMRA), Pub. L. 104–4, generally requires Federal agencies to assess the effects of their ''regulatory actions'' (defined to be the same as ''rules'' subject to the RFA) on tribal, state and local governments and the private sector. The permits issued today, however, are not a ''rule'' subject to the RFA and, are therefore, not subject to the requirements of UMRA.

Dated: November 30, 2002.

Robert W. Varney,

Regional Administrator, Region 1.

Part I—Final General Permit Under the National Pollutant Discharge Elimination System (NPDES)

(**Note:** Part IA and Part IB contain general permits for the state of Massachusetts (both Commonwealth and Indian Country Lands).)

A. Massachusetts General Permit, Permit No. MAG450000

In compliance with the provisions of the Federal Clean Water Act, as amended, (33 U.S.C. 1251 *et seq.*; the ''CWA''), and the Massachusetts Clean Waters Act, as amended, (M.G.L. Chap. 21, sections 26–53), operators of facilities located in Massachusetts, which discharge reject water from reverse osmosis units to the classes of waters as designated in the Massachusetts Water Quality Standards, 314 CMR 4.00 *et seq.*, are authorized to discharge to all waters, unless otherwise restricted, in accordance with effluent limitations, monitoring requirements and other conditions set forth herein.

This permit shall become effective when issued. This permit and the authorization to discharge expire at midnight, five years from the effective date of the publication in the **Federal Register**.

Signed this 29th day of November, 2002.

Linda M. Murphy,

Director, Office of Ecosystem Protection, U.S. Environmental Protection Agency, Boston, MA.

Glenn Haas,

Director, Division of Watershed Management, Bureau of Resource Protection, Massachusetts Department of Environmental, Protection, Boston, MA.

Part I—Effluent Limitations and Monitoring Requirements

1. During the period beginning on the effective date and lasting through expiration, the permittee is authorized to discharge reject water from reverse osmosis units. This permit is only for facilities discharging to freshwater with a dilution factor from 10 to less than 100.

a. Each outfall discharging effluent from reverse osmosis units shall be limited and monitored as specified below. Monitoring for each outfall shall be reported.

Effluent characteristics	Units	Discharge limitations			Monitoring requirements	
		Average monthly	Average weekly	Maximum daily	Measurement frequency	Sample type
Flow[1, 3, 4]	MGD	Report		Report	Continuous	Recorder.
TSS[3, 4]	mg/l	30		45	1/Month	24-Hour Composite.[5]
	lbs/day	Report		Report	1/Month	24-Hour Composite.[5]
Total Residual Chlorine[3, 4, 6]	mg/l	0.11		0.2	1/Week	Grab.
pH[2, 3, 4]	S.U.	(See conditions I.A.1.g)			1/Week	Grab.
Dissolved Oxygen	mg/1	Not Less Than 6.0			1/Week	Grab.
Ammonia[3, 4]	µg/l	Report		Report	1/Month	Grab.
Copper, Total[3, 4, 7]	µg/l	52		73	1/Month	24-Hour Composite.[5]
LC–50 and C–NOEC, (%)[8]		see Part 1.A.1.k				24-Hour Composite.[5]

Footnotes:

1. The flow shall be continuously measured and recorded using a flow meter.
2. Requirement for State Certification.
3. Samples shall be taken only when discharging, and prior to mixing with stormwater. All samples shall be tested using the analytical methods found in 40 CFR part 136, or alternative methods approved by EPA in accordance with the procedures in 40 CFR part 136. All samples shall be 24-hour composites unless specified as a grab sample in 40 CFR part 136.
4. In addition to the monthly monitoring requirements, the permittee is required to sample the effluent and report the results twice per year when the reverse osmosis units are cleaned. The reason for the additional sampling and reporting requirements is due to the potential of an increased load of pollutants being discharged to the receiving stream during the cleaning process.
5. A 24-hour composite sample will be conducted of at least 1 grab sample taken each hour during periods of discharge.
6. The minimum level (ML) for chlorine is defined as 50 µg/l. This value is the minimum level for chlorine using EPA approval methods found in most currently approved version of *Standard Methods for the Examination of Water and Wastewater* Method 4500 CL–E and G, or *United States Environmental Protection Agency Manual of Methods of Analysis of Water and Wastewater*, Method 330.5. One of these methods must be used to determine total residual chlorine. For effluent limitations less than 50 µg/l, compliance/non-compliance will be determined on ML. Sample results of less than 50 µg/l or less shall be reported as zero on the discharge monitoring report.
7. The minimum level (ML) for copper is defined as 5 µg/l. This value is the minimum level for copper using the Furnance Atomic Absorption analytical method (EPA Method 220.2). For effluent limitations of less than 5 µg/l, compliance/non-compliance will be determined based on the ML from this method, or another approved method that has an equivalent or lower ML, one of which must be used. Sample results of 5 µg/l or less shall be reported as zero on the Discharge Monitoring Report.
8. LC–50 is the concentration of effluent in a sample that causes mortality to 50% of the test population at a specific time of observation. C–NOEC, No Observed Effect Concentration, is the highest concentration of effluent to which organisms are exposed in a life-cycle test or partial life-cycle test which cause no adverse effect on growth, survival and reproduction at a specific time of observation as determined from hypothesis testing where the test results (growth, survival, and/or reproduction) exhibit a linear dose-response relationship. However, where the test results do not exhibit a linear dose-response relationship, report the lowest concentration where there is no observable effect. End of Footnotes.

Part I—Final General Permit under the National Pollutant Discharge Elimination System (NPDES)

(**Note:** Part IA and Part IB contain general permit for the state of Massachusetts (both Commonwealth and Indian Country Lands).)

B. Massachusetts General Permit, Permit No. MAG450000

In compliance with the provisions of the Federal Clean Water Act, as amended, (33 U.S.C. 1251 *et seq*.; the ''CWA''), and the Massachusetts Clean Waters Act, as amended, (M.G.L. Chap. 21, sections 26–53), operators of facilities located in Massachusetts, which discharge reject water from reverse osmosis units to the classes of waters as designated in the Massachusetts Water Quality Standards, 314 CMR 4.00 *et seq*., are authorized to discharge to all waters, unless otherwise restricted, in accordance with effluent limitations, monitoring requirements and other conditions set forth herein.

This permit shall become effective when issued. This permit and the authorization to discharge expire at midnight, five years from the effective date of the publication in the **Federal Register**.

Signed this 29th day of November, 2002.

Linda M. Murphy,

irector, Office of Ecosystem Protection, U.S. Environmental Protection Agency, Boston, MA.

Glenn Haas,

Director, Division of Watershed Management, Bureau of Resource Protection, Massachusetts Department of Environmental Protection, Boston, MA.

Part I—Effluent Limitations and Monitoring Requirements

1. During the period beginning on the effective date and lasting through expiration, the permittee is authorized to discharge reject water from reverse osmosis units. This permit is only for facilities discharging to freshwater with a dilution factor from 100 to 1000.

a. Each outfall discharging effluent from reverse osmosis units shall be limited and monitored as specified below. Monitoring for each outfall shall be reported.

Effluent characteristics	Units	Discharge limitations			Monitoring requirements	
		Average monthly	Average weekly	Maximum daily	Measurement frequency	Sample type
Flow[1 3 4]	MGD	Report		Report	Continuous	Recorder
TSS[3 4]	mg/l	30		45	1/Month	24-Hour Composite[5]
	lbs/day	Report		Report	1/Month	24-Hour Composite[5]
Total Residual Chlorine[3 4 6]	mg/l	1.0		1.0	1/Week	Grab.
pH[2 3 4]	S.U.	(See conditions I.A.1.g)			1/Week	Grab.

Effluent characteristics	Units	Discharge limitations			Monitoring requirements	
		Average monthly	Average weekly	Maximum daily	Measurement frequency	Sample type
Dissolved Oxygen	mg/l	NOT LESS THAN 6.0			1/Week	Grab.
Ammonia[3 4]	ug/l	Report		Report	1/Month	Grab.
Copper, Total[3 4 7]	ug/l	516		730	1/Month	24-Hour Composite[5]
LC and C-NOEC, (%)[8]		see Part 1.A.1.k.				24-Hour Composite[5]

Footnotes:

[1] The flow shall be continuously measured and recorded using a flow meter.

[2] Requirement for State Certification.

[3] Samples shall be taken only when discharging, and prior to mixing with stormwater. All samples shall be tested using the analytical methods found in 40 CFR Part 136, or alternative methods approved by EPA in accordance with the procedures in 40 CFR Part 136. All samples shall be 24-hour composites unless specified as a grab sample in 40 CFR Part 136.

[4] In addition to the monthly monitoring requirements, the permittee is required to sample the effluent and report the results twice a year when the reverse osmosis units are cleaned. The reason for the additional sampling and reporting requirements is due to the potential of an increased load of pollutants being discharged to the receiving stream during the cleaning process.

[5] A 24-hour composite sample will be conducted of at least 1 grab sample taken each hour during periods of discharge.

[6] The minimum level (ML) for chlorine is defined as 50 ug/l. This value is the minimum level for chlorine using EPA approval methods found in most currently approved version of *Standard Methods for the Examination of Water and Wastewater,* Method 4500 CL–E and G, or *United States Environmental Protection Agency Manual of Methods of Analysis of Water and Wastes,* Method 330.5. One of these methods must be used to determine total residual chlorine. For effluent limitations less than 50 ug/l, compliance/non-compliance will be determined on ML. Sample results of less than 50 ug/l or less shall be reported as zero on the discharge monitoring report.

[7] The minimum level (ML) for copper is defined as 5 ug/l. This value is the minimum level for copper using the Furnance Atomic Absorption analytical method (EPA Method 220.2). For effluent limitations of less than 5 ug/l, compliance/non-compliance will be determined based on the ML from this method, or another approved method that has an equivalent or lower ML, one of which must be used. Sample results of 5 ug/l or less shall be reported as zero on the Discharge Monitoring Report.

[8] LC–50 is the concentration of effluent in a sample that causes mortality to 50% of the test population at a specific time of observation. C–NOEC, No Observed Effect Concentration, is the highest concentration of effluent to which organisms are exposed in a life-cycle test or partial life-cycle test which cause no adverse effect on growth, survival and reproduction at a specific time of observation as determined from hypothesis testing where the test results (growth, survival, and/or reproduction) exhibit a linear dose-response relationship. However, where the test results do not exhibit a linear dose-response relationship, report the lowest concentration where there is no observable effect.

Part 1.A.1. Effluent Limitations and Monitoring Requirements for All Permits (Continued)

b. The discharge shall not cause a violation of the water quality standards of the receiving water.

c. The discharge shall not cause an objectionable discoloration of the receiving water.

d. There shall be no discharge of floating solids or visible foam in other than trace amounts.

e. The results of sampling for any parameter above its required frequency must also be reported.

f. Samples taken in compliance with the monitoring requirements specified above shall be taken at a location that provides a representative analysis of the effluent just prior to discharge to the receiving water or if the effluent is commingled with another discharge, prior to such commingling.

g. The pH of the effluent for discharges to Class A and Class B waters shall be in the range of 6.5–8.3 standard units and not more than 0.5 units outside of the background range. There shall be no change from background conditions that would impair any uses assigned to the receiving water Class.

h. The use of products containing formaldehye is prohibited.

i. There shall be no discharge of biocides, pathogenic organisms, toxic, radioactive, corrosive substances at levels or in combinations sufficient to be toxic or harmful to humans, animals, plant or aquatic life, or in amounts to interfere with State Water Quality Standards.

j. The discharge shall not cause the dissolved oxygen level in the receiving water to drop below 6.0 mg/l.

k. Chronic (and modified acute) toxicity test(s) shall be performed on the effluent from reverse osmosis systems by the permittee upon request by EPA and/or the MA DEP. Testing shall be performed in accordance with EPA toxicity protocol to be provided at the time of the request. The test shall be performed on a 24-hour composite sample to be taken during normal facility operation. The result of the test(s) shall be forwarded to both the EPA and the State within 30 days after completion.

B. State Permit Conditions

1. These NPDES Discharge Permits are issued jointly by the U. S. Environmental Protection Agency (EPA) and the Massachusetts Department of Environmental Protection (MADEP) under Federal and State law, respectively. As such, all the terms and conditions of these permits are hereby incorporated into and constitute discharge permits issued by the Commissioner of the Massachusetts Department of Environmental Protection to M.G.L. Chap. 21, section 43.

2. Each Agency shall have the independent right to enforce the terms and conditions of these permits. Any modification, suspension or revocation of these permits shall be effective only with respect to the Agency taking such action, and shall not affect the validity or status of these permits as issued by the other Agency, unless and until each Agency has concurred in writing with such modification, suspension or revocation. In the event any portion of these permits are declared, invalid, illegal or otherwise issued in violation of State law such permits shall remain in full force and effect under Federal law as an NPDES Permit issued by EPA. In the event these permits are declared invalid, illegal or otherwise issued in violation of Federal law, these permits shall remain in full force and effect under State law as permits issued by the Commonwealth of Massachusetts.

C. Common Elements of all Permits

1. Conditions of the General Permit

a. *Geographic Areas: Massachusetts* (Permit No. MAG450000). All of the discharges to be authorized by these general NPDES permits for dischargers in the Commonwealth of Massachusetts are into all waters of the Commonwealth as specified in Part I.A. of these permits unless otherwise restricted by the Massachusetts Surface Water Quality Standards, 314 CMR 4.00 (or as revised).

b. *Exclusions:* These permits are not available for discharges into impaired waters on the Federal Clean Water Act 303(d) list which are not attaining state water quality standards for the parameters limited in the permit. These general permits are not available to

''New Source'' dischargers as defined in 40 CFR 122.2.

c. *Notification by Permittees:* Operators of sites whose discharge, or discharges are effluent from reverse osmosis units and whose sites are located in the geographic areas described in part I.C.1.a. above, shall submit to the Regional Administrator, EPA–NE, a Notice of Intent to be covered by the appropriate general permit. Notifications must be submitted by all permittees who are seeking coverage under these permits. This written notification must include for each individual site, the owner's and/or operator's legal name, address and telephone number; the site's name, address, contact name, and telephone number; the number and type of sites (SIC code) to be covered; the site location(s); the number of discharge points, and the anticipated duration, volume, and rate of discharge for each outfall; a topographic map (or other map if a topographic map is not available) indicating the site's location(s) and discharge point(s); latitude and longitude of outfall(s); a description of any wastewater treatment; schematic of the reverse osmosis system; the name(s) of the receiving waters into which discharge will occur; antidegradation review where necessary (*see* section IV.C of the Fact Sheet); new and increased discharges from reverse osmosis activities that may adversely affect a listed or proposed to be listed endangered or threatened species or its critical habitat are not authorized under these general permits (see section IV. E of the Fact Sheet). The notice must be signed in accordance with the signatory requirements of 40 CFR § 122.22.

Each facility must certify that the discharge for which it is seeking coverage under one of these general permits consists solely of reject water from discharges from reverse osmosis units. An authorization to discharge under one of these general permits, where the reverse osmosis unit discharges to a municipal or private storm drain owned by another party, does not convey any rights or authorization to connect to that drain.

Each site must also submit a copy of the Notice of Intent to the Massachusetts DEP. Copies of the State Application Form Appendix E (BRP WM 11b), and the Transmittal Form for Permit Application and Payment, may be obtained at the DEP Web site at (*www.state.ma.us/dep*) <(*www.state.magnet.us/dep*);> by clicking on ''Permit Applications'' and ''Watershed Management''; by telephoning the DEP Info Service Center (Permitting) at 617–338–2255 or 1–800–462–0444 in 508, 413, 978 and 781 area codes; or from any DEP Regional Service Center located in each Regional Office.

Three copies of the transmittal form are needed. Copy 1 (the original) of the transmittal form and Appendix E should be sent to Massachusetts Department of Environmental Protection, 627 Main Street, 2nd floor, Worcester, MA 01608. Copy 2 of the transmittal form and the $295 fee should be sent to DEP, P.O. Box 4062, Boston, MA 02111. Municipalities are fee-exempt, but should send a copy of the transmittal form to that address. Keep Copy 3 of the transmittal form and a copy of the application package for your records. The sites authorized to discharge under one of these final general permits will receive written notification from EPA–NE with State concurrence. Failure to submit to EPA–NE a Notice of Intent to be covered and/or failure to receive from EPA–NE written notification of permit coverage means that the facility is not authorized to discharge under one of these general permits. Sites who are denied permit coverage by EPA–NE are not authorized under these general permits to discharge from those sites to the receiving waters.

2. Administrative Aspects

a. Request to be covered: A facility is not covered by any of these general permits until it meets the following requirements. First, it must send a Notice of Intent (NOI) to EPA–NE and Massachusetts DEP indicating it meets the requirements of the permit and wants to be covered. And second, it must be notified in writing by EPA–NE that it is covered by one of these general permits.

b. Eligibility to Apply: Any facility operating under an effective (unexpired) individual NPDES permit may request that the individual permit be revoked and that coverage under one of these general permits be granted, as outlined in 40 CFR 122.28(b)(3)(v). If EPA revokes the individual permit, the general permit would apply to the discharge.

Facilities with expired individual permits that have been administratively continued in accordance with 40 CFR 122.6 may apply for coverage under one of these general permits. When coverage is granted the expired individual permit automatically will cease being in effect.

Proposed new dischargers may apply for coverage under one of these general permits and must submit the NOI 90 days prior to the discharge.

c. Continuation of General Permit After Expiration: If these permits are not reissued prior to the expiration date, it will be administratively continued in accordance with the Administrative Procedures Act and remain in force and in effect as to any particular permittee as long as the permittee submits a new Notice of Intent two (2) months prior to the expiration date in the permit. However, once these permits expire EPA cannot provide written notification of coverage under either of these general permits to any permittee who submits Notice of Intent to EPA after the permit's expiration date. Any permittee who was granted permit coverage prior to the expiration date will automatically remain covered by the continued permit until the earlier of:

(1) Reissuance of these permits, at which time the permittee must comply with the Notice of Intent conditions of the new permit to maintain authorization to discharge; or

(2) The permittee's submittal of a Notice of Termination; or

(3) Issuance of an individual permit for the permittee's discharges; or

(4) A formal permit decision by the Director not to reissue these general permits, at which time the permittee must seek coverage under an alternative general permit or an individual permit.

D. Monitoring and Reporting

Monitoring results obtained during each calendar month shall be summarized and recorded on separate Discharge Monitoring Report Form(s), postmaked no later than the 15th day of following month. All communications and any required submittals should be sent to both EPA–NE and the appropriate State office at the following addresses:

1. EPA–NE

U.S. Environmental Protection Agency, New England Region, Water Technical Unit (SEW), Post Office Box 8127, Boston, MA 02114.

2. Massachusetts Department of Environmental Protection

a. The Regional Offices wherein the discharge occurs, shall receive a copy of all notifications and communications:

Massachusetts Department of Environmental Protection, Western Regional Office, 436 Dwight Street, Springfield, MA 01103.

Massachusetts Department of Environmental Protection, Southeastern Regional Office, 20 Riverside Drive, Lakeville, MA 02347.

Massachusetts Department of Environmental Protection, Northeastern Regional Office, 205A Lowell Street, Wilmington, MA 01887.

Massachusetts Department of Environmental Protection, Central

Regional Office, 627 Main Street, 2nd floor, Worcester, Massachusetts 01608.

b. Copies of all notifications required by these permits shall also be submitted to the State at:

Massachusetts Department of Environmental Protection, Division of Watershed Management, 627 Main Street, 2nd floor, Worcester, MA 01608.

E. Additional General Permit Conditions

1. *Termination of Operations:* Operators of facilities and/or operations authorized under these permits shall notify the Director upon the termination of discharges. The notice must contain the name, mailing address, and location of the facility for which the notification is submitted, the NPDES permit number for the reverse osmosis reject water discharge identified by the notice, and an indication of whether the reverse osmosis reject water discharge has been eliminated or the operator of the discharge has changed. The notice must be signed in accordance with the signatory requirements of 40 CFR 122.22.

2. When the Director May Require Application for an Individual NPDES Permit;

a. The Director may require any person authorized by these permits to apply for and obtain an individual NPDES permit. Any interested person may petition the Director to take such action. Instances where an individual permit may be required include the following:

(1) The discharge(s) is a significant contributor of pollution;

(2) The discharger is not in compliance with the conditions of the permit;

(3) A change has occurred in the availability of the demonstrated technology of practices for the control or abatement of pollutants applicable to the point source;

(4) Effluent limitation guidelines are promulgated for point sources covered by the permit;

(5) A Water Quality Management Plan or Total Maximum Daily Load containing requirements applicable to such point source is approved;

(6) Discharge to the territorial sea;

(7) Discharge into waters that are not attaining state water quality standards; or,

(8) The point source(s) covered by the permit no longer:

(a) Involves the same or substantially similar types of operations;

(b) Discharges the same types of wastes;

(c) Requires the same effluent limitations or operating conditions;

(d) Requires the same or similar monitoring; and

(e) In the opinion of the Director, it is more appropriately controlled under an individual permit than under one of these general NPDES permits.

b. The Director may require an individual permit only if the permittee authorized by the general permit has been notified in writing that an individual permit is required, and has been given a brief explanation of the reasons for this decision.

3. When an Individual NPDES Permit may be Requested;

a. Any operator may request to be excluded from the coverage of these general permits by applying for an individual permit.

b. When an individual NPDES permit is issued to an operator otherwise subject to the general permit, the applicability of the permit to that owner or operator is automatically terminated on the effective date of the individual permit.

F. Summary of Response to Comments

(1) Comment Submitted by, National Pretreatment Program, U.S. EPA, Washington, DC

Comment #1: I have reviewed the draft General Permit (MAG450000) and have concerns regarding the vast availability of coverage under this permit for any type of generated wastewater that uses Reverse Osmosis as its treatment process.

In particular, I know of some industrial facilities whose wastewaters are subject to Effluent Guidelines and Standards (40 CFR subchapter N or specifically, 40 CFR parts 405–471) that use Reverse Osmosis as their treatment processes. Specifically, pharmaceutical facilities, metal finishers and a textile facility. If we do not provide an exclusion for such facilities that are already subjected to effluent guidelines and standards, we are not fully satisfying the requirements of 40 CFR 122.44(a)(2) and relying on the ''permit as a shield'' concept for all pollutants listed within those standards.

Response: This permit is not intended for facilities that generate industrial wastewaters who are subject to Effluent Guidelines and Standards under 40 CFR subchapter N. If effluent guidelines and standards exists then it is possible that an individual permit would be needed to reflect the standards in the guidelines. Additional language has been included in the final permit under section III. Exclusions, that states if Effluent Guidelines and Standards exists facilities are required to follow them to treat wastewater even if a reverse osmosis system is part of the treatment process.

Therefore, this permit is only meant for coverage of discharges of RO reject water from facilities using RO as a treatment process to purify potable water for various further uses. This permit is not intended to authorize discharge from RO units used from wastewater treatment as a stand alone process or in combination with other treatment processes.

(2) Comment Submitted by the Army National Guard Bureau, Environmental Programs Division, Arlington, Virginia.

Comment #2: The Army National Guard (ARNG) uses reverse osmosis water purification units (ROWPUs) in the field during training exercises. ARNG personnel train with this equipment to prepare for foreign or domestic emergency water incidents. An initiative that we in the Water Program here at National Guard Bureau (NGB) have been pushing is the use of the Modular Multi-Fluid Filtration System (MMFFS), which is used to treat post-ROWPU ''reject water'' down to almost drinking water quality. The MMFFS is a mobile unit that follows the ROWPU in the field. Several states have even allowed Army personnel to discharge MMFFS-treated water straight to the ground or to the stormwater system after they reviewed the water quality standards the MMFFS delivers.

Please consider adding language to the Final Rule which discusses MMFFS and MMFFS-type ROWPU ''reject water'' treatment systems. And where does this piece of equipment fall into regulation within the context of the proposed rule?

Response: The reject water from Modular Multi-Fluid Filtration Systems will not be covered under this permit. The intent of this general permit is for facilities that discharge RO reject to the same surface water body over time, and it is only for coverage of facilities in Massachusetts. The reject water from a MMFFS unit potentially could be discharged to any number of surface water bodies, and in several states. For instance, when a unit was ready to be discharged how would the permittee know that the dilution of each receiving stream was greater than 10 to 1? How would the permittee take copper samples when the reject water was being discharged to different water bodies? Discharge from these units could not meet the requirements in the general permit. Discharges from these systems are not regulated under this General Permit.

(3) Comment Submitted by Massachusetts Resource Authority (MWRA), Boston, Massachusetts

Comment #3: Reduce the Monitoring Frequency Requirements for Each Outfall. Dischargers that receive the NPDES General Permit will be required to conduct weekly sampling for Total Residual Chlorine, pH, and Dissolved Oxygen. The sampling frequency seems to be excessive. MWRA is concerned that excessive sampling costs will discourage dischargers from obtaining and complying with this permit.

Response: The weekly sampling frequency in the draft permit will help ensure compliance with the permit requirements on a consistent basis. EPA feels that weekly sampling and analysis for TRC, pH, and DO are routine, inexpensive, and easily performed procedures. RO reject water discharges may be intermittent and prone to periodic fluctuations in quality, thus EPA is requiring weekly sampling and analysis for these parameters.

Comment #4: Require continuous pH recording for Each Outfall. Rather than, or in addition to, a weekly Grab sampling event for pH, we believe that a continuous pH-recording device on the discharge line would provide more representative monitoring. Generally, the MWRA finds the installation of a continuous pH-recording device helpful, because it provides a thorough pH characterization of the discharge.

Response: The analytical methods specified in 40 CFR part 136 are required for all monitoring performed under the NPDES program, and grab samples are the required pH collection method. Since the quality and flow of the wastestream for reverse osmosis systems are not highly variable grab samples will remain the method of collection for pH samples.

Comment #5: Identify who should conduct sample analyses required by the General Permit. The proposed analytical activities required by the General Permit should be conducted by Mass. DEP certified lab. Most dischargers will not have the in-house expertise to conduct these analyses as required by 40 CFR part 136.

Response: As long as analytical methods in 40 CFR part 136 are used to determine characteristics in the effluent, EPA does not require permittee's to use MA certified labs for analytical testing.

Comment #6: Expand the General Permit's coverage to include water from the backwash filters from incoming water treatment. In addition to RO reject water, MWRA prohibits any filter backwash discharge, unless specifically authorized by an MWRA permit. The General Permit would help minimize clean water discharges to the sewer systems in the Commonwealth of Massachusetts if it covered filter backwash discharges from incoming water treatment filters.

Response: EPA has determined that this general permit will authorize only the discharge of reject water from RO units. Including other discharges such as filter backwash waters would unnecessarily complicate this permit and perhaps require individual permits to be issued.

TRC Limits

The TRC limits in the final permit are more stringent than what was published in the draft permit. After careful consideration, EPA and MA DEP determined that the average monthly and maximum daily TRC limits of 1.0 mg/l published in the draft permit would not meet water quality criteria with dilution factors between 10 and 99. Therefore the limits were changed in the final permit to be protective of surface water. Chlorine and chlorine compounds produced by the chlorination of wastewater can be extremely toxic to aquatic life. The effluent limits for daily maximum Total Residual Chlorine (TRC) were developed using the acute and chronic criterion defined in the *EPA Quality Criteria for Water,* 1986 (Gold Book), as adopted by the MA DEP into the State Water Quality Standards. The criterion was multiplied by the available receiving water dilution. The criterion states that the average total residual chlorine in the receiving water should not exceed 11 ug/l for chronic toxicity protection and the maximum daily total residual chlorine in the receiving water should not exceed 19 ug/l for acute toxicity production.

Toxicity Test

EPA and MA DEP have added language to the final permit that requires that permittee to submit toxicity test results upon request.

Part II—Standard Conditions

A. General Requirements

1. *Duty to Comply:* The permittee must comply with all conditions of this permit. Any permit in noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

a. The permittee shall comply with effluent standards or prohibitions established under section 307(a) of the CWA for toxic pollutants and with standards for sewage sludge use or disposal established under section 405(d) of the CWA within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

b. The CWA provides that any person who violates sections 301, 302, 306, 307, 308, 318, or 405 of the CWA or any permit condition or limitation implementing any of such sections in a permit issued under section 402, or any requirement imposed in a pretreatment program approved under sections 402 (a)(3) or 402(b)(8) of the CWA is subject to a civil penalty not to exceed $25,000 per day for each violation. Any person who *negligently* violates such requirements is subject to a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than 1 year, or both. Any person who *knowingly* violates such requirements is subject to a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or both.

Note: *See* 40 CFR 122.41(a)(2) for additional enforcement criteria.

c. Any person may be assessed an administrative penalty by the Administrator for violating sections 301, 302, 306, 307, 308, 318, or 405 of the CWA, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of the CWA. Administrative penalties for Class I violations are not to exceed $10,000 per violation, with the maximum amount of any Class I penalty assessed not to exceed $25,000. Penalties for Class II violations are not to exceed $10,000 per day for each day during which the violation continues, with the maximum amount of any Class II penalty not to exceed $125,000.

2. *Permit Actions:* This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

3. *Duty to Provide Information:* The permittee shall furnish to the Regional Administrator, within a reasonable time, any information which the Regional Administrator may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Regional

Administrator, upon request, copies of records required to be kept by this permit.

4. *Reopener Clause:* The Regional Administrator reserves the right to make appropriate revisions to this permit in order to establish any appropriate effluent limitations, schedules of compliance, or other provisions which may be authorized under the CWA in order to bring all discharges into compliance with the CWA.

5. *Oil and Hazardous Substance Liability:* Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under section 311 of the CWA, or section 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA).

6. *Property Rights:* The issuance of this permit does not convey any property rights of any sort, nor any exclusive privileges.

7. *Confidentiality of Information:*

a. In accordance with 40 CFR part 2, any information submitted to EPA pursuant to these regulations may be claimed as confidential by the submitter. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions or, in the case of other submissions, by stamping the words ''confidential business information'' on each page containing such information. If no claim is made at the time of submission, *EPA may make the information available to the public without further notice.* If a claim is asserted, the information will be treated in accordance with the procedures in 40 CFR part 2 (Public Information).

b. Claims of confidentiality for the following information will be denied:

(i) The name and address of any permit applicant or permittee;

(ii) Permit applications, permits, and effluent data as defined in 40 CFR 2.302(a)(2).

c. Information required by NPDES application forms provided by the Regional Administrator under § 122.21 may not be claimed confidential. This includes information submitted on the forms themselves and any attachments used to supply information required by the forms.

8. *Duty to Reapply:* If the permittee wishes to continue an activity regulated by this permit after its expiration date, the permittee must apply for and obtain a new permit. The permittee shall submit a new notice of intent at least 60 days before the expiration date of the existing permit, unless permission for a later date has been granted by the Regional Administrator. (The Regional Administrator shall not grant permission for applications to be submitted later than the expiration date of the existing permit.)

9. *State Authorities:* Nothing in part 122, 123, or 124 precludes more stringent State regulation of any activity covered by these regulations, whether or not under an approved State program.

10. *Other Laws:* The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, nor does it relieve the permittee of its obligation to comply with any other applicable Federal, State, and local laws and regulations.

B. Operations and Maintenance of Pollution Control

1. *Proper Operation and Maintenance:* The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when the operation is necessary to achieve compliance with the conditions of the permit.

2. *Need to Halt or Reduce Not a Defense:* It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

3. *Duty to Mitigate:* The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

4. *Bypass:*

a. *Definitions*

(1) ''Bypass'' means the intentional diversion of waste streams from any portion of a treatment facility.

(2) ''Severe property damage'' means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

b. *Bypass not exceeding limitations.* The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs B.4.c and 4.d of this section.

c. *Notice.*

(1) *Anticipated bypass:* If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.

(2) *Unanticipated bypass:* The permittee shall submit notice of an unanticipated bypass as required in paragraph D.1.e (24-hour notice).

d. *Prohibition of bypass:*

(1) Bypass is prohibited, and the Regional Administrator may take enforcement action against a permittee for bypass, unless:

(a) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(c)(i)The permittee submitted notices as required under paragraph 4.c of this section.

(ii)The Regional Administrator may approve an anticipated bypass, after considering its adverse effects, if the Regional Administrator determines that it will meet the three conditions listed above in paragraph 4.d of this section.

5. *Upset:*

a. *Definition.* ''Upset'' means an exceptional incident in which there is unintentional and temporary non-compliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

b. *Effect of an upset.* An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of paragraph B.5.c of this section are met. No determination made during administrative review of claims that

noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

c. *Conditions necessary for a demonstration of upset.* A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(1) An upset occurred and that the permittee can identify the cause(s) of the upset;

(2) The permitted facility was at the time being properly operated;

(3) The permittee submitted notice of the upset as required in paragraphs D.1.a and 1.e (24-hour notice); and

(4) The permittee complied with any remedial measures required under B.3. above.

d. *Burden of proof.* In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

C. Monitoring and Records

1. Monitoring and Records

a. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

b. Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years (or longer as required by 40 CFR part 503), the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report or application *except for the information concerning storm water discharges which must be retained for a total of 6 years.* This retention period may be extended by request of the Regional Administrator at any time.

c. Records of monitoring information shall include:

(1) The date, exact place, and time of sampling or measurements;

(2) The individual(s) who performed the sampling or measurements;

(3) The date(s) analyses were performed;

(4) The individual(s) who performed the analyses;

(5) The analytical techniques or methods used; and

(6) The results of such analyses.

d. Monitoring results must be conducted according to test procedures approved under 40 CFR part 136 or, in the case of sludge use or disposal, approved under 40 CFR part 136 unless otherwise specified in 40 CFR part 503, unless other test procedures have been specified in the permit.

e. The Clean Water Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than 2 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than $20,000 per day of violation, or by imprisonment of not more than 4 years, or both.

2. *Inspection and Entry:* The permittee shall allow the Regional Administrator, or an authorized representative (including an authorized contractor acting as a representative of the Administrator), upon presentation of credentials and other documents as may be required by law, to:

a. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

d. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location.

D. Reporting Requirements

1. Reporting Requirements

a. *Planned changes.* The permittee shall give notice to the Regional Administrator as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

(1) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 40 CFR 122.29(b); or

(2) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject to the effluent limitations in the permit, nor to the notification requirements under 40 CFR 122.42(a)(1).

(3) The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition or change may justify the application of permit conditions different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.

b. *Anticipated noncompliance.* The permittee shall give advance notice to the Regional Administrator of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

c. *Transfers.* This permit is not transferable to any person except after notice to the Regional Administrator. The Regional Administrator may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the Clean Water Act. (*See* § 122.61; in some cases, modification or revocation and reissuance is mandatory.)

d. *Monitoring reports.* Monitoring results shall be reported at the intervals specified elsewhere in this permit.

(1) Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the Regional Administrator for reporting results of monitoring of sludge use or disposal practices.

(2) If the permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 40 CFR part 136 or, in the case of sludge use or disposal, approved under 40 CFR part 136 unless otherwise specified in 40 CFR part 503, or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Regional Administrator.

(3) Calculations for all limitations which require averaging of measurement shall utilize an arithmetic mean unless otherwise specified by the Regional Administrator in the permit.

e. Twenty-four hour reporting.

(1) The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the

permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

(2) The following shall be included as information which must be reported within 24 hours under this paragraph.

(a) Any unanticipated bypass which exceeds any effluent limitation in the permit. (*See* § 122.41(g))

(b) Any upset which exceeds any effluent limitation in the permit.

(c) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Regional Administrator in the permit to be reported within 24 hours. (*See* § 122.44(g))

(3) The Regional Administrator may waive the written report on a case-by-case basis for reports under paragraph D.1.e if the oral report has been received within 24 hours.

f. *Compliance Schedules.* Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

g. *Other noncompliance.* The permittee shall report all instances of noncompliance not reported under paragraphs D.1.d, D.1.e and, D.1.f of this section at the time monitoring reports are submitted. The reports shall contain the information listed in paragraph D.1.e of this section.

h. *Other information.* Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Regional Administrator, it shall promptly submit such facts or information.

2. Signatory Requirement

a. All applications, reports, or information submitted to the Regional Administrator shall be signed and certified. (*See* § 122.22)

b. The CWA provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

3. *Availability of Reports:* Except for data determined to be confidential under paragraph A.8. above, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the State water pollution control agency and the Regional Administrator. As required by the CWA, effluent data shall not be considered confidential. Knowingly making any false statement on any such report may result in the imposition of criminal penalties as provided for in section 309 of the CWA.

E. Other Conditions

1. *Definitions* for purposes of this permit are as follows:

Administrator means the Administrator of the United States Environmental Protection Agency, or an authorized representative.

Applicable standards and limitations means all State, interstate, and Federal standards and limitations to which a ''discharge'' or a related activity is subject to, including water quality standards, standards of performance, toxic effluent standards or prohibitions, ''best management practices,'' and pretreatment standards under sections 301, 302, 303, 304, 306, 307, 308, 403, and 405 of CWA.

Application means the EPA standard national forms for applying for a permit, including any additions, revisions or modifications to the forms; or forms approved by EPA for use in ''approved States,'' including any approved modifications or revisions.

Average means the arithmetic mean of values taken at the frequency required for each parameter over the specified period. For total and/or fecal coliforms, the average shall be the geometric mean.

Average monthly discharge limitation means the highest allowable average of ''daily discharges'' over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.

Average weekly discharge limitation means the highest allowable average of ''daily discharges'' over a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week.

Best Management Practices (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of ''waters of the United States.'' BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

Best Professional Judgement (BPJ) means a case-by-case determination of Best Practicable Treatment (BPT), Best Available Treatment (BAT) or other appropriate standard based on an evaluation of the available technology to achieve a particular pollutant reduction.

Composite Sample—A sample consisting of a minimum of eight grab samples collected at equal intervals during a 24-hour period (or lesser period as specified in the section on Monitoring and Reporting) and combined proportional to flow, or a sample continuously collected proportionally to flow over that same time period.

Continuous Discharge means a ''discharge'' which occurs without interruption throughout the operating hours of the facility except for infrequent shutdowns for maintenance, process changes, or similar activities.

CWA or ''The Act'' means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Public Law 92–500, as amended by Pub. L. 95–217, Pub. L. 95–576, Pub. L. 96–483 and Pub. L. 97–117; 33 U.S.C. 1251 *et seq.*

Daily Discharge means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day.

Director means the person authorized to sign NPDES permits by EPA and/or the State.

Discharge Monitoring Report Form (DMR) means the EPA standard national form, including any subsequent additions, revisions, or modifications, for the reporting of self-monitoring results by permittees. DMRs must be used by ''approved States'' as well as by EPA. EPA will supply DMRs to any approved State upon request. The EPA national forms may be modified to substitute the State Agency name, address, logo, and other similar information, as appropriate, in place of EPA's.

Discharge of a pollutant means:

(a) Any addition of any ''pollutant'' or combination of pollutants to ''waters of the United States'' from any ''point source,'' or

(b) Any addition of any pollutant or combination of pollutants to the waters of the ''contiguous zone'' or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation. This definition includes additions of pollutants into waters of the United States from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances leading into privately owned treatment works. This term does not include an addition of pollutants by any ''indirect discharger.''

Effluent limitation means any restriction imposed by the Director on quantities, discharge rates, and concentrations of ''pollutants'' which are ''discharged'' from ''point sources'' into ''waters of the United States,'' the waters of the ''contiguous zone,'' or the ocean.

Effluent limitations guidelines means a regulation published by the Administrator under section 304(b) of CWA to adopt or revise ''effluent limitations.''

EPA means the United States ''Environmental Protection Agency.''

Grab Sample—An individual sample collected in a period of less than 15 minutes.

Hazardous Substance means any substance designated under 40 CFR part 116 pursuant to section 311 of CWA.

Maximum daily discharge limitation means the highest allowable ''daily discharge.''

Municipality means a city, town, borough, county, parish, district, association, or other public body created by of under State law and having jurisdiction over disposal or sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribe organization, or a designated and approved management agency under section 208 of CWA.

National Pollutant Discharge Elimination System means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under sections 307, 402, 318, and 405 of CWA. The term includes an ''approved program.''

New discharger means any building, structure, facility, or installation:

(a) From which there is or may be a ''discharge of pollutants'';

(b) That did not commence the ''discharge of pollutants'' at a particular ''site'' prior to August 13, 1979;

(c) Which is not a ''new source''; and

(d) Which has never received a finally effective NPDES permit for discharges at that ''site''.

This definition includes an ''indirect discharger'' which commences discharging into ''waters of the United States'' after August 13, 1979. It also includes any existing mobile point source (other than an offshore or coastal oil and gas exploratory drilling rig or a coastal oil and gas developmental drilling rig) such as a seafood processing rig, seafood processing vessel, or aggregate plant, that begins discharging at a ''site'' for which it does not have a permit; and any offshore or coastal mobile oil and gas exploratory drilling rig or coastal mobile oil and gas developmental drilling rig that commences the discharge of pollutants after August 13, 1979, at a ''site'' under EPA's permitting jurisdiction for which it is not covered by an individual or general permit and which is located in an area determined by the Regional Administrator in the issuance of a final permit to be an area of biological concern. In determining whether an area is an area of biological concern, the Regional Administrator shall consider the factors specified in 40 CFR 125.122.(a)(1) through (10).

An offshore or coastal mobile exploratory drilling rig or coastal mobile developmental drilling rig will be considered a ''new discharger'' only for the duration of its discharge in an area of biological concern.

New source means any building, structure, facility, or installation from which there is or may be a ''discharge of pollutants,'' the construction of which commenced:

(a) After promulgation of standards of performance under section 306 of CWA which are applicable to such.

(b) After proposal of standards of performance in accordance with section 306 of CWA which are applicable to such source, but only if the standards are promulgated in accordance with section 306 within 120 days of their proposal.

NPDES means ''National Pollutant Discharge Elimination System.''

Non-Contact Cooling Water is water used to reduce temperature which does not come in direct contact with any raw material, intermediate product, a waste product or finished product.

Owner or operator means the owner or operator of any ''facility or activity'' subject to regulation under the NPDES programs.

Permit means an authorization, license, or equivalent control document issued by EPA or an ''approved State.''

Person means an individual, association, partnership, corporation, municipality, State or Federal agency, or an agent or employee thereof.

Point source means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel, or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

Pollutant means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean:

(a) Sewage from vessels; or

(b) Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the State in which the well is located, and if the State determines that the injection or disposal will not result in the degradation of ground or surface water resources.

Primary industry category means any industry category listed in the NRDC settlement agreement (*Natural Resources Defense Council et al.* v. *Train*, 8 E.R.C. 2120 (D.D.C. 1976), modified 12 E.R.C. 1833 (D.D.C. 1979)); also listed in appendix A of 40 CFR part 122.

Process wastewater means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.

Regional Administrator means the Regional Administrator, EPA—New England, Boston, Massachusetts.

State means any of the 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands.

Secondary Industry Category means any industry category which is not a ''primary industry category.''

Toxic pollutant means any pollutant listed as toxic in appendix D of 40 CFR part 122, under section 307(a)(l) of CWA.

Uncontaminated storm water is precipitation to which no pollutants have been added and has not come into direct contact with any raw material, intermediate product, waste product or finished product.

Waters of the United States means:

(a) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

(b) All interstate waters, including interstate ''wetlands'';

(c) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, ''wetlands,'' sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

(1) Which are or could be used by interstate or foreign travelers for recreational or other purposes;

(2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or,

(3) Which are used or could be used for industrial purposes by industries in interstate commerce;

(d) All impoundments of waters otherwise defined as waters of the United States under this definition;

(e) Tributaries of waters identified in paragraphs (a)–(d) of this definition;

(f) The territorial sea; and

(g) ''Wetlands'' adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a)–(f) of this definition.

Whole Effluent Toxicity (WET) means the aggregate toxic effect of an effluent measured directly by a toxicity test.

Wetlands means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

2. Abbreviations when used in this permit are defined below:

cu. M/day or M3/day cubic meters per day.

mg/l milligrams per liter.

µg/l micrograms per liter.

lbs/day pounds per day.

kg/day kilograms per day.

Temp. °C temperature in degrees Centigrade.

Temp. °F temperature in degrees Fahrenheit.

Turb. turbidity measured by the Nephelometric Method (NTU).

pH. a measure of the hydrogen ion concentration.

CFS cubic feet per second.

MGD million gallons per day.

Oil & Grease Freon extractable material.

ml/l milliliter(s) per liter.

Cl_2 total residual chlorine.

Attachment A—Dilution Factor Calculations

Equation used to calculate available dilution factor at Outfall 001.

$$\text{Dilution Factor} = \frac{(Q_{001} + Q_{FD} \times 1.547)}{Q_{FD} \times 1.547}$$

Where:

Q_{001} = Estimated 7Q10 flow* at Outfall 001, in cubic foot/seconds (cfs)

Q_{FD} = Facility's design flow, in million gallons per day (MGD)

1.547 = Factor to convert MGD to CFS

* The 7Q10 is the lowest observed mean river flow for 7 consecutive days, recorded over a 10-year recurrence interval.

Example Calculation

Q_{001} = 325 cfs

Q_{FD} = 3.2 MGD.

Attachment B—Copper Calculation

Copper limits for dilutions between 10 and 99

Estimated hardness = 50.

ln 50 = 3.912

chronic copper limit: criterion continuous concentration

$e^{[(0.8545*3.912)+(-1.702)]} * 10.0$

= 5.159 × 10.0

= 51.59 µg/l

= 52 µg/l.

acute copper limit

$e^{[(0.9422*3.912)+(-1.700)]} * 10.0$

= 7.285 × 10.0

= 72.85 µg/l

= 73 µg/l.

Copper limits for dilutions between 100 and 1000

Estimated hardness = 50.

ln 50 = 3.912

chronic copper limit: criterion continuous concentration

$e^{[(0.8545*3.912)+(-1.702)]} * 100.0$

= 5.159 × 100.0

= 515.59 µg/l

= 516 µg/l.

acute copper limit

$e^{[(0.9422* 3.912)+(-1.700)]} * 100.0$

= 7.285 × 100.0

= 728.85 µg/l

= 730 µg/l.

[FR Doc. 02–31465 Filed 12–16–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7422–6]

Public Water Supervision Program Revision for the State of Tennessee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative approval.

SUMMARY: Notice is hereby given that the State of Tennessee is revising its approved Public Water System Supervision Program. Tennessee has adopted drinking water regulations which incorporate the requirements of the Filter Backwash Recovery Rule and the Radionuclides Rule. EPA has determined that these revisions are no less stringent than the corresponding Federal regulations. Therefore, EPA intends to approve this State program revision.

All interested parties may request a public hearing. A request for a public hearing must be submitted by January 16, 2003 to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by January 16, 2003, a public hearing will be held. If no timely and appropriate request for a hearing is received, and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective on January 16, 2003. Any request for a public hearing shall include the following information: (1) The name, address, and telephone number of the individual organization, or other entity requesting a hearing; (2) A brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; (3) The signature of the individual making the request, or, if the request is made on the behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday,

at the following offices: Tennessee Department of Environment and Conservation, Division of Water Supply, 401 Church Street, L&C Tower, Sixth Floor, Nashville, Tennessee, 37243–1549, or at the Environmental Protection Agency, Region 4, Drinking Water Section, 61 Forsyth Street Southwest, Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Vivian Doyle, EPA Region 4, Drinking Water Section at the Atlanta address given above, or by telephone at (404) 562–9942.

Authority: Sections 1401 and 1413 of the Safe Drinking Water Act, as amended (1996), and 40 CFR parts 141 and 142.

Dated: December 4, 2002.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 02–31676 Filed 12–16–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket 98–67; DA 02–3168]

Notice of Telecommunications Relay Service (TRS) Applications for State Certification Accepted Pleading Cycle Established for Comment on TRS Certification Applications

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission notifies the public, state Telecommunications Relay Service (TRS) programs, and TRS providers that TRS applications for certification have been accepted and that the pleading cycle for comments and reply comments regarding these applications has been established.

DATES: Comments must be filed on or before January 9, 2003, and reply comments on or before January 27, 2003.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. *See* **SUPPLEMENTARY INFORMATION** for filing instructions.

FOR FURTHER INFORMATION CONTACT: Erica Myers, (202) 418–2429 (voice), (202) 418–0464 (TTY), or e-mail *emyers@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice, CC Docket 98–67; released November 15, 2002. This notice seeks public comment on the above-referenced applications for TRS certification. Copies of applications for certification are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The applications for certification are also available on the Commission's Web site at *http://www.fcc.gov/cgb/dro/trs_by_state.html*. They 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*.

Interested parties may file comments in this proceeding no later than January 9, 2003. Reply comments may be filed no later than January 27, 2003. When filing comments, please reference CC Docket No. 98–67 and the relevant state file number of the state application that is being commented upon. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Services mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554.

Parties who choose to file by paper should also submit their comments on diskette or via e-mail in Microsoft Word. These diskettes should be submitted to: Erica Myers, Federal Communications Commission, 445 12th Street, SW., Room 6–A432, Washington DC 20554. The e-mail should be submitted to Erica Myers at *emyers@fcc.gov*. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Word 97 or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number in this case, CC Docket No. 98–67, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. *See* 47 CFR 1.1200 and 1.1206. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally

required. *See* 47 CFR 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in section 1.1206(b) of the Commission's rules, 47 CFR 1.1206(b).

Alternative formats (computer diskette, large print, audio recording and Braille) are available to persons with disabilities by contacting Brian Millin, of the Consumer & Governmental Affairs Bureau, at (202) 418–7426, TTY (202) 418–7365, or e-mail at *bmillin@fcc.gov*. This *Public Notice* can also be downloaded in Text and ASCII formats at: *http://www.fcc.gov/cgb/dro*.

Synopsis

Notice is hereby given that the states listed below have applied to the Commission for renewal of the certification of their State Telecommunications Relay Service (TRS) program pursuant to Title IV of the Americans with Disabilities Act (ADA), 47 U.S.C. 225 and the Commission's rules, 47 CFR 64.601–605. Current state certifications expire July 25, 2003. Applications for certification, covering the five year period of July 26, 2003 to July 25, 2008, must demonstrate that the state TRS program complies with the ADA and the Commission's rules for the provision of TRS.

File No: TRS–47–02
Commission for the Deaf and Hard of Hearing, State of Arkansas.

File No: TRS–48–02
Commission for the Deaf and Hearing Impaired, State of Connecticut.

File No: TRS–50–02
Florida Public Utilities Commission, State of Florida.

File No: TRS–53–02
Maine Public Utilities Commission, State of Maine.

File No: TRS–54–02
Michigan Public Service Commission, State of Michigan.

File No: TRS–55–02
Mississippi Public Service Commission, State of Mississippi.

File No: TRS–45–02
New Jersey Board of Utilities, State of New Jersey.

File No: TRS–14–02
Commission for the Deaf and Hard of Hearing, State of New Mexico.

File No: TRS–58–02
Pennsylvania Public Utilities Commission, State of Pennsylvania.

File No: TRS–28–02
Telecommunications Regulatory Board, State of Puerto Rico.

Federal Communications Commission.

Margaret M. Egler,

Deputy Chief, Consumer & Governmental Affairs Bureau.

[FR Doc. 02–31714 Filed 12–16–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–02–47–C (Auction No. 47); DA 02–3153]

Closed Auction of Licenses for Cellular Unserved Service Areas Scheduled for February 12, 2003; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Auction Procedures

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the procedures and minimum opening bids for the upcoming auction of seven licenses to provide cellular service in unserved areas scheduled for February 12, 2003. This document is intended to familiarize prospective bidders with the procedures and minimum opening bids for this auction.

DATES: Auction No. 47 is scheduled to begin on February 12, 2003.

FOR FURTHER INFORMATION CONTACT: Auctions and Industry Analysis Division: Ken Burnley, Legal Branch, or Jeff Crooks, Auctions Operations Branch, at (202) 418–0660; Lisa Stover, Auctions Operations Branch, at (717) 338–2888. Media Contact: Lauren Kravetz at (202) 418–7944. Commercial Wireless Division: Mike Kleeb, Licensing and Technical Analysis Branch, at (202) 418–0620; Amal Abdallah, Policy and Rules Branch, at (202) 418–7307 or Evan Baranoff, Policy and Rules Branch, at (202) 418–7142.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction No. 47 Procedures Public Notice* released on November 15, 2002. The complete text of the *Auction No. 47 Procedures Public Notice,* including attachments, is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The *Auction No. 47 Procedures Public Notice* 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 to *qualexint@aol.com.*

I. General Information

A. Introduction

1. By the *Auction No. 47 Procedures Public Notice,* the Wireless Telecommunications Bureau (''Bureau'') announces the procedures and minimum opening bids for the upcoming auction of seven licenses to provide cellular service in unserved areas (''Auction No. 47'') scheduled for February 12, 2003.

2. In accordance with the Balanced Budget Act of 1997, the Bureau released a public notice on September 16, 2002, seeking comment on reserve prices or minimum opening bids and the procedures to be used in Auction No. 47. The Bureau received one comment and no reply comments in response to the *Auction No. 47 Comment Public Notice.* The Bureau subsequently released a second public notice on October 25, 2002, revising the inventory, auction start date, and seeking comment on procedural issues. The Bureau did not receive any comments in response to the *Auction No. 47 Revised Comment Public Notice,* 67 FR 69221 (November 15, 2002).

i. Licenses to Be Auctioned

3. Participation in Auction No. 47 is limited to those applicants who have filed the long-form applications listed in Attachment A of the *Auction No. 47 Procedures Public Notice.* All applications within a mutually exclusive applicant group (''MX Group'') are directly mutually exclusive with one another and therefore a single license will be auctioned for each MX Group identified in Attachment A of the *Auction No. 47 Procedures Public Notice.* The winning bidder for a particular MX Group will be authorized to construct only the facilities proposed in its long-form application(s) for that MX Group as identified in Attachment A of the *Auction No. 47 Procedures Public Notice.*

4. As stated in the *Competitive Bidding Ninth Report and Order,* 61 FR 58333 (November 14, 1996), all pending mutually exclusive applications for unserved area licenses in the Cellular Radiotelephone Service must be resolved through a system of competitive bidding. When the short-form applications of two or more applicants within an MX Group are accepted for filing, mutual exclusivity exits for auction purposes. Once mutual exclusivity exists for auction purposes, even if only one applicant within an MX Group submits an upfront payment, that applicant is required to submit a bid in order to obtain the license.

B. Rules and Disclaimers

i. Relevant Authority

5. Prospective bidders must familiarize themselves thoroughly with the Commission's rules relating to the Cellular Radiotelephone Service contained in title 47, part 22 of the Code of Federal Regulations, and those relating to application and auction procedures, contained in title 47, part 1 of the Code of Federal Regulations. Prospective bidders must also be thoroughly familiar with the procedures, terms and conditions (collectively, ''Terms'') contained in the *Auction No. 47 Procedures Public Notice;* the *Auction No. 47 Comment Public Notice* and the *Auction No. 47 Revised Comment Public Notice;* and the *Part 1 Fifth Report and Order*, 65 FR 52401 (August 29, 2000), (as well as prior and subsequent Commission proceedings regarding competitive bidding procedures).

6. Auction participants bidding on licenses for cellular unserved service areas should also be familiar with the *Competitive Bidding Ninth Report and Order.*

7. The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in our public notices at any time, and will issue public notices to convey any new or supplemental information to bidders. It is the responsibility of all prospective bidders to remain current with all Commission rules and with all public notices pertaining to this auction. Copies of most Commission documents, including public notices, can be retrieved from the FCC Auctions Internet site at *http://wireless.fcc.gov/auctions.* Additionally, documents are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554 or may 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.* When ordering documents from Qualex, please provide the appropriate FCC number (for example, FCC 96–361 for the *Competitive Bidding Ninth Report and Order).*

ii. Prohibition of Collusion

8. To ensure the competitiveness of the auction process, the Commission's rules prohibit competing applicants from communicating with each other during the auction about bids, bidding strategies, or settlements. This prohibition begins at the short-form application filing deadline and ends at the down payment deadline after the auction.

9. Bidders in Auction No. 47 are encouraged not to use the same individual as an authorized bidder. A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between the bidders he or she is authorized to represent in the auction. A violation could similarly occur if the authorized bidders are different individuals employed by the same organization (*e.g.*, law firm or consulting firm). In such a case, at a minimum, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule. However, the Bureau cautions that merely filing a certifying statement as part of an application will not outweigh specific evidence that collusive behavior has occurred, nor will it preclude the initiation of an investigation when warranted.

10. Applicants may enter into bidding agreements before filing their FCC form 175, as long as they disclose the existence of the agreement(s) in their form 175. If parties agree in principle on all material terms prior to the short-form filing deadline, those parties must be identified on the short-form application pursuant to § 1.2105(c), even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the filing deadline, an applicant would not include the names of those parties on its application, and may not continue negotiations with other competing applicants. By signing their FCC form 175 short-form applications, applicants are certifying their compliance with § 1.2105(c).

11. In addition, § 1.65 of the Commission's rules requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Thus, § 1.65 requires an auction applicant to notify the Commission of any violation of the anti-collusion rules upon learning of such violation. Bidders therefore are required to make such notification to the Commission immediately upon discovery.

12. A summary listing of documents from the Commission and the Bureau addressing the application of the anti-collusion rules may be found in Attachment E of the *Auction No. 47 Procedures Public Notice.*

iii. Due Diligence

13. Potential bidders also should be aware that certain applications (including those for modification), petitions for rulemaking, requests for special temporary authority (''STA'') waiver requests, petitions to deny, petitions for reconsideration, and applications for review may be pending before the Commission and relate to particular applicants or incumbent licensees. The Bureau notes that resolution of these matters could have an impact on the availability of spectrum in Auction No. 47. In addition, although the Commission will continue to act on pending applications, requests and petitions, some of these matters may not be resolved by the time of the auction.

14. Potential bidders are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of licenses available in Auction No. 47.

15. The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases or any third party databases, including, for example, court docketing systems. Furthermore, the Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into the database. Potential bidders are strongly encouraged to physically inspect any sites located in, or near, the unserved areas for which they plan to bid.

iv. Bidder Alerts

16. All applicants must certify on their FCC form 175 applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license, and not in default on any payment for Commission licenses (including down payments) or delinquent on any non-tax debt owed to any Federal agency. Prospective bidders are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations,

exclusion from participation in future auctions, and/or criminal prosecution.

17. The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC licensee in this service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular services, technologies or products, nor does an FCC license constitute a guarantee of business success. Applicants and interested parties should perform their own due diligence before proceeding, as they would with any new business venture.

18. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction No. 47 to deceive and defraud unsuspecting investors.

Common warning signals of fraud include the following:

- The first contact is a ''cold call'' from a telemarketer, or is made in response to an inquiry prompted by a radio or television infomercial.
- The offering materials used to invest in the venture appear to be targeted at IRA funds, for example, by including all documents and papers needed for the transfer of funds maintained in IRA accounts.
- The amount of investment is less than $25,000.
- The sales representative makes verbal representations that: (a) The Internal Revenue Service (''IRS''), Federal Trade Commission (''FTC''), Securities and Exchange Commission (''SEC''), FCC, or other government agency has approved the investment; (b) the investment is not subject to state or federal securities laws; or (c) the investment will yield unrealistically high short-term profits. In addition, the offering materials often include copies of actual FCC releases, or quotes from FCC personnel, giving the appearance of FCC knowledge or approval of the solicitation.

19. Information about deceptive telemarketing investment schemes is available from the FTC at (202) 326–2222 and from the SEC at (202) 942–7040. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (800) 876–7060. Consumers who have concerns about specific proposals regarding Auction No. 47 may also call the FCC Consumer Center at (888) CALL-FCC ((888)225–5322).

v. National Environmental Policy Act (''NEPA'') Requirements

20. Licensees must comply with the Commission's rules regarding the National Environmental Policy Act (NEPA). The construction of a wireless antenna facility is a federal action, and the licensee must comply with the Commission's NEPA rules for each such facility. The Commission's NEPA rules require, among other things, that the licensee consult with expert agencies having NEPA responsibilities, including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the Army Corp of Engineers and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). The licensee must prepare environmental assessments for facilities that may have a significant impact in or on wilderness areas, wildlife preserves, threatened or endangered species or designated critical habitats, historical or archaeological sites, Indian religious sites, floodplains, and surface features. The licensee must also prepare environmental assessments for facilities that include high intensity white lights in residential neighborhoods or excessive radio frequency emission.

C. Auction Specifics

i. Auction Date

21. The auction will be held on Wednesday, February 12, 2003. Unless otherwise announced, all seven licenses will be offered at the same time with bidders placing one bid per license. The start and finish times for the bidding round will be announced by public notice at least one week before the start of the auction.

ii. Auction Title

22. Auction No. 47—Closed Cellular Unserved.

iii. Bidding Methodology

23. The bidding methodology for Auction No. 47 will be single-round sealed-bid. The Commission will conduct this auction over the Internet. Telephonic bidding will also be available. As a contingency, the FCC Wide Area Network will be available as well. Qualified bidders are permitted to bid telephonically or electronically.

iv. Pre-Auction Dates and Deadlines

24. Listed are important dates associated with Auction No. 47:

Short-Form Application (FCC FORM 175).	January 13, 2003; 6 p.m. e.t.
Upfront Payments (via wire transfer).	January 27, 2003; 6 p.m. e.t.
Mock Auction	February 7, 2003.
Auction	February 12, 2003.

v. Requirements for Participation

25. Those wishing to participate in the auction must:

- Submit a short-form application (FCC form 175) electronically by 6 p.m. e.t., January 13, 2003.
- Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6 p.m. e.t., January 27, 2003.
- Comply with all provisions outlined in the Auction No. 47 Procedures Public Notice.

vi. General Contact Information

26. The following is a list of general information relating to Auction No. 47:

General Auction Information: General Auction Questions—FCC Auctions Hotline, (888) 225–5322, Press Option #2, or direct (717) 338–2888. Hours of service: 8 a.m.–5:30 p.m. e.t.

Auction Legal Information: Auctions Rules, Policies, Regulations—Auction and Industry Analysis Division, Legal Branch, (202) 418–0660.

Licensing Information: Rules, Policies, Regulations, Licensing Issues, Due Diligence, Incumbency Issues—Commercial Wireless Division, (202) 418–0620.

Technical Support: Electronic Filing Automated Auction System—FCC Auctions Technical Support Hotline, (202) 414–1250 (Voice), (202) 414–1255 (TTY). Hours of service: Monday through Friday 8 a.m. to 6 p.m. e.t.

Payment Information: Wire Transfers, Refunds—FCC Auctions Accounting Branch, (202) 418–1995, (202) 418–2843 (Fax).

Telephonic Bidding: Will be furnished only to qualified bidders.

FCC Copy Contractor: Additional Copies of Commission Documents—Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. (202) 863–2893, (202) 863–2898 (Fax), *qualexint@aol.com* (E-mail).

Press Information: Lauren Kravetz (202) 418–7944.

FCC Forms: (800) 418–3676 (outside Washington, DC). (202) 418–3676 (in the Washington Area). *http://www.fcc.gov/formpage.html.*

FCC Internet Sites: *http://www.fcc.gov. http://wireless.fcc.gov/auctions. http://wireless.fcc.gov/uls.*

II. Short-Form (FCC Form 175) Application Requirements

27. Guidelines for completion of the short-form application (FCC form 175) are set forth in Attachment C to the *Auction No. 47 Procedures Public Notice*. The short-form application seeks the applicant's name and address, legal classification, status, identification of the license(s) sought, the authorized bidders and contact persons. Applicants must certify on their FCC form 175 applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license and that they are not in default on any payment for Commission licenses (including down payments) or delinquent on any non-tax debt owed to any Federal agency.

28. The Commission determines whether mutual exclusivity exists for auction purposes by reviewing all of the short-form (FCC form 175) applications that have been accepted for filing. In the event that review of all the FCC form 175 applications accepted for filing determines that only one applicant in a given MX Group has applied for the license to be auctioned for that MX Group, that license will be removed from the auction. In such a case, the Commission will process the long-form application(s) of the party that applied for the given license on its FCC form 175 and dismiss the long-form application(s) of the other applicant. In the event that neither applicant in a given MX Group applies for the license to be auctioned for that MX Group, the long-form application(s) of both applicants will be dismissed.

A. Ownership Disclosure Requirements (FCC Form 175 Exhibit A)

29. Applicants must comply with the uniform part 1 ownership disclosure standards and provide information required by §§ 1.2105 and 1.2112 of the Commission's rules. Specifically, in completing FCC form 175, applicants will be required to file an ''Exhibit A'' providing a full and complete statement of the ownership of the bidding entity. The ownership disclosure standards for the short-form are set forth in § 1.2112 of the Commission's rules.

B. Consortia and Joint Bidding Arrangements (FCC Form 175 Exhibit B)

30. Applicants will be required to identify on their short-form applications any parties with whom they have entered into any consortium arrangements, joint ventures, partnerships or other agreements or understandings which relate in any way to the licenses being auctioned, including any agreements relating to post-auction market structure. Applicants will also be required to certify on their short-form applications that they have not entered into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified, regarding the amount of their bids, bidding strategies, or the particular licenses on which they will or will not bid. As discussed above, if an applicant has had discussions, but has not reached a joint bidding agreement by the short-form deadline, it would not include the names of parties to the discussions on its applications and may not continue discussions with competing applicants after the deadline. Where applicants have entered into consortia or joint bidding arrangements, applicants must submit an ''Exhibit B'' to the FCC form 175.

31. A party holding a non-controlling, attributable interest in one applicant will be permitted to acquire an ownership interest in, form a consortium with, or enter into a joint bidding arrangement with other competing applicants provided that (i) the attributable interest holder certifies that it has not and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has formed a consortium or entered into a joint bidding arrangement; and (ii) the arrangements do not result in a change in control of any of the applicants. While the anti-collusion rules do not prohibit non-auction related business negotiations among auction applicants, bidders are reminded that certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies.

C. Bidding Credit Eligibility

32. Bidding credits for designated entities will not be available in Auction No. 47. To encourage the growth of wireless services in federally recognized tribal lands the Commission has implemented a tribal land bidding credit. *See* section V.C, *infra*.

D. Provisions Regarding Defaulters and Former Defaulters (FCC Form 175 Exhibit C)

33. Each applicant must certify on its FCC form 175 application that it is not in default on any Commission licenses and that it is not delinquent on any non-tax debt owed to any Federal agency. In addition, each applicant must attach to its FCC form 175 application a statement made under penalty of perjury indicating whether or not the applicant, its affiliates, its controlling interests, or the affiliates of its controlling interest have ever been in default on any Commission licenses or have ever been delinquent on any non-tax debt owed to any Federal agency. The applicant must provide such information for itself, its affiliates, its controlling interests, and the affiliates of its controlling interests, as defined by § 1.2110 of the Commission's rules (as amended in the *Part 1 Fifth Report and Order*). Applicants must include this statement as Exhibit C of the FCC form 175. Prospective bidders are reminded that the statement must be made under penalty of perjury and, further, submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

34. ''Former defaulters''—*i.e.*, applicants, including their attributable interest holders, that in the past have defaulted on any Commission licenses or been delinquent on any non-tax debt owed to any Federal agency, but that have since remedied all such defaults and cured all of their outstanding non-tax delinquencies—are eligible to bid in Auction No. 47, provided that they are otherwise qualified. However, former defaulters are required to pay upfront payments that are fifty percent more than the normal upfront payment amounts.

E. Installment Payments

35. Installment payment plans will not be available in Auction No. 47.

F. Other Information (FCC Form 175 Exhibits D and E)

36. Applicants owned by minorities or women, as defined in 47 CFR 1.2110(c)(2), may attach an exhibit (Exhibit D) regarding this status. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of ''designated entities'' in its auctions. Applicants wishing to submit additional information may do so on Exhibit E (Miscellaneous Information) to the FCC form 175.

G. Minor Modifications to Short-Form Applications (FCC Form 175)

37. After the short-form filing deadline (January 13, 2003), applicants may make only minor changes to their FCC form 175 applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*,

change their license selections or proposed service areas, change the certifying official or change control of the applicant). *See* 47 CFR 1.2105. Permissible minor changes include, for example, deletion and addition of authorized bidders (to a maximum of three) and revision of exhibits. Applicants must make these modifications to their FCC form 175 electronically and should submit a letter, briefly summarizing the changes, by electronic mail to the attention of Margaret Wiener, Chief, Auctions and Industry Analysis Division, at the following address: *auction47@fcc.gov*. The electronic mail summarizing the changes should include a subject or caption referring to Auction No. 47. The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents.

38. A separate copy of the letter should be faxed to the attention of Kathryn Garland at (717) 338–2850. Questions about other changes should be directed to Kenneth Burnley of the Auctions and Industry Analysis Division at (202) 418–0660.

H. Maintaining Current Information in Short-Form Applications (FCC Form 175)

39. Applicants have an obligation under 47 CFR 1.65, to maintain the completeness and accuracy of information in their short-form applications. Amendments reporting substantial changes of possible decisional significance in information contained in FCC form 175 applications, as defined by 47 CFR 1.2105(b)(2), will not be accepted and may in some instances result in the dismissal of the FCC form 175 application.

III. Pre-Auction Procedures

A. Auction Seminar

40. An auction seminar will not be held for Auction No. 47. Applicants having questions about pre-auction procedures, conduct of the auction, the FCC Automated Auction System , or the Cellular Radiotelephone Service and auction rules are encouraged to contact the appropriate staff listed in the *Auction No. 47 Procedures Public Notice*.

B. Short-Form Application (FCC Form 175)—Due January 13, 2003

41. In order to be eligible to bid in this auction, each applicant must first submit an FCC form 175 application with the license(s) selected. This application must be submitted electronically and received at the Commission no later than 6 p.m. e.t. on January 13, 2003. Late applications will not be accepted.

42. There is no application fee required when filing an FCC Form 175. However, to be eligible to bid, an applicant must submit an upfront payment. *See* part III.D.

i. Electronic Filing

43. Applicants must file their FCC form 175 applications electronically. Applications may generally be filed at any time beginning at 9 a.m. e.t. on January 7, 2003, until 6 p.m. e.t. on January 13, 2003. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. Applicants may update or amend their electronic applications multiple times until the filing deadline of 6 p.m. e.t. on January 13, 2003.

44. Applicants must press the ''SUBMIT Application'' button on the ''Submission'' page of the electronic form to successfully submit their FCC form 175s. Any form that is not submitted will not be reviewed by the FCC. Information about accessing the FCC form 175 is included in Attachment B. Technical support is available at (202) 414–1250 (voice) or (202) 414–1255 (text telephone (TTY)); hours of service Monday through Friday, from 8 a.m. to 6 p.m. e.t. In order to provide better service to the public, *all calls to the hotline are recorded*.

45. Applicants can also contact Technical Support via e-mail. To obtain the address, click the Support tab on the form 175 Homepage.

ii. Completion of the FCC Form 175

46. Applicants should carefully review 47 CFR 1.2105, and must complete all items on the FCC form 175. Instructions for completing the FCC form 175 are in Attachment C of the *Auction No. 47 Procedures Public Notice*. Applicants are encouraged to begin preparing the required attachments for FCC form 175 prior to submitting the form. Attachments B and C to the *Auction No. 47 Procedures Public Notice* provide information on the required attachments and appropriate formats.

iii. Electronic Review of FCC Form 175

47. The FCC form 175 electronic review system may be used to locate and print applicants' FCC form 175 information. Applicants may also view other applicants' completed FCC form 175s after the filing deadline has passed and the FCC has issued a public notice explaining the status of the applications. For this reason, it is important that applicants do not include their Taxpayer Identification Numbers (TINs) on any exhibits to their FCC form 175 applications. There is no fee for accessing this system. *See* Attachment B of the *Auction No. 47 Procedures Public Notice* for details on accessing the review system.

C. Application Processing and Minor Corrections

48. After the deadline for filing the FCC form 175 applications has passed, the FCC will process all timely-submitted applications to determine which are acceptable for filing, and subsequently will issue a public notice identifying: (i) Those applications accepted for filing; (ii) those applications rejected; and (iii) those applications which have minor defects that may be corrected, and the deadline for filing such corrected applications.

49. As described more fully in the Commission's rules, after the January 13, 2003, short-form filing deadline, applicants may make only minor corrections to their FCC form 175 applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change their license selections, change the certifying official, or change control of the applicant).

D. Upfront Payments—Due January 27, 2003

50. In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice form (FCC form 159). After completing the FCC form 175, filers will have access to an electronic version of the FCC form 159 that can be printed and faxed to Mellon Bank in Pittsburgh, PA. All upfront payments must be received at Mellon Bank by 6 p.m. e.t. on January 27, 2003.

Please note that:

- All payments must be made in U.S. dollars.
- All payments must be made by wire transfer.
- Upfront payments for Auction No. 47 go to a lockbox number different from the lockboxes used in previous FCC auctions, and different from the lockbox number to be used for post-auction payments.
- Failure to deliver the upfront payment by the January 27, 2003, deadline will result in dismissal of the application and disqualification from participation in the auction.

i. Making Auction Payments by Wire Transfer

51. Wire transfer payments must be received by 6 p.m. e.t. on January 27,

2003. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. Applicants will need the following information:

ABA Routing Number: 043000261.

Receiving Bank: Mellon Pittsburgh.

Beneficiary: FCC/Account # 910–0198.

OBI Field: (Skip one space between each information item).

''Auctionpay''

FCC Registration Number (FRN): (same as FCC form 159, block 11 and/or 21).

Payment Type Code (same as FCC form 159, block 24A: A47U).

FCC Code 1 (same as FCC form 159, block 28A: ''47'').

Payer Name (same as FCC form 159, block 2).

Lockbox No. #358410.

Note: The BNF and Lockbox number are specific to the upfront payments for this auction; do not use BNF or Lockbox numbers from previous auctions.

52. Applicants must fax a completed FCC form 159 (revised 2/00) to Mellon Bank at (412) 209–6045 at least one hour before placing the order for the wire transfer (but on the same business day). On the cover sheet of the fax, write ''Wire Transfer—Auction Payment for Auction Event No. 47.'' Bidders should confirm receipt of their upfront payment at Mellon Bank by contacting their sending financial institution.

ii. FCC Form 159

53. A completed FCC Remittance Advice Form (FCC form 159, revised 2/00) must be faxed to Mellon Bank in order to accompany each upfront payment. Proper completion of FCC form 159 (Revised 2/00) is critical to ensuring correct credit of upfront payments. Detailed instructions for completion of FCC form 159 are included in Attachment D to the *Auction No. 47 Procedures Public Notice*. An electronic version of the FCC form 159 is available after filing the FCC form 175. The FCC form 159 can be completed electronically, but must be filed with Mellon Bank via facsimile.

iii. Amount of Upfront Payment

54. In the *Part 1 Order, Memorandum Opinion and Order,* and *Notice of Proposed Rule Making,* the Commission delegated to the Bureau the authority and discretion to determine appropriate upfront payment(s) for each auction. In addition, in the *Part 1 Fifth Report and Order*, the Commission ordered that ''former defaulters,'' *i.e.*, applicants that have ever been in default on any Commission license or have ever been delinquent on any non-tax debt owed to any Federal agency, be required to pay upfront payments fifty percent greater than non-''former defaulters.''

55. In both the *Auction No. 47 Comment Public Notice* and *Auction No. 47 Revised Comment Public Notice*, the Bureau proposed that the amount of the upfront payment would determine the number of bidding units on which a bidder may place bids. In order to bid on a license, otherwise qualified bidders that applied for that license on form 175 must have an eligibility level that meets or exceeds the number of bidding units assigned to that license. At a minimum, therefore, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the licenses applied for on form 175, or else the applicant will not be eligible to participate in the auction. An applicant does not have to make an upfront payment to cover all licenses for which the applicant has applied on form 175, but rather to cover the maximum number of bidding units that are associated with licenses on which the bidder wishes to place a bid.

56. In both the *Auction No. 47 Comment Public Notice* and *Auction No. 47 Revised Comment Public Notice*, the Bureau proposed to set the upfront payment for each license at $500 per license. Having received no comments regarding the amount of the proposed upfront payments, the Bureau therefore adopts its proposed upfront payment amounts for Auction No. 47. The specific upfront payments and bidding units for each license are set forth in Attachment A of the *Auction No. 47 Procedures Public Notice*.

57. In calculating its upfront payment amount, an applicant should determine the *maximum* number of bidding units on which it may wish to bid on, and submit an upfront payment covering that number of bidding units. In order to make this calculation, an applicant should add together the upfront payments for all licenses on which it plans to bid. Bidders should check their calculations carefully, as there is no provision for increasing a bidder's maximum eligibility after the upfront payment deadline.

58. Former defaulters should calculate their upfront payment for all licenses by multiplying the number of bidding units they wish to purchase by 1.5. In order to calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit.

Note: An applicant may, on its FCC form 175, apply for every applicable license being offered, but its actual bidding will be limited by the bidding units reflected in its upfront payment.

iv. Applicant's Wire Transfer Information for Purposes of Refunds of Upfront Payments

59. The Commission will use wire transfers for all Auction No. 47 refunds. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information as listed below be supplied to the FCC. Applicants can provide the information electronically during the initial short-form filing window after the form has been submitted. Wire Transfer Instructions can also be manually faxed to the FCC, Financial Operations Center, Auctions Accounting Group, ATTN: Tim Dates or Gail Glasser, at (202) 418–2843 by January 27, 2003. All refunds will be returned to the payer of record as identified on the FCC form 159 unless the payer submits written authorization instructing otherwise. For additional information, please call Gail Glasser at (202) 418–0578 or Tim Dates at 202–418–0496.

Name of Bank
ABA Number
Contact and Phone Number
Account Number to Credit
Name of Account Holder
FCC Registration Number (FRN)
Taxpayer Identification Number (see below)
Correspondent Bank (if applicable)
ABA Number
Account Number

(Applicants should also note that implementation of the Debt Collection Improvement Act of 1996 requires the FCC to obtain a Taxpayer Identification Number (TIN) before it can disburse refunds.) Eligibility for refunds is discussed in part V.E., *infra*.

E. Auction Registration

60. Approximately 10 days before the auction, the FCC will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants whose FCC form 175 applications have been accepted for filing and have timely submitted upfront payments sufficient to make them eligible to bid on at least one of the licenses for which they applied.

61. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by two separate overnight mailings, one

containing the confidential bidder identification number (BIN) required to place bids and the other containing the SecurID cards. These mailings will be sent only to the contact person at the contact address listed on the FCC form 175.

62. Applicants that do not receive both registration mailings will not be able to submit bids. Therefore, any qualified applicant that has not received both mailings by noon on Wednesday, February 5, 2003, should contact the Auctions Hotline at (717) 338–2888. Receipt of both registration mailings is critical to participating in the auction, and each applicant is responsible for ensuring it has received all of the registration material.

63. Qualified bidders should note that lost bidder identification numbers or SecurID cards can be replaced only by appearing in person at the FCC Auction Headquarters located at 445 12th St., SW., Washington, DC 20554. Only an authorized representative or certifying official, as designated on an applicant's FCC form 175, may appear in person with two forms of identification (one of which must be a photo identification) in order to receive replacements. Qualified bidders requiring replacements must call technical support prior to arriving at the FCC.

F. Electronic Bidding

64. The Commission will conduct this auction over the Internet. Telephonic bidding will also be available. As a contingency, the FCC Wide Area Network will be available as well. Qualified bidders are permitted to bid electronically or telephonically , *i.e.*, over the Internet or the FCC's Wide Area Network. In either case, each authorized bidder must have its own Remote Security Access SecurID card, which the FCC will provide at no charge. Each applicant with less than three authorized bidders will be issued two SecurID cards, while applicants with three authorized bidders will be issued three cards. For security purposes, the SecurID cards and the FCC Automated Auction System user manual are only mailed to the contact person at the contact address listed on the FCC form 175. Please note that each SecurID card is tailored to a specific auction, therefore, SecurID cards issued for other auctions or obtained from a source other than the FCC will not work for Auction No. 47. The telephonic bidding phone number will be supplied in the first overnight mailing, which also includes the confidential bidder identification number. Each applicant should indicate its bidding preference-electronic or telephonic—on the FCC form 175.

65. Please note that the SecurID cards can be recycled, and the Bureau encourages bidders to return the cards to the FCC. The Bureau will provide pre-addressed envelopes that bidders may use to return the cards once the auction is over.

G. Mock Auction

66. All qualified bidders will be eligible to participate in a mock auction on Friday, February 7, 2003. The mock auction will enable applicants to become familiar with the FCC Automated Auction System prior to the auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

IV. Auction Event

67. Auction No. 47 will be held on Wednesday, February 12, 2003. The start and finish time of the bidding round will be announced in a later public notice, which will be released approximately 10 days before the start of the auction.

A. Auction Structure

i. Single Round Sealed Bid Auction

68. In both the *Auction No. 47 Comment Public Notice* and *Auction No. 47 Revised Comment Public Notice*, the Bureau proposed to award all licenses in Auction No. 47 using a single-round sealed-bid auction design. In its comments, Western Wireless objects to this design proposal and urges the Bureau instead to utilize a simultaneous multiple-round auction or, if that is not possible, a ''sealed-second-bid'' single round design. Western Wireless contends that there exists informational advantages to using these alternative auction formats. The Bureau believes that due to the unusual circumstances of Auction No. 47, in which there are only two bidders, both of whom are very familiar with the areas to be licensed, these informational advantages are not necessary. Therefore, the Bureau concludes that it is operationally feasible and appropriate to auction the cellular unserved service area licenses through a single-round sealed-bid auction.

ii. Maximum Eligibility

69. In both the *Auction No. 47 Comment Public Notice* and *Auction No. 47 Revised Comment Public Notice*, the Bureau proposed that the amount of the upfront payment submitted by a bidder would determine the maximum eligibility (as measured in bidding units) for each bidder. The Bureau received no comments on this issue.

70. For Auction No. 47, the Bureau adopts its proposal. The amount of the upfront payment submitted by a bidder determines the number of bidding units on which a bidder may place bids. Note again that each license is assigned a specific number of bidding units equal to the upfront payment listed in Attachment A on a bidding unit per dollar basis. The total upfront payment defines the maximum number of bidding units on which the applicant will be permitted to bid. As there is no provision for increasing a bidder's maximum eligibility after the upfront payment deadline, prospective bidders are cautioned to calculate their upfront payments carefully. The total upfront payment does not affect the dollar amount a bidder may bid on any license.

iii. Auction Delay or Cancellation

71. In the *Auction No. 47 Comment Public Notice*, the Bureau proposed that, by public notice or by announcement during the auction, the Bureau may delay or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair conduct of competitive bidding.

72. Because this approach has proven effective in resolving exigent circumstances in previous auctions, the Bureau adopts its proposed auction cancellation rules. By public notice or by announcement during the auction, the Bureau may delay or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to resume the auction or cancel the auction in its entirety. Network interruption may cause the Bureau to delay the auction. The Bureau emphasizes that exercise of this authority is solely within the discretion of the Bureau.

B. Bidding Procedures

i. Round Structure

73. The single-round sealed-bid format will consist of one bidding round followed by the release of the auction results. The start and finish time of the bidding round will be announced in the public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction.

ii. Reserve Price or Minimum Opening Bid

74. *Background.* The Balanced Budget Act calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when FCC licenses are subject to auction (*i.e.*, because they are mutually exclusive), unless the Commission determines that a reserve price or minimum opening bid is not in the public interest. Consistent with this mandate, the Commission directed the Bureau to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction. The Commission concluded that the Bureau should have the discretion to employ either or both of these mechanisms for future auctions.

75. In both the *Auction No. 47 Comment Public Notice* and *Auction No. 47 Revised Comment Public Notice,* the Bureau proposed to establish minimum opening bids for Auction No. 47 in the amount of $500 per license. The Bureau received no comments concerning this proposal. Therefore, the minimum opening bid for each license is set at $500 and is set forth in Attachment A of the *Auction No. 47 Procedures Public Notice.*

iii. Bidding

76. During the bidding round, a bidder may place bids in any whole dollar amount equal to or greater than the minimum opening bid for as many licenses as it wishes (subject to its eligibility). Bidders also have the option of making multiple submissions during the bidding round. If a bidder submits multiple bids for a single license in the same round, the system takes the last bid submitted as that bidder's bid.

77. Please note that all bidding will take place remotely either through the Automated Auction System or by telephonic bidding. (Telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their call well in advance of the close of the round. Normally, four to five minutes are necessary to complete a bid submission.) There will be no on-site bidding during Auction No. 47.

78. A bidder's ability to bid on specific licenses in the auction is determined by two factors: (i) the licenses applied for on FCC form 175 and (ii) the upfront payment amount deposited. The bid submission screens will allow bidders to submit bids on only those licenses for which the bidder applied on its FCC form 175.

79. The Automated Auction System requires each bidder to be logged in during the bidding round using the bidder identification number provided in the registration materials, and the generated SecurID code. Bidders are strongly encouraged to print a bid confirmation after they submit their bids.

80. Finally, bidders are cautioned that they should type their bid amounts carefully because, even if mistakenly or erroneously made, bidders still assume a binding obligation to pay their full bid amount.

iv. Bid Removal and Bid Withdrawal

81. In the *Auction No. 47 Comment Public Notice,* the Bureau proposed bid removal and bid withdrawal procedures. With respect to bid withdrawals, the Bureau proposed not to allow any bid withdrawals in Auction No. 47. The Bureau received no comments on this issue. Therefore, the Bureau adopts its proposal.

82. Bid Removal Procedures. Before the close of the bidding round, a bidder has the option of removing any bids placed in the round. By using the ''remove bid'' function in the bidding system, a bidder may effectively ''unsubmit'' any bid placed within the round.

v. Winning Bids and Tie Bids

83. At the end of the bidding round, the winning bids will be determined based on the highest gross bid amount received for each license. In the event of identical bids on a license (*i.e.*, tied bids), the Bureau proposed to allow an additional bidding round for bidders to submit higher bids for only the license(s) with tied bids. The Commission would announce the schedule for the subsequent round, via an announcement in the Auctions Bidding System, concurrent with the release of round results. In the event of tied bids, the Bureau proposed to use a random number generator to select a high bid from among the tied bids. A random number will be assigned to each bid. The tie bid having the highest random number will become the high bid. The remaining bidder, as well as the high bidder, will be able to submit higher bid in the next round. If neither bidder submits a higher bid, the high bid from the previous round will win the license. If any bids are received in the next round, the winning bid will be determined on the highest gross bid amount received for each license. The Bureau received no comments on its proposal. Therefore, the Bureau adopts its proposal.

vi. Auction Announcements

84. The FCC will use auction announcements to announce items such as the schedule for a subsequent round in the event of tied bids on a license. All FCC auction announcements will be available by clicking on a link in the Automated Auction System.

vii. Maintaining the Accuracy of FCC Form 175 Information

85. As noted in part II.G., after the short-form filing deadline, applicants may make only minor changes to their FCC form 175 applications. For example, permissible minor changes include deletion and addition of authorized bidders (to a maximum of three) and certain revision of exhibits. Applicants must make these modifications to their FCC form 175 electronically and should submit a letter, briefly summarizing the changes, by electronic mail to the attention of Margaret Wiener, Chief, Auctions and Industry Analysis Division, at the following address: *auction47@fcc.gov.* The electronic mail summarizing the changes should include a subject or caption referring to Auction No. 47. The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents.

86. A separate copy of the letter should be faxed to the attention of Kathryn Garland at (717) 338–2850. Questions about other changes should be directed to Kenneth Burnley of the Auctions and Industry Analysis Division at (202) 418–0660.

V. Post-Auction Procedures

A. Down Payments

87. After the auction has ended, the Commission will issue a public notice declaring the auction closed, identifying winning bidders and any down payments due.

88. Within 10 business days after release of the auction closing notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Government to 20 percent of its winning bids. *See* 47 CFR 1.2107(b).

B. Long-Form Applications

89. Within an MX Group, the previously filed long-form applications(s) of the unsuccessful bidder will be dismissed following the grant of the winning bidder's license.

C. Tribal Land Bidding Credit

90. A winning bidder that intends to use its license(s) to deploy facilities and

provide services to federally-recognized tribal lands that are unserved by any telecommunications carrier or that have a telephone service penetration rate equal to or below 70 percent is eligible to receive a tribal land bidding credit as set forth in 47 CFR 1.2107 and 1.2110(f).

91. A winning bidder applies for the tribal land bidding credit *after* winning the auction. Instructions for applying for this credit will be provided in a public notice after the close of the auction. Licensees receiving a tribal land bidding credit are subject to performance criteria as set forth in 47 CFR 1.2110(f).

92. For additional information on the tribal land bidding credit, including how the amount of the credit is calculated, applicants should review the Commission's rule making proceeding regarding tribal land bidding credits and related public notices. Relevant documents can be viewed on the Commission's auctions Web site at *http://wireless.fcc.gov/auctions* by clicking on the *Tribal Land Credits* link.

D. Default and Disqualification

93. Any winning bidder that defaults or is disqualified after the close of the auction (*i.e.*, fails to remit the required down payment within the prescribed period of time, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR 1.2104(g)(2). In such event the Commission may re-auction the license or offer it to the next highest bidder (in descending order) at its final bid. In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing licenses held by the applicant.

E. Refund of Remaining Upfront Payment Balance

94. Applicants that submitted upfront payments but were not a winning bidder for a license in Auction No. 47 may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. All refunds will be returned to the payer of record, as identified on the FCC form 159, unless the payer submits written authorization instructing otherwise.

95. Qualified bidders must submit a written refund request. If you have completed the refund instructions electronically, then only a written request for the refund is necessary. If not, the request must also include wire transfer instructions, Taxpayer Identification Number (TIN) and FCC Registration Number (FRN). Send refund request to: Federal Communications Commission, Financial Operations Center, Auctions Accounting Group, Gail Glasser or Tim Dates, 445 12th Street, SW., Room 1–C863, Washington, DC 20554.

96. Bidders are encouraged to file their refund information electronically using the refund information portion of the FCC form 175, but bidders can also fax their information to the Auctions Accounting Group at (202) 418–2843. Once the information has been approved, a refund will be sent to the party identified in the refund information.

Note: Refund processing generally takes up to two weeks to complete. Bidders with questions about refunds should contact Tim Dates at (202) 418–0496 or Gail Glasser at (202) 418–0578.

Federal Communications Commission.

Margaret Wiener,

Chief, Auctions & Industry Analysis Division, WTB.

[FR Doc. 02–31634 Filed 12–16–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 02–3293]

Auction of Multichannel Video Distribution and Data Service Licenses (MVDDS) Is Rescheduled

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces that the start of the upcoming of MVDDS licenses scheduled for February 12, 2003 is rescheduled for August 6, 2003.

DATES: The MVDDS auction is scheduled to begin on August 6, 2003.

FOR FURTHER INFORMATION CONTACT: *Media Contact:* Lauren Kravetz at (202) 418–7944. *Wireless Telecommunications Bureau:* FCC Auctions Hotline at (888) 225–5322, Press Option #2.

SUPPLEMENTARY INFORMATION: This is a summary of a Public Notice released by the Wireless Telecommunications Bureau on November 26, 2002. The complete text of the Public Notice is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC, 20554. The November 26, 2002 Public Notice may also be purchased from the Commission's duplication 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 Wireless Telecommunications Bureau announces the auction of the Multichannel Video Distribution and Data Service (MVDDS) licenses previously scheduled to begin on February 12, 2003, has been rescheduled for August 6, 2003. Future public notices will seek comment on specific terms and conditions for this auction. The key dates are listed:

Auction Seminar: June 5, 2003.

Short Form Deadline: June 16, 2003.

(FCC 175 Application)

Upfront Payment Deadline: July 10, 2003.

Mock Auction: August 1, 2003.

Auction Begins: August 6, 2003.

Federal Communications Commission.

Margaret Wiener,

Chief, Auctions and Industry Analysis Division, WTB.

[FR Doc. 02–31716 Filed 12–16–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Notice Announcing an Open Meeting of the Board

Time and Date: 10 a.m., Friday, December 20, 2002.

Place: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

Status: The entire meeting will be open to the public.

Matter to be Considered:

- Amendments to the Federal Home Loan Bank of Atlanta Capital Plan.
- Proposed Rule: Disclosure under the Securities Act of 1933.
- Resolution Posing Questions to the 12 Federal Home Loan Banks Regarding Modernized Membership.
- Final Rule: Procedure for Conducting the Monthly Survey of Rates and Terms on Conventional One-Family, Non-Farm Mortgage Loans.

FOR FURTHER INFORMATION CONTACT: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

Arnold Intrater,

General Counsel.

[FR Doc. 02–31846 Filed 12–13–02; 12:47 pm]

BILLING CODE 6725–01–P

FEDERAL TRADE COMMISSION

Charges for Certain Disclosures

AGENCY: Federal Trade Commission.

ACTION: Notice Regarding Charges for Certain Disclosures.

SUMMARY: The Federal Trade Commission announces that the current $9.00 ceiling on allowable charges under section 612(a) of the Fair Credit Reporting Act (''FCRA'') will remain unchanged for 2003. Under 1996 amendments to the FCRA, the Federal Trade Commission is required to increase the $8.00 amount referred to in paragraph (1)(A)(i) of section 612(a) on January 1 of each year, based proportionally on changes in the Consumer Price Index (''CPI''), with fractional changes rounded to the nearest fifty cents. The CPI increased 12.28 percent between September 1997, the date the FCRA amendments took effect, and September 2002. This increase in the CPI and the requirement that any increase be rounded to the nearest fifty cents results in no change in the current maximum allowable charge of $9.00.

EFFECTIVE DATE: January 1, 2003.

ADDRESSES: Federal Trade Commission, 600 PA. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Keith B. Anderson, Bureau of Economics, Federal Trade Commission, Washington, DC 20580, 202–326–3428.

SUPPLEMENTARY INFORMATION: Section 612(a)(1)(A) of the Fair Credit Reporting Act, as amended in 1996, states that, where a consumer reporting agency is permitted to impose a reasonable charge on a consumer for making a disclosure to the consumer pursuant to section 609, the charge shall not exceed $8 and shall be indicated to the consumer before making the disclosure. Section 612(a)(2) goes on to state that the Federal Trade Commission (''the Commission'') shall increase the $8.00 maximum amount on January 1 of each year, based proportionally on changes in the Consumer Price Index, with fractional changes rounded to the nearest fifty cents.

The Commission considers the $8 amount referred to in paragraph (1)(A)(i) of section 612(a) to be the baseline for the effective ceiling on reasonable charges dating from the effective date of the amended FCRA, *i.e.*, September 30, 1997. Each year the Commission calculates the proportional increase in the Consumer Price Index (using the most general CPI, which is for all urban consumers, all items) from September 1997 to September of the current year. The Commission then determines what modification, if any, from the original base of $8 should be made effective on January 1 of the subsequent year, given the requirement that fractional changes be rounded to the nearest fifty cents.

Between September 1997 and September 2002, the Consumer Price Index for all urban consumers and all items increased by 12.28 percent—from an index value of 161.2 in September 1997 to a value of 181.0 in September 2002. An increase of 12.28 percent in the $8.00 base figure would lead to a new figure of $8.98. However, because the statute directs that the resulting figure be rounded to the nearest $0.50, the allowable charge should be $9.00.

The Commission therefore determines that the allowable charge for the year 2003 will remain unchanged at $9.00.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02–31646 Filed 12–16–02; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

Public Workshop: Advertising of Weight Loss Products

AGENCY: Federal Trade Commission (FTC).

ACTION: Extension of public comment period.

SUMMARY: The FTC issues an amendment to its notice announcing publicWorkshop, extending the time period during which persons may submit written comments on the topics discussed by the panelists.

DATES: Written comments must be received on or before February 3, 2003.

ADDRESSES: Written comments may be submitted to Secretary, Federal Trade Commission, Room 159, 600 Pennsylvania Avenue, NW., Washington, DC 20580, or e-mailed to *weightloss@ftc.gov.*

FOR FURTHER INFORMATION CONTACT: Rona Kelner, (202) 326–2752, *rkelner@ftc.gov,* or Lesley Fair, (202) 326–3081, *lfair@ftc.gov,* Division of Advertising Practices, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580. To read the Commission's policy on how it handles the information you may submit, please visit *http://www.ftc.gov/ftc/privacy.htm.*

SUPPLEMENTARY INFORMATION:

November 19, 2002, Workshop

On November 19, 2002, the FTC held a public workshop on deception in weight-loss advertising. The goal of the workshop was to explore the impact of deceptive weight loss ads and to develop new approaches for combating weight loss advertising fraud. Three panels were convened over the course of the day, each focusing, respectively, on science, industry, and media issues.

The first panel consisted of researchers, academicians, medical professionals, and industry experts who discussed the state of the science regarding weight loss. These panelists evaluated eight common claims found in ads for weight loss products and opined on whether these claims promised results that are not scientifically feasible.

The second panel was comprised of representatives from the weight loss industry, including companies that sell weight loss products and trade associations that represent dietary supplement makers. This panel discussed the problem that deceptive advertising poses for legitimate industry players, and addressed what industry self-regulatory efforts have been, and could be, implemented.

The third panel was made up of media experts and representatives of media organizations and outlets. This panel focused on the role of the media in screening out false and deceptive advertisements, and discussed new approaches to effective media screening.

A detailed agenda, transcript, and other information about the workshop can be found on the FTC's Web site at *http://www.ftc.gov/bcp/workshops/weightloss.*

Form and Availability of Comments

To continue the discussion on this important topic, the FTC is extending the time period during which public comments may be submitted. Interested parties may file written comments on the issues that the panels addressed until February 3, 2003. Comments should be captioned ''Advertising of Weight Loss Products Workshop—Comment, P024527.''

Parties sending written comments should submit an original and two copies of each document. To enable prompt review and public access, paper submissions should include a version on diskette in PDF, ASCII,WordPerfect, or Microsoft Word format. Diskettes should be labeled with the name of the party, and the name and version of the word processing program used to create the document. Alternatively, comments may be e-mailed to *weightloss@ftc.gov.*

Written comments will be available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and FTC regulations, 16 CFR 4.9, Monday through Friday between the hours of 8:30 a.m. and 5 p.m. at the Public Reference Room, Room 130–H, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580. This notice and, to the extent possible, all comments will also be posted on the FTC Web site, *http://www.ftc.gov.*

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02–31647 Filed 12–16–02; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Opportunity for Cooperative Research and Development Agreements (CRADAs) To Develop Novel Mechanical and Biological Treatments in Interventional Cardiovascular Medicine Using X-ray Fluoroscopy and Real-Time Magnetic Resonance Imaging

AGENCY: National Heart, Lung, and Blood Institute.

ACTION: Notice.

SUMMARY: The National Heart, Lung, and Blood Institute (NHLBI) of the National Institutes of Health (NIH) announces the opportunity for Cooperative Research and Development Agreements (CRADAs) to develop novel mechanical and biological treatments in interventional cardiovascular medicine using x-ray fluoroscopy and real-time magnetic resonance imaging. The NHLBI seeks potential Collaborators wishing to provide expertise in (1) novel biological treatments for cardiovascular disease, including adult-derived stem cell and cardiovascular progenitor cells, (2) novel agents for therapeutic angiogenesis for myocardial or peripheral artery applications, (3) novel mechanisms of drug, gene, or cell delivery to the myocardium or skeletal muscle to treat manifestations of coronary or peripheral artery atherosclerosis, and (4) intravascular devices for real-time magnetic resonance imaging-guided treatments including but not limited to angioplasty balloons, recanalization systems, percutaneous cardiac valves, stents, endografts, and bypass grafts.

The NHLBI seeks capability statements from parties interested in entering into a potential CRADA to manufacture, prototype, and test the above-specified agents or devices leading to early clinical testing and development. Collaborator applicants developing capability statements may also include proposals to provide funding for possible commercial uses of interest to the Collaborator. The availability of private sector support may increase the feasibility of particular aspects of the final design, but the primary criterion for selecting potential collaborators is the scientific merit of proposals for developing a plan to identify novel putative therapeutic agents and devices.

The NHLBI can provide extensive preclinical and clinical support in the development of Collaborator deliverables, including animal experiments, advanced x-ray fluoroscopic and magnetic resonance imaging laboratories, and investigations conducted in the Warren G. Magnuson Clinical Center at the Bethesda campus of the National Institutes of Health.

The control of clinical trials shall reside entirely with the Institute and the scientific participants of the trial. In the event that any adverse effects are encountered which, for legal or ethical reasons, may require communication with the U.S. Food and Drug Administration, the relevant collaborating institutions will be notified. Neither the conduct of the trial nor the results should be represented as an NHLBI endorsement of the agent, drug, or device under study.

DATES: Only written CRADA capability statements received by the NHLBI within 21 days of publication of this notice will be considered during the initial design phase. Confidential information must be clearly labeled. Potential collaborators may be invited to meet with the Selection Committee at the Collaborators' expense to provide additional information. The Institute may issue an additional notice of CRADA opportunity during the design phase if circumstances change or if the design alters substantially.

FOR FURTHER INFORMATION CONTACT: Capability statements should be submitted to Ms. Peg Koelble, Office of Technology Transfer and Development, National Heart, Lung, and Blood Institute, National Institutes of Health, 31 Center Drive, Room 1B30, Bethesda, MD 20892–2490; Tel: 301–594–4095; Fax: 301–594–3080; e-mail: *koelblep@nhlbi.nih.gov.*

Capability Statements: A Selection Committee will use the information provided in the ''Collaborator Capability Statements'' received in response to this announcement to help in its deliberations. It is the intention of the NHLBI that all qualified Collaborators have the opportunity to provide information to the Selection Committee through their capability statements. The Capability Statement should not exceed 10 pages and should address the following selection criteria:

1. The statement should provide specific details of the method to be used in the development of novel candidate biological treatments, delivery systems, or real-time MRI-guided mechanical treatments for cardiovascular disease.

2. The statement should include a detailed plan demonstrating the ability to provide sufficient capacity in drug, gene, or stem cell development and manufacturing or in mechanical device prototyping, testing, development, and manufacturing.

3. The statement may include outline measures of interest to the Collaborator. The specifics of the proposed outcome measures and the proposed support should include but not be limited to: expertise in the proposed field, specific personnel allocation to the proposed collaboration, specific internal or external funding commitment to support the advancement of scientific research, services, facilities, equipment, or other resources that would contribute to the conduct of the commercial development.

4. The statement must address willingness promptly to publish research results and ability to be bound by PHS intellectual property policies (*see* CRADA: *http://ott.od.nih.gov/newpages/crada.pdf*).

Dated: December 6, 2002.

Carl Roth,

Associate Director for Scientific Program Operation, National Heart, Lung, and Blood Institute.

[FR Doc. 02–31630 Filed 12–16–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

The National Toxicology Program (NTP) Announces the Availability of the Report on Carcinogens, Tenth Edition

The Report on Carcinogens, Tenth Edition was submitted to the Congress by the Secretary HHS and also released publicly on December 11, 2002. It is available on the Internet and can be accessed from the Environmental Health Perspectives web site at: *http://www.ehponline.org* or from the NTP

Web site at: *http://ntp-server.niehs.nih.gov*. Hard copies of the Report on Carcinogens, Tenth Edition can also be obtained by contacting Environmental Health Perspectives, ATTN: Order Processing, 1001 Winstead Drive Suite 355, Cary, NC 27513; Telephone: 866–541–3841 or 919–653–2586; Fax (919) 678–8696; email: *ehponline@niehs.nih.gov*.

Background

The Report on Carcinogens (RoC) (previously known as the Annual Report on Carcinogens) is a Congressionally mandated listing of known human carcinogens and reasonably anticipated human carcinogens whose preparation is delegated to the National Toxicology Program by the Secretary, Department of Health and Human Services (DHHS). Section 301(b)(4) of the Public Health Service Act, as amended, provides that the Secretary, (DHHS), shall publish a biennial report which contains a list of all substances (1) which either are known to be human carcinogens or may reasonably be anticipated to be human carcinogens; and (2) to which a significant number of persons residing in the United States are exposed. The law also states that the reports should provide available information on the nature of exposures, the estimated number of persons exposed and the extent to which the implementation of Federal regulations decreases the risk to public health from exposure to these chemicals.

The RoC is an informational scientific and public health document that identifies and discusses agents, substances, mixtures, or exposure circumstances that may pose a carcinogenic hazard to human health. It serves as a meaningful and useful compilation of data on the (1) carcinogenicity, genotoxicity, and biologic mechanisms of the listed substances in humans and/or animals, (2) the potential for exposure to these substances, and (3) the regulations promulgated by Federal agencies to limit exposures. The report does not present quantitative assessments of carcinogenic risk, an assessment that defines the conditions under which the hazard may be unacceptable. Listing of substances in the report, therefore, does not establish that such substances present carcinogenic risks to individuals in their daily lives. Such formal risk assessments are the purview of the appropriate Federal, State, and local health regulatory and research agencies.

New Listings to the RoC, Tenth Edition

The RoC, Tenth Edition, contains 228 entries, 15 of which have not appeared in earlier RoCs. The Tenth Edition of the RoC also changes the listing of beryllium and beryllium compounds from reasonably anticipated to be human carcinogens to known to be human carcinogens, with corresponding revisions of the earlier profile for these chemicals. The Tenth Edition of the RoC lists estrogens, steroidal as known human carcinogens. This listing of steroidal estrogens supersedes the previous listing of individual estrogens in the RoC (including conjugated estrogens, estradiol-17β, estrone, ethinylestradiol, and mestranol) and applies to all chemicals of this steroid class. The profile for steroidal estrogens includes information on carcinogenicity, properties, use, production, exposure, and regulations for steroidal estrogens as a class, as well as some specific information for individual estrogens. The table below summarizes the actions taken for the substances or exposure circumstances reviewed for possible listing in or change in the listing in the RoC, Tenth Edition.

The new entries for the Report on Carcinogens, Tenth Edition, including those whose listing changed, underwent a multiphase peer review. This review included three scientific peer reviews, two consisting of scientists within the Federal government and the other consisting of an outside peer review by both government and non-government scientists. During the entire review period, there was extensive opportunity for public comment and stakeholder review. The three scientific review committees evaluated all available data relevant to the criteria for inclusion of candidate nominations in the report. The criteria used in the review process and a detailed description of the review procedures, including the steps in the current formal review process, can be obtained from the NTP Web site at *http://ntp-server.niehs.nih.gov/* or by contacting: Dr. C. W. Jameson, Head—Report on Carcinogens, National Toxicology Program, MD EC–14, P.O. Box 12233, Research Triangle Park, NC 27709; phone: (919) 541–4096, fax: (919) 541–0144, email: *jameson@niehs.nih.gov*.

Questions or comments concerning the RoC, Tenth Edition should be directed to: Dr. Mary Wolfe, Office of Scientific Review and NTP Liaison, MDA3–01, P.O. Box 12233, Research Triangle Park, NC 27709; phone: (919) 541–0530, fax: (919) 541–0295, e-mail: *wolfe@niehs.nih.gov*.

Dated: December 9, 2002.

Kenneth Olden,

Director, National Toxicology Program.

SUMMARY FOR AGENTS, SUBSTANCES, MIXTURES OR EXPOSURE CIRCUMSTANCES BEING ADDED TO OR CHANGING THE LISTING IN THE TENTH EDITION OF THE REPORT ON CARCINOGENS

Nominations	Primary uses or exposures	Action
2-Amino-3-methylimidazo[4,5-f] quinoline (IQ)/CAS# 76180–96–6.	One of a series of heterocyclic amines that is formed in food during heating or cooking and is found in cooked meats and eggs. It is also found in cigarette smoke.	Listed as reasonably anticipated to be a human carcinogen.
Beryllium and Beryllium Compounds	Used in fiber optics and cellular network communications systems, aerospace, defense and other industry applications.	Listing changed to known to be human carcinogens.
2,2-bis-(Bromomethyl)–1,3-propanediol (Technical Grade)/CAS# 3296–90–9.	Used as a flame retardant in unsaturated polyester resins, for molded products, and in the production of rigid polyurethane foam.	Listed as reasonably anticipated to be a human carcinogen.
Broad Spectrum UV Radiation and UVA Radiation, UVB Radiation and UVC Radiation.	Solar and artificial sources of ultraviolet radiation	Broad Spectrum UV Radiation listed as known to be a human carcinogen, UVA Radiation, UVB Radiation and UVC Radiation each listed as reasonably anticipated to be a human carcinogen.
Chloramphenicol/CAS# 56–75–7	Used as an antibiotic since the 1950s but currently has restricted use in the United States because it causes blood dyscrasia.	Listed as reasonably anticipated to be a human carcinogen.

SUMMARY FOR AGENTS, SUBSTANCES, MIXTURES OR EXPOSURE CIRCUMSTANCES BEING ADDED TO OR CHANGING THE LISTING IN THE TENTH EDITION OF THE REPORT ON CARCINOGENS—Continued

Nominations	Primary uses or exposures	Action
2,3-Dibromo-1-Propanol/CAS# 96–13–9	Used as an intermediate in the preparation of flame retardants and as an intermediate in the manufacture of pesticides and pharmaceuticals.	Listed as reasonably anticipated to be a human carcinogen.
Dyes Metabolized to Dimethoxybenzidine	Dyes used in leather, paper, plastics, rubber, and textile industries.	Listed as reasonably anticipated to be human carcinogens.
Dyes Metabolized to Dimethylbenzidine ..	Dyes used in printing textiles, as biological stains, and in color photography.	Listed as reasonably anticipated to be human carcinogens.
Estrogens, Steroidal	Comprise a group of structurally related hormones that control sex and growth characteristics and are commonly used in hormone replacement therapy (HRT) to treat symptoms of menopause and in oral contraceptives.	Listed as known to be human carcinogens.
Methyleugenol/CAS# 93–15–2	Occurs naturally in oils, herbs and spices and is used in its natural or synthetic forms as a flavoring agent, insect attractant, anesthetic and in sunscreens.	Listed as reasonably anticipated to be a human carcinogen
Nickel and Nickel Compounds	Used in many industrial and commercial applications including alloys, catalysts, batteries, pigments, and ceramics.	Metallic Nickel listed as reasonably anticipated to be a human carcinogen, Nickel Compounds listed as known to be human carcinogens, Nickel alloys not listed.
Styrene7,8-oxide/CAS# 96–09–3	Used mainly as an intermediate in the production of styrene glycol and its derivatives, in the production of reinforced plastics, and as a chemical intermediate for cosmetics, surface coatings, agricultural and biological chemicals.	Listed as reasonably anticipated to be a human carcinogen.
Trichloroethylene/CAS# 79–01–6	Used as an industrial solvent for vapor degreasing and cold cleaning of fabricated metal parts.	Remains listed as reasonably anticipated to be a human carcinogen.
Vinyl Bromide/CAS# 593–60–2	Used predominantly in polymers in the production of fabrics and fabric blends used in sleepwear (mostly children's) and home furnishings, as well as in leather, fabricated metal products and in the production of pharmaceuticals and fumigants.	Listed as reasonably anticipated to be a human carcinogen.
Vinyl Fluoride/CAS# 75–02–5	Used mainly in the production of polyvinyl fluoride and other fluoropolymers that are widely used because they are resistant to weather and have great strength, chemical inertness, and low permeability to air and water.	Listed as reasonably anticipated to be a human carcinogen.
Wood Dust	Created when machines or tools are used to cut or shape wood. High amounts of wood dust are produced in sawmills, dimension mills, furniture making industries, cabinetmaking, and carpentry.	Listed as a known to be a human carcinogen.

[FR Doc. 02–31629 Filed 12–16–02; 8:45 am]
BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No.FR–4734–N–73]

Notice of Submission of Proposed Information Collection to OMB: Customer-Survey of Households Living in Federally Assisted Units

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments Due Date: January 16, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2528–0170) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). The notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including

number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This notice also lists the following information:

Title of Proposal: Customer-Survey of Households Living in Federally Assisted Units.

OMB Approval Number: 2528–0170.

Form Numbers: None.

Description of the Need for the Information and its Proposed Use: This survey provides HUD feedback to help local housing agencies improve their Section 8 programs. Additionally, it provides HUD's policy, program, and budget managers with improved measures for tracking national housing conditions over time.

No changes in the Survey are contemplated, except for the following minor improvements:

1. Respondents who live in apartments are asked: ''How many apartments in your building?''

They are provided the following response options: 2–4 4–8 8 or more.

The first two options have typos and will be corrected to read: 2–3 4–7 8 or more.

2. Respondents are provided a telephone hotline number to use if they have concerns or questions. One type of feedback at the hotline indicated that some did not understand the term ''screening.''

The question ''The landlord does a good job screening tenants'' will be replaced with ''Most tenants here are acceptable as neighbors.''

The two questions ''If you have been in this apartment for more than one year, describe how things have changed* * *Landlord's screening of new tenants?'' and ''If you have been in this apartment for more than one year, describe how things have changed* * *Amount of crime around your homes?'' will be eliminated.

3. The following questions will be added to the ''Neighborhood'' section of the questionnaire:

A. Travel by bus to grocery shopping and jobs.

Response options:

Not a problem, some problem, big problem, no bus service in this town.

B. Travel by car to grocery shopping and jobs.

Response options:

Not a problem, some problem, big problem, no car.

Lack of transportation is known to be a barrier to deconcentration of poverty and employment. We do not know, however, the extent to which this problem confronts households assisted by the HVC program. The replacement items are intended provide pertinent data.

Respondents: Individuals or households.

Frequency of Submission: Less than annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	267,000	0.70		0.22		41,385

Total Estimated Burden Hours: 41,385.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: December 10, 2002.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 02–31702 Filed 12–16–02; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*). We, the U.S. Fish and Wildlife Service, solicit review and comment from local, State, and Federal agencies, and the public on the following permit requests.

DATES: Comments on these permit applications must be received on or before January 16, 2003 to receive our consideration.

ADDRESSES: Written data or comments should be submitted to the Chief, Endangered Species, Ecological Services, U.S. Fish and Wildlife Service, 911 NE. 11th Avenue, Portland, Oregon 97232–4181 (fax: 503–231–6243). Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 20 days of the date of publication of this notice to the address above (telephone: 503–231–2063). Please refer to the respective permit number for each application when requesting copies of documents.

SUPPLEMENTARY INFORMATION:

Permit No. TE–031850

Applicant: Gretchen Cummings, El Cajon, California.

The permittee requests an amendment to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with demographic research throughout the range of the species in California for the purpose of enhancing its survival.

Permit No. TE–064644

Applicant: Jason Wolfe, El Cajon, California.

The applicant requests a permit to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with demographic research throughout the range of the species in California for the purpose of enhancing its survival.

Permit No. TE–064645

Applicant: Gregg Anderson, San Marcos, California.

The applicant requests a permit to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with demographic research throughout the

range of the species in California for the purpose of enhancing its survival.

Permit No. TE–064359

Applicant: Sophie Chiang, Irvine, California.

The applicant requests a permit to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with demographic research throughout the range of the species in California for the purpose of enhancing its survival.

Permit No. TE–020548

Applicant: U.S. Geological Survey, Biological Resources Division, Western Ecological Science Center, Vallejo, California.

The permittee requests an amendment to take (capture, mark, and release) the salt marsh harvest mouse (*Reithrodontomys raviventris*) in conjunction with genetic research throughout the southern range of the species in California, and extend the geographic area to throughout the range of the species in California to take (harass by survey) the California clapper rail (*Railus longirostris obsoletus*) in conjunction with distribution studies for the purpose of enhancing their survival.

Permit No. TE–017352

Applicant: Commonwealth of the Northern Mariana Islands, Saipan, Mariana Islands.

The permittee requests an amendment to take (locate and monitor nests) the Nightingale reed-warbler (*Acrocephalus luscinia*) in conjunction with research in the Northern Mariana Islands for the purpose of enhancing its survival.

Permit No. TE–795934

Applicant: Jones & Stokes, Sacramento, California.

The permittee requests an amendment to take (harass by survey) the Cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*) in conjunction with demographic studies in Arizona for the purpose of enhancing its survival.

Permit No. TE–016591

Applicant: Wendy Weber, Hayward, California.

The permittee requests an amendment to take (harass by survey, capture, and release) the Sonoma and Santa Barbara distinct population segments of the California tiger salamander (*Ambystoma californiense*) in conjunction with demographic research in Sonoma and Santa Barbara Counties, California for the purpose of enhancing their survival.

Permit No. TE–064944

Applicant: Charles Patterson, Lafayette, California.

The applicant requests a permit to take (harass by survey, capture, and release) the Sonoma distinct population segment of the California tiger salamander (*Ambystoma californiense*) in conjunction with demographic research in Sonoma County, California for the purpose of enhancing its survival.

Permit No. TE–797665

Applicant: Regional Environmental, Inc., San Diego, California.

The permittee requests an amendment to remove/reduce to possession the *Ambrosia pumila* (San Diego ambrosia) in conjunction with research in Riverside and San Diego Counties, California for the purpose of enhancing its survival.

Permit No. TE–702631

Applicant: Regional Director, Region 1, U.S. Fish and Wildlife Service, Portland, Oregon.

The permittee requests an amendment to remove/reduce to possession *Lomatium cookii* (Cook's lomatium) and *Limnanthes floccosa grandiflora* (large-flowered wooly meadowfoam) in conjunction with recovery efforts throughout the range of each species for the purpose of enhancing their propagation and survival.

We solicit public review and comment on each of these permit applications.

Dated: December 2, 2002.

Rowan Gould,

Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 02–31641 Filed 12–16–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Revised Assessment Plan for the Natural Resource Damage Assessment at the St. Louis River/Interlake/Duluth Tar Superfund Site

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: Notice is given that the document titled ''Assessment Plan for the Natural Resource Damage Assessment at the St. Louis River Interlake/Duluth Tar Superfund Site, 9/24/02'' (''The Plan'') is available for public review. The U.S. Departments of the Interior (Fish and Wildlife Service, Bureau of Indian Affairs) and Commerce (National Oceanic and Atmospheric Administration), The State of Minnesota (Minnesota Department of Natural Resources, Minnesota Pollution Control Agency), The Fond du Lac Band of Lake Superior Chippewa, and The 1854 Authority (representing the Bois Forte Band and Grand Portage Band of Lake Superior Chippewa) are trustees for natural resources (''trustees'') considered in this assessment, pursuant to subpart G of the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR 300.600 and 300.610, and Executive Order 12580.

The trustees are following the guidance of the Natural Resource Damage Assessment Regulations found at 43 CFR part 11, and provided the public an opportunity to review a draft Plan and submit comments (67 FR 132, Jul. 10, 2002). The trustees considered all comments received, and revised the draft Plan. The Plan announced by this Notice is considered to be complete for implementation, as provided for in 43 CFR 11.32(c).

Interested members of the public are invited to review the Plan. Copies of the Plan can be requested from the address listed below.

DATES: The trustees completed revisions to the Plan on September 24, 2002.

ADDRESSES: Requests for copies of the Plan should be sent to: Marilyn Danks, Trustee Coordinator, Minnesota Department of Natural Resources, Division of Ecological Services, 500 Lafayette Road, St. Paul, MN 55155–4025. You may also submit requests for copies of the Plan by sending electronic mail (e-mail) to: *marilyn.danks@dnr.state.mn.us.* See **SUPPLEMENTARY INFORMATION** for information about electronic mailing and access.

FOR FURTHER INFORMATION CONTACT: *Case Management and Logistical Information:* Dave Warburton, (612) 725–3548 (x203) *Technical Information:* Annette Trowbridge, (612) 725–3548 (x202).

SUPPLEMENTARY INFORMATION: The trustees are undertaking an assessment of damages resulting from suspected injuries to natural resources in and near the Lower St. Louis River which have been exposed to hazardous substances released by industrial activity at the St. Louis River/Interlake/Duluth Tar Superfund Site. The trustees suspect this exposure has caused injury and resultant damages to trustee resources. The injury and resultant damages will be assessed under the Comprehensive Environmental Response,

Compensation, and Liability Act, as amended, and the Clean Water Act, as amended, in order to determine the appropriate type and extent of resource restoration. The Assessment Plan addresses the trustees' overall assessment approach, and utilizes both existing data as well as additional data to be collected as described in study workplans attached to the Plan. It is important to note that the purpose of the Plan is to organize the approach for determining and quantifying natural resource injuries and calculating the damages associated with those injuries; the Plan is not a claim for damages for injuries to all natural resources listed in the Assessment Plan. The trustees provided the public an opportunity to review a draft Plan and submit comments (67 FR 132, Jul. 10, 2002). All comments received by the trustees in response to the draft Plan were carefully reviewed and considered. As a result, a number of revisions were made to the draft Plan. Revisions made to the draft Plan in response to public comments include minor wording changes clarifying the responsible parties as identified by Minnesota Pollution Control Agency, decisions regarding implementation of the assessment, the State's role under the Minnesota Environmental Response, Compensation, and Liability Act, and coordination of the assessment with the Remedial Investigation/Feasibility Study process. A paragraph was also added to clarify the availability of quality assurance project plans for trustee-conducted studies. Other changes included corrected capitalization of words and citations and/or references, wording edits, additions of scientific names for fish and wildlife species, and updated confirmation of exposure values. The Avian Exposure and Injury Study Workplan did not change. The Methods section of the Fish Exposure and Injury Study Workplan was rearranged to clarify procedures, and to note that individual fish are being analyzed in 2002, for greater statistical strength in the study. A ''Revisions to Draft Assessment Plan'' document, is included with the Plan, and provides a listing of all revisions. These revisions are not significant and do not alter the scope or methodologies proposed for the assessment. Therefore, the Assessment Plan, with these modifications, is considered to be complete for implementation. All of the comments received on the draft Plan during the public review period, as well as trustee responses to those comments, will be included in the Report of Assessment to be completed at the conclusion of the assessment.

This Plan may be modified at any stage of the assessment as new information becomes available. If significant modifications are made to this Plan, and when other major planning documents and/or reports that are part of the assessment process are completed, the trustees will solicit public comments on the modifications or other documents as provided in 43 CFR part 11. Any further Plan modifications considered to be non-significant will be made available for public review, but the implementation of such modifications will not be delayed as a result of the review. Plan addenda may be prepared by the trustees to provide public notice of additional data collection activities. Restoration of natural resources will be proposed by the trustees following the assessment.

Electronic Mail and Access

You may request copies of the Plan, and the ''Revisions to Draft Assessment Plan'' document, by sending electronic mail (e-mail) to: *marilyn.danks@dnr.state.mn.us.* Do not use any special characters or forms of encryption in your e-mail.

Dated: November 22, 2002.

William F. Hartwig,

Regional Director, Region 3, U.S. Fish and Wildlife Service.

[FR Doc. 02–31638 Filed 12–16–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930, 1430–EU; N–65600]

Notice of Realty Action: Competitive Sale of Public Land

AGENCY: Bureau of Land Management, Interior.

ACTION: Competitive sale of public land in Humboldt County, Nevada.

SUMMARY: The below listed public land in Orovada, Humboldt County, Nevada, has been examined and found suitable for disposal pursuant to sections 203 and 209 of the Federal Land Policy and Management Act (FLPMA) of October 21, 1976 (90 Stat. 2750, 43 U.S.C. 1713 and 1719), and the Federal Land Transaction Facilitation Act of July 25, 2000 (Pub. L. 106–248).

DATES: For a period of 45 days from publication of this notice in the **Federal Register**, interested parties may submit comments to the Assistant Field Manager, Nonrenewable Resources.

ADDRESSES: Written comments should be addressed to Bureau of Land Management, Colin P. Christensen, Assistant Field Manager, Nonrenewable Resources, 5100 E. Winnemucca Blvd., Winnemucca, NV 89445.

SUPPLEMENTARY INFORMATION: The following described parcel of land, situated in Humboldt County, Nevada, is being offered for sale as a competitive sale:

Mount Diablo Meridian, Nevada

T. 45 N., R. 37 E., Section 35, S½SE¼

Containing 80 acres more or less

This land is not required for any federal purposes. The sale is consistent with current Bureau planning for this area and would be in the public interest. The subject land shall be sold for not less than fair market value as determined by appraisal. The locatable, salable, and leasable mineral rights will be conveyed simultaneously with the surface estate. The Fort McDermitt Tribe did not respond to Consultation. The disposal would not generate any adverse energy impacts or limit energy production and distribution (EO 13212).

The above described land is hereby classified for disposal in accordance with Executive Order 6910 and the Act of June 28, 1934, as amended. Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, and leasing under the mineral leasing laws. This segregation will terminate upon issuance of a patent or 270 days from the date of this publication, whichever occurs first. Upon publication of this notice and until completion of the sale, the BLM is no longer taking or accepting land use applications affecting the parcel being offered for sale.

This sale will be by competitive procedures. Bids must not be less than the appraised fair market value. The appraised fair market value is $26,000.00 (twenty-six thousand dollars and no cents). All bids shall be sealed. Each sealed bid shall be accompanied by a certified check, postal money order, bank draft, or cashier's check made payable to the Department of the Interior, Bureau of Land Management for not less than 10 percent or more than 30 percent of the bid amount. Sealed bid envelopes must be marked on the lower left corner with the sale date and the number ''N–65600''. At least 60 days prior to the sale, the sale date and appraised fair market value shall be advertised for three consecutive weeks in the Humboldt Sun and Battle

Mountain Bugle newspapers. If two or more envelopes containing valid bids of the same amount are received, the determination of which is to be considered the highest bid shall be by supplemental bid. The designated high bidders shall be allowed to submit sealed bids as designated by the Authorized Officer.

Federal law requires all bidders must be U.S. citizens 18 years of age or older, a corporation subject to the laws of any State or of the United States; a State, State instrumentality, or political subdivision authorized to hold property; or an entity, including but not limited to associations or partnerships, legally capable of conveying and holding property or interests therein under the laws of the State of Nevada. Certification or qualification, including citizenship or corporation or partnership, must accompany the bid deposit.

In order to determine the fair market value of the subject land through appraisal, certain assumptions have been made on the attributes and limitations of the lands and potential effects of local regulations and policies on potential land uses. Through publication of this notice, the Bureau of Land Management gives notice that these assumptions may not be endorsed or approved by units of local government.

Furthermore, no warranty of any kind shall be given or implied by the United States as to the potential uses of the land offered for sale; conveyance of the subject land will not be on a contingency basis. It is the buyers' responsibility to be aware of all applicable local government policies and regulations that would affect the subject lands. It is also the buyers' responsibility to be aware of existing and potential uses for nearby properties. When conveyed out of federal ownership, the lands will be subject to any applicable reviews and approvals by the respective unit of local government for proposed future uses, and any such reviews and approvals would be the responsibility of the buyer.

The purchaser/patentee, by accepting a patent, agrees to indemnify, defend, hold harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind or nature arising out of or in connection with the use/or occupancy of the patented real property which has already resulted or does hereafter result in: (1) Violations of federal, state, and local laws and regulations that are now or may in the future become applicable to the real property; (2) judgments, claims or demands of any kind incurred by the United States: (4) other releases or threatened releases of solid or hazardous waste(s) and/or hazardous substance(s), as defined by federal or state environmental laws; off, on, into or under land, property and other interests of the United Stated; (5) other activities by which solids or hazardous substances or wastes, as defined by federal laws are generated, released or stored, used or otherwise disposed of on the patented real property, and any cleanup response, remedial action or other actions related in any manner to said solid wastes or hazardous substances or wastes; or (6) natural resource damages as defined by federal and state law. This covenant shall be construed as running with the patented real property and may be enforced by the United States in a court of competent jurisdiction.

The patent, when issued, will contain the following reservation to the United States: A right-of-way thereon for ditches and canals constructed by the authority of the United States, under the Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

And will be subject to:

1. Those rights for power transmission line purposes which have been granted to Harney Electric Cooperative, Inc., by Right-of-way NEV–058382 under the Act of October 21, 1976 (43 U.S.C. 1761).

2. County Road #316 under the jurisdiction of Humboldt County which runs the entire length of the parcel along the south edge of the parcel, being the south section line of section 35, T. 45 N., R. 37 E., and having a total width of 22 feet.

3. Those rights for a buried cable which have been granted to Oregon Idaho Utilities, Inc., dba Humboldt Telephone Company by Right-of-way N–60463 under the Act of October 21, 1976 (43 U.S.C. 1761).

The purchaser, by accepting the land patent, agrees to take the property subject to current grazing lease, authorized under the Taylor Grazing Act, 43 U.S.C. 315f, Act of June 28, 1934. The two year notification commenced on August 27, 2001. The lease shall expire on August 26, 2003.

It has been determined that the subject parcel contains no mineral value. The parcel will be sold with no reservation of mineral rights to the United States. Acceptance of a sale offer will constitute an application for conveyance of those mineral interests. The purchaser will be required to pay a $50.00 non-refundable filing fee for conveyance of said mineral interests when remitting final payment for the parcel.

The purchase price does not include the costs for publication in the **Federal Register**. The purchaser will be required to reimburse the BLM for publishing costs.

Protests: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding whether the BLM followed proper administrative procedures in reaching the decision or any other factor directly related to the suitability of the land for a competitive sale. The Environmental Assessment NV–020–02–11 (EA) and Decision Record are available for review at the Winnemucca Field Office. Comments should be sent to Colin P. Christensen, Assistant Field Manager, Nonrenewable Resources, at the address listed below. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In absence of any adverse comments, this realty action will become the final determination of the Department of the Interior. The BLM may accept or reject any or all offers, or withdraw any land or interest in the land from sale, if, in the opinion of the Authorized Officer, consummation of the sale would not be fully consistent with the FLPMA or other applicable laws. The lands will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register**.

This notice in the **Federal Register** allows the parcel to be re-offered for sale until the parcel has been sold at the discretion of the Authorized Officer. In the event the parcel is not sold, the parcel shall be automatically opened for entry without further notice on December 30, 2003.

FOR FURTHER INFORMATION CONTACT: M. Lynn Trost, Realty Specialist, Bureau of Land Management, at 5100 E. Winnemucca Blvd., Winnemucca, NV 89445, or telephone (775) 623–1500.

Dated: September 26, 2002.

Terry A. Reed,

Winnemucca Field Manager.

[FR Doc. 02–31664 Filed 12–16–02; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review; Agency Information Collection Activities: Proposed Collection, Comments Requested

ACTION: 30-Day notice of information collection under review: reinstatement, without change, of a previously approved collection for which approval

has expired; application for suspension of deportation.

The Department of Justice (DOJ), Executive Office for Immigration Review (EOIR), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. The proposed information collection was previously published in the **Federal Register** on October 4, 2002, Volume 67, Number 193, Pages 62265–62266, allowing for a 60 day comment period.

The purpose of this notice is to allow an additional 30 days for public comments until January 16, 2003. This process is conducted in accordance with 5 CFR 1320.10. Written comments and/or suggestions regarding the item contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed colleciton of information are encouraged. Your comments 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:* Reinstatement, without change, of a previously approved collection for which approval has expired.

(2) *Title of the Form/Colleciton:* Application for Suspension of Deportation.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number EOIR–40, Executive Office for Immigration Review, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract Primary:* Individuals or households. *Other:* None.

Abstract: This form is used by certain deportable aliens to apply for suspension of deportation pursuant to former section 244 of the Immigration and Nationality Act and 8 CFR 240.56 (2002).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 2,000 responses per year at 5 hours, 45 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 11,500 hours annually.

If additional information is required contact: Mr. Robert B. Briggs, Department Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: December 11, 2002.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 02–31662 Filed 12–16–02; 8:45 am]

BILLING CODE 4410–30–M

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

[OJP (OJJDP)—1369]

Extension of Deadline for Applications for Promising Programs for Substance Abuse Prevention Replication and Evaluation Initiative

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency, Justice.

ACTION: Notice of extension of deadline for applications.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) has extended the deadline for applications for the Promising Programs for Substance Abuse Prevention: Replication and Evaluation Initiative Solicitation (published in the **Federal Register** on Friday November 15, 2002, at 67 FR 69246).

DATES: The deadline for applications has been extended from December 30, 2002 to January 31, 2003.

FOR FURTHER INFORMATION CONTACT: Janet Chiancone, Program Manager, Research and Program Development Division, Office of Juvenile Justice and Delinquency Prevention, 202–353–9258 [This is not a toll-free number.] (E-mail: *chiancoj@ojp.usdoj.gov.*)

SUPPLEMENTARY INFORMATION: For more information about this program, and for information on how to obtain and submit an application, see Program Announcement for the Promising Programs for Substance Abuse Prevention: Replication and Evaluation Initiative, 67 FR 69246, November 15, 2002.

J. Robert Flores,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 02–31689 Filed 12–16–02; 8:45 am]

BILLING CODE 4410–18–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–17]

Notice of Issuance of Amendment to Materials License SNM–2509; Trojan Independent Spent Fuel Storage Installation

The U.S. Nuclear Regulatory Commission (NRC or the Commission) has issued Amendment 3 to Materials License No. SNM–2509 held by Portland General Electric Company (PGE) for the receipt, possession, storage, and transfer of spent fuel at the Trojan Independent Spent Fuel Storage Installation (ISFSI), located in Columbia County, Oregon. The amendment is effective as of the date of issuance.

By application dated October 18, 2002, PGE requested an amendment to its ISFSI license to increase the Technical Specification for the Holtec International Multi Purpose Canister (MPC) helium backfill upper pressure limit from 33.3 psig to 39.3 psig at a reference temperature of 70°F.

This amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. An Environmental

Assessment and Finding of No Significant Impact regarding this amendment has been issued (67 FR 75865; December 10, 2002).

In accordance with 10 CFR 72.46(b)(2), a determination has been made that the amendment does not present a genuine issue as to whether public health and safety will be significantly affected. Therefore, the publication of a notice of proposed action and an opportunity for hearing or a notice of hearing is not warranted. Notice is hereby given of the right of interested persons to request a hearing on whether the action should be rescinded or modified.

For further details with respect to this amendment, see the application dated October 18, 2002, which is available for public inspection at the Commission's Public Document Room, One White Flint North Building, 11555 Rockville Pike, Rockville, MD or from the publicly available records component of NRC's Agencywide Documents Access and Management System (ADAMS) under Accession No. ML022970061. The NRC maintains ADAMS, which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 10th day of December 2002.

For the Nuclear Regulatory Commission

Christopher M. Regan,

Project Manager, Licensing Section, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–31663 Filed 12–16–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATES: Weeks of December 16, 23, 30, 2002, January 6, 13, 20, 2003.

PLACE: Commissions' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of December 16, 2002

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 *http://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 *http://www.nrc.gov.*

3 p.m.: Discussion of Security Issues (Closed—Ex. 1).

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.

Week of January 13, 2003—Tentative

Tuesday, January 14, 2003

10 a.m.: Briefing on Status of NRR Programs, Performance, and Plans (Public Meeting) (Contact: Darrell Roberts, 301–415–1669).

This meeting will be webcast live at the Web address *http://www.nrc.gov.*

Week of January 20, 2003—Tentative

Thursday, January 23, 2003

2 p.m.: Briefing on Status of NMSS Programs, Performance, and Plans—Materials Safety (Pubic Meeting)

This meeting will be webcast live at the Web address *http://www.nrc.gov*

Note: The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: R. Michelle Schroll (301) 415–1662.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://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, ow 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: December 12, 2002.

R. Michelle Schroll,

Acting Technical Coordinator, Office of the Secretary.

[FR Doc. 02–31868 Filed 12–13–02; 2:14 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of a Revised Information Collection: RI 38–107

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for review of a revised information collection. RI 38–107, Verification of Who is Getting Payments, is used to verify that the entitled person is indeed receiving the monies payable. Failure to collect this information would cause OPM to pay monies absent the assurance of the correct payee.

Comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, 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; 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.

We estimate 25,400 RI 38–107 forms are completed annually. Each form takes forms takes approximately 10 minutes to complete. The annual estimated burden is 4,234 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or via e-mail to *mbtoomey@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received on or before February 18, 2003.

ADDRESSES: Send or deliver comments to Ronald W. Melton, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349, Washington, DC 20415–3540.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Cyrus S. Benson, Team Leader, Desktop Publishing and Printing Team, Budget and Administrative Services Division, (202) 606–0623.

U.S. Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 02–31642 Filed 12–16–02; 8:45 am]

BILLING CODE 6325–50–M

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of an Information Collection: SF 2817

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) will submit to the Office of Management and Budget (OMB) a request for review of an information collection. SF 2817, Life Insurance Election, is used by employees and assignees (those who have acquired ownership and control of an employee's or annuitant's coverage through the enrollee's assignment of life insurance). The form is used as the official agency record of the individual's coverage and enrollment status under the Federal Employees' Group Life Insurance (FEGLI) program, and as acknowledgment and authorization by the individual for collection from him or her of the enrollee share of the premium contributions.

Comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, 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; 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.

Approximately 100 forms are completed annually by assignees. Each form takes approximately 15 minutes to complete. The annual estimated burden is 25 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or via e-mail to *mbtoomey@opm.gov*. Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to: Christopher N. Meuchner, Insurance Policy and Information Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3425, Washington, DC 20415–3660.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Cyrus S. Benson, Team Leader, Desktop Publishing and Printing Team, Budget and Administrative Services Division, (202) 606–0623.

U.S. Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 02–31643 Filed 12–16–02; 8:45 am]

BILLING CODE 6325–50–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Reclearance of a Revised Information Collection: RI 98–7

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for reclearance of a revised information collection. RI 98–7, We Need Important Information About Your Eligibility for Social Security Disability Benefits, is used by OPM to verify receipt of Social Security Administration (SSA) disability benefits, to lessen or avoid overpayment to Federal Employees Retirement System (FERS) disability retirees. It notifies the annuitant of the responsibility to notify OPM if SSA benefits begin and the overpayment that will occur with the receipt of both benefits.

Approximately 3,000 RI 98–7 forms will be completed annually. We estimate it takes approximately 5 minutes to complete the form. The annual burden is 250 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or Email to *mbtoomey@opm.gov*. Please include your mailing address with your request.

DATES: Comments on this proposal should be received on or before January 16, 2003.

ADDRESSES: Send or deliver comments to—

Lawrence P. Holman, Acting Chief, FERS Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3313, Washington, DC 20415–3520; and

Stuart Shapiro, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Cyrus Benson, Team Leader, Desktop Publishing and Printing Team, Budget and Administrative Services Division, (202) 606–0623.

U.S. Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 02–31644 Filed 12–16–02; 8:45 am]

BILLING CODE 6325–50–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of e-Smart Technologies, Inc.; Order of Suspension of Trading

December 12, 2002.

It appears to the Securities and Exchange Commission (''Commission''), based on information provided by the staff, that there is a lack of adequate and accurate information concerning the management, business practices and results of operations of e-Smart Technologies, Inc. (''e-Smart''). The securities of e-Smart Technologies, Inc. are quoted on the Pink Sheets under the symbol ESMT. Information has been provided to the Commission raising concerns as to the adequacy and accuracy of e-Smart's publicly disseminated information concerning, among other things, e-Smart's results of operations, contractual relationships, ownership of technology assets, and projected revenues and profits.

The Commission is of the opinion that the public interest and the protection of

investors require a suspension of trading in the securities of e-Smart.

Therefore, it is ordered that, pursuant to section 12(k) of the Securities Exchange Act of 1934 (''Exchange Act''), trading in the securities of e-Smart is suspended for the period from 9:30 a.m. e.s.t. December 13, 2002, through 11:59 p.m. e.s.t., on December 27, 2002.

By the Commission.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02–31842 Filed 12–13–02; 2:38 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46983; File No. SR–Amex–2002–95]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the American Stock Exchange LLC Relating to Member Notifications Required in Connection With Offerings and Distributions of Amex-Listed Securities

December 11, 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 18, 2002, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange has proposed new Amex Rules 193(f) and 570A that would require notification to Amex by members and member organizations in connection with offerings and distributions of Amex-listed securities. The text of the proposed rule change is as follows; new text is underlined:

Affiliated Persons of Specialists

Rule 193. (a) through (e): No change.

(f)(i) An approved person associated with a specialist member organization (''Affiliated Specialist'') that is entitled to an exemption from certain Exchange rules pursuant to Exchange Rule 193 shall notify the Exchange of its participation in any distribution or tender or exchange offer of any security covered by paragraph (f)(ii) of this rule, in such form and within such time frame as may be prescribed by the Exchange and shall provide the information required below:

1. name of security

2. symbol

3. type of security

4. symbol of reference security or securities (if different from security being distributed)

5. description of distribution or tender or exchange offer

6. distribution price or terms of tender or exchange offer

7. date of pricing

8. time of pricing

9. pricing basis (e.g., Amex or consolidated close)

10. beginning and ending dates of the restricted period under Regulation M (if applicable) or, for a tender or exchange offer, the date the offer is publicly announced and its expiration date

11. firm submitting notification

12. name and title of individual submitting notification

13. telephone number

14. such other information as the Exchange may from time to time require.

(ii) The notification requirements of this rule are applicable to any security in which the Affiliated specialist is registered where such security is either:

1. the subject of a tender or exchange offer (or any other security which is immediately convertible into or exchangeable for such security) for purposes of Rule 14e–5 under the Securities Exchange Act of 1934; or

2. a covered security as defined in Rule 100 of Regulation M.

* * * Commenatry

No change.

Notification Requirements for Offerings of Listed Securities

Rule 570A. (a) A member or member organization which acts as the lead underwriter of any offering in a listed security shall notify the Exchange of such offering in such form and within such time frame as may be prescribed by the Exchange and shall provide the information required below:

1. name of security

2. symbol

3. type of security

4. number of shares offered

5. offering price

6. date of pricing

7. time of pricing

8. pricing basis (e.g., Amex or Consolidated close)

9. beginning and ending dates of the restricted period under Regulation M (if applicable)

10. syndicate members

11. firm submitting notification

12. name of individual submitting notification

13. telephone number

14. such other information as the Exchange may from time to time require.

(ii) The notification requirements of this rule are applicable to any security in which the Affiliated Specialist is registered where such security is either:

1. the subject of a tender or exchange offer (or any other security which is immediately convertible into or exchangeable for such security) for purposes of Rule 14e–5 under the Securities Exchange Act of 1934; or

2. a covered security as defined in Rule 100 of Regulation M.

* * * Commentary

No change.

Notification Requirements for Offerings of Listed Securities

Rule 570A. (a) A member or member organization which acts as the lead underwriter of any offering in a listed security shall notify the Exchange of such offering in such form and within such time frame as may be prescribed by the Exchange and shall provide the information required below:

1. name of security

2. symbol

3. type of security

4. number of share offered

5. offering price

6. date of pricing

7. time of pricing

8. pricing basis (e.g., Amex or Consolidated close)

9. beginning and ending dates of the restricted period under Regulation M (if applicable)

10. syndicate members

11. firm submitting notification

12. name of individual submitting notification

13. telephone number

14. such other information as the Exchange may from time to time require.

(b) Any Exchange member or member organization effecting a syndicate covering transaction or imposing a penalty bid or placing or transmitting a stabilizing bid in a listed security shall provide prior notice of such to the Exchange in such format and within such time frame as the Exchange may from time to time require.

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing new paragraph (f) to Amex Rule 193 (Affiliated Persons of Specialists) and new Amex Rule 570A to require notification by Amex members and member organizations when they are participating in an offering of Amex-listed securities. The proposed rules, which are substantially similar to New York Stock Exchange (''NYSE'') Rules 460.30 and 392, respectively, are intended to codify the disclosure and notification requirements included in Regulation M under the Act. Amex has stated that it has previously issued Information Circulars (97–0262, 97–0570, and 01–0295) that set forth member obligations and provided the formats for reporting to Amex information relating to stabilizing transactions, covering transactions, penalty bids, and distributions.

Amex Rule 193(f) would require notification to the Exchange whenever an approved person associated with a specialist member organization that has a functional separation approved pursuant to Amex Rule 193 participates in a distribution or tender offer of a specialist's specialty security, as covered by Amex Rule 193(f)(ii). The required information is similar to that required under proposed Amex Rule 570A.

Amex Rule 570A (Notification Requirements for Offerings of Listed Securities) would require notification to the Exchange whenever a member or member organization acts as a lead underwriter of any offering of an Amex-listed security. Such notification would enable the Exchange to monitor trading in the security or any related security traded on the Exchange for possible price manipulation. The data required to be transmitted to the Exchange would include the name and type of the security, symbol, number of shares offered, offering price, date, time and basis of pricing, applicable restricted period, and syndicate members, as well as the firm, name, and telephone number of the individual submitting the notification.

2. Statutory Basis

Amex believes that the proposed rule change is consistent with Section 6(b) of the Act [3] in general, and furthers the objectives of Sections 6(b)(5) [4] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

Amex does not believe that the proposed rule change would impose any 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 solicited or received in connection with the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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–Amex–2002–95 and should be submitted by January 7, 2003.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[5] which requires that an exchange have rules that are designed, among other things, 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.

As previously noted, the rules proposed by Amex are nearly identical to two rules of the New York Stock Exchange.[6] Given that the Commission has previously found the NYSE rules to be consistent with the Act,[7] the Commission finds good cause for approving the Amex proposal pursuant to Section 19(b)(2) of the Act prior to the thirtieth day after the date of publication of notice in the **Federal Register**.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–Amex–2002–95) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

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[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78f(b)(5).

[6] Proposed Amex Rule 193(f) imitates NYSE Rule 460.30; proposed Amex Rule 570A imitates NYSE Rule 392.

[7] *See* Securities Exchange Act Release No. 38478 (April 4, 1997), 62 FR 17899 (April 11, 1997) (approving NYSE Rules 460.30 and 392). *See also* Securities Exchange Act Release No. 38873 (July 24, 1997), 62 FR 41118 (July 31, 1997) (amending NYSE Rule 392 to require notification by NYSE member organizations of any stabilizing bid made in connection with an offering of a NYSE-listed security). Proposed Amex Rule 193(f) incorporates the NYSE amendment.

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46981; File No. SR–CBOE–2001–59]

Self-Regulatory Organizations; Order Granting Approval to the Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 2 and 3 to the Proposed Rule Change by the Chicago Board Options Exchange, Inc. Amending CBOE Disciplinary Rules 17.4, 17.9 and 17.10

December 11, 2002.

I. Introduction

On December 6, 2001, the Chicago Board Options Exchange, Inc. (''CBOE'' 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 amend provisions of its disciplinary rules. On December 17, 2001, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change and Amendment No. 1 were published for comment in the **Federal Register** on January 3, 2002.[4] The Commission received no comments on the proposal and Amendment No. 1. On May 13, 2002, the Exchange filed Amendment No. 2 to the proposed rule change.[5] On October 9, 2002, the Exchange filed Amendment No. 3 to the proposed rule change.[6] The Commission is approving the proposed rule change and Amendment No. 1, and is publishing notice of, and granting accelerated approval to, Amendment Nos. 2 and 3 to the proposed rule change.

Below is the text of the proposed rule change, as amended. Proposed new language is *italicized,* and proposed deletions are in brackets.

* * * * *

Chicago Board Options Exchange, Incorporated Rules

Chapter XVII—Discipline

Rule 17.4. Charges

(a) No Change.
(b) No Change.
(c) No Change.
(d) No member or person associated with a member shall make or knowingly cause to be made an ex parte communication with any member of the Business Conduct Committee *or Board* concerning the merits of any matter pending under Chapter XVII of the Rules. No member of the Business Conduct Committee *or Board* shall make or knowingly cause to be made an ex parte communication with any member or any person associated with a member concerning the merits of any matter pending under Chapter XVII of the Rules.

* * * * *

* * * Interpretations and Policies

.01 No Change.

.02 No violation of Rule 17.4(d) shall be deemed to occur if the ex parte communication deals solely with procedural matters rather than the merits of the investigation or proceeding.

.03 No person shall be deemed to violate Rule 17.4(d) if the person refuses an attempted communication concerning the merits of an investigation or proceeding as soon as it becomes apparent that the communication concerns the merits. In order for this Interpretation .03 to apply, the person refusing the attempted communication must promptly notify Exchange regulatory staff about the attempted communication and how the person responded to it. Exchange regulatory staff shall memorialize this information of the attempted communication in the regulatory record of the investigation or disciplinary hearing.

* * * * *

Rule 17.9. Decision

Following a hearing conducted pursuant to Rule 17.6 of this Chapter, the Panel shall issue a decision in writing, based solely on the record, determining whether the Respondent has committed a violation and imposing the sanction, if any, therefor. Where the Panel is not composed of at least a majority of the members of the Business Conduct Committee, its determination shall be automatically reviewed by a majority of the Committee, which may affirm, reverse or modify in whole or in part or may remand the matter for additional findings or supplemental proceedings. Such modification may include an increase or decrease of the sanction. The decision shall include a statement of findings and conclusions, with the reasons therefor, upon all material issues presented on the record. Where a sanction is imposed, the decision shall include a statement specifying the acts or practices in which the Respondent has been found to have engaged and setting forth the specific provisions of the Securities Exchange Act of 1934, as amended, rules and regulations promulgated thereunder, constitutional provisions, by-laws, rules, interpretations or resolutions of the Exchange of which the acts are deemed to be in violation. The Respondent *and the Office of Enforcement* shall be promptly sent a copy of the decision. After Board review pursuant to Rule 17.10, or the time for such review has expired, the decision will be considered final, and the Exchange shall publish a summary of the decision in the Exchange Bulletin.

* * * * *

Rule 17.10. Review

(a)

(1) Petition. *Both t*[T]he Respondent *and the Office of Enforcement* shall have 15 days after service of notice of *any* [a] decision made pursuant to Rule 17.9 of this Chapter to petition for review of the decision by filing a copy of the petition with the Secretary of the Exchange (''Secretary'') and *with all other parties to the hearing* [the Exchange's Office of Enforcement]. Such petition shall be in writing and shall specify the findings and conclusions to which exceptions are taken together with reasons for such exceptions. Any objections to a decision not specified by written exception shall be considered to have been abandoned.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Christopher R. Hill, Attorney II, Office of Enforcement, Legal Division, CBOE, to Sapna C. Patel, Attorney, Division of Market Regulation (''Division''), Commission, dated December 13, 2001 (''Amendment No. 1'').

[4] Securities Exchange Act Release No. 45191 (December 26, 2001), 67 FR 378.

[5] *See* letter from Nancy Nielsen, Director of Arbitration and Assistant Secretary, CBOE, to Nancy Sanow, Assistant Director, Division, Commission, dated May 10, 2002 (''Amendment No. 2''). In Amendment No. 2, the CBOE deleted proposed CBOE Rule 17.15, which would have governed ex parte communications with any member of the CBOE Board of Directors (''Board''), and amended CBOE Rule 17.4 to incorporate the Board into the prohibition against ex parte communications with the Exchange's Business Conduct Committee (''BCC''). In addition, Amendment No. 2 proposes to add Interpretations .02 and .03 to CBOE Rule 17.4.

[6] *See* letter from Christopher R. Hill, Attorney II, Office of Enforcement, Legal Division, CBOE, to Nancy Sanow, Assistant Director, Division, Commission, dated October 8, 2002 (''Amendment No. 3''). In Amendment No. 3, the CBOE proposed to clarify in Interpretation .03 that a person refusing an ex parte communication must notify Exchange regulatory staff about such ex parte communication and how he or she responded to it, and that the Exchange regulatory staff must memorialize such information of the attempted communication in the regulatory record of the investigation or disciplinary proceeding. In addition, the CBOE provided the following examples of what it would consider ''solely procedural matters'' for purposes of proposed Interpretation .02: ''the time, place, or manner of events in the disciplinary process, or the procedural requirements set forth in the Exchange's rules as they apply to the disciplinary proceedings.''

(2) Written Submissions. Within 15 days after a [Respondent's] petition for review has been filed with the Secretary of the Exchange pursuant to paragraph (a)(1) of this Rule, *the other parties to the hearing* [Exchange staff] may *each* submit to the Secretary a written response to the petition. A copy of the response must be served upon the *petitioner* [Respondent]. *The petitioner* [A Respondent] has 15 days from the service of the response to file a reply with the Secretary and the *other parties to the* hearing [Office of Enforcement].

(b) Conduct of Review. The review shall be conducted by the Board or a committee of the Board composed of at least three Directors whose decision must be ratified by the Board. Any Director who participated in a matter before the Business Conduct or other Committee may not participate in any review of that matter by the Board. Unless the Board shall decide to open the record for the introduction of evidence or to hear argument, such review shall be based solely upon the record and the written exceptions filed by the parties. New issues may be raised by the Board; *the parties to the hearing* [Respondents] shall be given notice of and an opportunity to address any such new issues. The Board may affirm, reverse or modify, in whole or in part, the decision of the Business Conduct Committee. Such modification may include an increase or decrease of the sanction. The decision of the Board shall be in writing, shall be promptly served on the Respondent *and the Office of Enforcement,* and shall be final.

(c) Review on Motion of Board. The Board may on its own initiative order review of a decision made pursuant to Rule 17.7 or 17.9 of this Chapter within 30 days after notice of the decision has been served on the Respondent *and the Office of Enforcement.* Such review shall be conducted in accordance with the procedure set forth in paragraph (b) of this Rule.

(d) No change.

* * * * *

II. Description of the Proposal

A. Ex Parte Communications with Exchange Board Members Prohibited

Exchange Rule 17.4(d) prohibits members or persons associated with members from making or causing ex parte communications with any member of the BBC concerning the merits of any matter pending under the disciplinary rules of the Exchange. This prohibition is to eliminate the potential that such communications might somehow influence the outcome of an investigation or enforcement matter. The proposed rule change would amend Exchange Rule 17.4(d) to also forbid ex parte communications with members of the Board. The Exchange represents that such communications are already prohibited by some of the other self-regulatory organizations (''SROs'').[7]

The proposed rule change would also add two new Interpretations to clarify the application of the amended Exchange Rule 17.4(d). Proposed Interpretation .02 addresses the current language of Exchange Rule 17.4(d), which permits ex parte communications that do not ''concern the merits.'' Proposed Interpretation .02 distinguishes permissible ex parte communications from those ''concerning the merits'' by specifying that the only permissible ex parte communications are those that deal ''solely'' with procedural matters. The Exchange considers examples of ''solely procedural matters'' to include the following: ''the time, place, or manner of events in the disciplinary process, or the procedural requirements set forth in the Exchange's rules as they apply to the disciplinary proceedings.'' [8]

Proposed Interpretation .03 is intended to provide workable guidelines for Board and BCC members, particularly those who work on the Exchange trading floor. In such positions, these Board and BCC members are subject to the possibility that a member or associated person involved in an investigation or disciplinary proceeding may approach them and launch into a conversation or other communication concerning the merits of their disciplinary case before the Board or BCC member can stop them. The Exchange believes it would be unfair in such circumstances to subject the Board or BCC member to disciplinary action for violation of Exchange Rule 17.4(d) if the violation of the Rule is caused by the unpredictable and uncontrollable actions of a third party. At the same time, the Exchange believes that Board or BCC members in such circumstances remain responsible for adhering to Exchange Rule 17.4(d) and encouraging members and associated persons to do likewise. To balance these concerns, proposed Interpretation .03 clarifies that, in such circumstances, Board or BCC members will not be deemed to have violated Exchange Rule 17.4(d) so long as they ''refuse the communication'' (*e.g.*, stop the conversation, stop reading the e-mail or letter, etc.) as soon as it becomes apparent that the communication concerns the merits of the case. In addition, the Exchange proposes to require that a person refusing an ex parte communication notify Exchange regulatory staff about such ex parte communication and how he or she responded to it, and also requires that the Exchange regulatory staff memorialize such information of the attempted communication in the regulatory record of the investigation or disciplinary proceeding.[9] The Exchange represents that copies of the attempted communication will be given to all of the parties involved in the proceeding.[10]

B. Exchange Office of Enforcement's Right To Appeal

Exchange Rule 17.10(a) permits a respondent in a disciplinary matter to appeal a decision of the BCC to the Board, but does not grant the Exchange's Office of Enforcement (''OOE'') a similar right of appeal. The proposed rule change would permit the Exchange's OOE to appeal factual findings that the OOE thinks may have been in error, as well as to appeal disciplinary sanctions that the OOE deems insufficient. The Exchange represents that such appeals are already authorized at other SROs.[11] Therefore, the Exchange proposes to amend Exchange Rules 17.9 and 17.10 to give the OOE and the Respondent equivalent rights in the appellate process.

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) of the Act.[12] Specifically, the Commission

[7] *See* American Stock Exchange LLC Exchange Disciplinary Proceedings Rule 11(a); National Association of Securities Dealers, Inc. (''NASD'') Rule 9143(a); and Pacific Exchange, Inc. Rule 10.3(a).

[8] *See* Amendment No. 3, *supra* note 6. The Exchange represents that by ''manner of events in a disciplinary process,'' it means the sequence of events in the disciplinary process. Telephone conversation between Christopher R. Hill, Attorney II, Office of Enforcement, Legal Division, CBOE, and Kathy A. England, Assistant Director, and Sapna C. Patel, Attorney, Division, Commission, on December 5, 2002.

[9] *See* Amendment No. 3, *supra* note 6.

[10] Telephone conversation between Christopher R. Hill, Attorney II, Office of Enforcement, Legal Division, CBOE, and Kathy A. England, Assistant Director, and Sapna C. Patel, Attorney, Division, Commission, on December 5, 2002.

[11] *See* New York Stock Exchange, Inc. Rule 476(f); NASD Rule 9311; and Securities Exchange Act Release No. 43554 (November 14, 2001), 65 FR 69975 (November 21, 2001) (File No. SR–Amex-00–22).

[12] 15 U.S.C. 78f(b). In approving this proposal, the Commission has considered the proposed rule's

finds that the proposed rule change, as amended, is consistent with section 6(b)(5) of the Act [13] 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. In addition, the Commission finds that the proposed rule change, as amended, is consistent with sections 6(b)(1) and 6(b)(7) of the Act [14] in that it requires compliance by the Exchange members and persons associated with its members with the Act, the rules and regulations thereunder, and Exchange rules; and provides a fair procedure for the disciplining of Exchange members.

The Commission believes that the proposed rule change, as amended, should limit ex parte communications in the disciplinary process, thereby providing a safeguard against influence over the outcome of a disciplinary proceeding and eliminating the appearance of unfairness. The Commission notes that the Exchange currently prohibits ex parte communications between persons involved in disciplinary proceedings and the Exchange's BCC. Extending the prohibition to Board members is consistent with practices on other SROs.[15]

The Commission believes that proposed Interpretations .02 and .03 to the proposed rule change should provide objective criteria and guidance regarding the application of the proposed rule change, as amended. The Commission notes that proposed Interpretation .02 excludes from the prohibition against ex parte communications any ex parte communications dealing solely with procedural matters. The Commission further notes that the Exchange has provided examples of what it considers ''solely procedural matters.'' The Commission believes that proposed Interpretation .03 strikes the right balance permitting persons who refuse an attempted ex parte communication to avoid violating the rule, provided that they report such attempted communication and their responses to such communications to Exchange regulatory staff. The proposed Interpretation would also require Exchange regulatory staff to keep a record of the attempted ex parte communication in the regulatory record of the investigation or disciplinary proceeding. In addition, the Commission notes that the Exchange has represented that it will give copies of the attempted ex parte communication to all of the parties involved in the proceeding.[16]

Furthermore, the Commission believes that allowing the Exchange's OOE to appeal a decision of the BCC to the Board regarding factual findings that the OOE believes may have been in error or disciplinary sanctions that it finds insufficient, is consistent with practices on other SROs.[17]

In addition, the Commission finds good cause for approving Amendment Nos. 2 and 3 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 2 deletes proposed CBOE Rule 17.15 and amends CBOE Rule 17.4 to incorporate the Board into the prohibition against ex parte communications with the BCC. The Commission believes this change is not substantively different from the proposal, as published. In addition, it makes sense for the Board to be subject to the same limitations that the BCC is subject to. As discussed more fully above, Amendment No. 3 provides clarity to proposed rule change by requiring persons to report attempted communications, and by requiring Exchange regulatory staff to memorialize the communications. In addition, Amendment No. 3 provides examples of what the Exchange would consider ''solely procedural matters'' for purposes of proposed Interpretation .02. The Commission, therefore, finds good cause to approve Amendment Nos. 2 and 3 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 Amendment Nos. 2 and 3, including whether the Amendment Nos. 2 and 3 to the proposed rule change are 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–CBOE–2001–59 and should be submitted by January 7, 2003.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[18] that the proposed rule change (SR–CBOE–2001–59) and Amendment No. 1 are hereby approved, and that Amendment Nos. 2 and 3 to the proposed rule change are approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

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impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78f(b)(1); and 15 U.S.C. 78f(b)(7).

[15] See, *e.g.*, supra note 7.

[16] Telephone conversation between Christopher R. Hill, Attorney II, Office of Enforcement, Legal Division, CBOE, and Kathy A. England, Assistant Director, and Sapna C. Patel, Attorney, Division, Commission, on December 5, 2002.

[17] See, *e.g.*, supra note 11.

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46975; File No. SR–CME–2002–02]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the Chicago Mercantile Exchange Relating to Listing Standards for Security Futures Products

December 9, 2002.

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–7 under the Act,[2] notice is hereby given that on October 28, 2002, Chicago Mercantile Exchange (''CME'' or ''the Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by CME.

On November 1, 2002, CME filed an amendment to the proposed rule change to clarify the proposed rules.[3] On

[1] 15 U.S.C. 78s(b)(7).

[2] 17 CFR 240.19b–7.

[3] *See* letter from Richard J. McDonald, Managing Director, Product Development, CME, to Office of Market Supervision, Division of Market Regulation,

Continued

November 6, 2002, CME filed an amendment to the proposed rule change to reflect technical changes to the proposed rules.[4] On November 20, 2002, CME filed an amendment to the proposed rule change to provide additional information for inclusion in this Notice, and to reflect further technical changes to the proposed rules.[5]

The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. CME also has certified the proposed rule change with the Commodity Futures Trading Commission (''CFTC'') under Section 5c(c) of the Commodity Exchange Act[6] on October 28, 2002.

I. Self-Regulatory Organization's Description of the Proposed Rule Change

CME proposes to adopt Security Futures Product Listing Standards (''CME Listing Standards'') for purposes of Section 6(h) of the Act.[7] The CME Listing Standards are generally identical to the sample listing standards (the ''Sample Listing Standards'') published in Staff Legal Bulletin No. 15 (''SLB 15'')[8] except that they:

- Reflect the modifications to the statutory listing standards requirements adopted by the Commission and the CFTC governing shares of American Depositary Receipts, exchange-traded funds, trust-issued receipts and shares of registered closed-end management investment companies;[9] and
- Establish an approximately equal dollar weighting methodology for physically settled futures based on narrow-based security indices (''NBIs'') which (1) requires the number of each component security to be rounded up or down to the nearest multiple of 100 shares or receipts in the course of the initial index composition and any subsequent rebalancing, (2) contemplates mandatory annual rebalancing of such indices under specified circumstances, complemented by CME's ability to rebalance indices on an interim basis if it so elects; and (3) ensures that outstanding contracts will not be affected by any rebalancing.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

CME has prepared statements concerning the purpose of, and basis for, the proposed rule change, burdens on competition, and comments received from members, participants, and others. The text of these statements may be examined at the places specified in Item IV below. These statements are set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Section 6(h)(3) of the Act[10] identifies requirements for listing standards applicable to security futures products. In particular, the Act requires that such listing standards: (1) Must be no less restrictive than comparable listing standards for options traded on a national securities exchange; and (2) must require that trading in security futures products not be readily susceptible to manipulation of the price of such products or of the underlying securities or options on such securities.

Listing Standards—The Sample Listing Standards found in SLB 15 were modeled after listing standards employed by option exchanges and were intended to provide guidance as to how the requirements under the Act may be addressed but also provided that alternate standards could be consistent with the Act as well.

Accordingly, the CME Listing Standards are generally modeled on the Sample Listing Standards (as modified by the Commissions' orders regarding American Depositary Receipts, exchange-traded funds, trust-issued receipts and registered closed-end management investment companies[11] and subject to additional modifications relating to physically settled futures based on NBIs described above. These additional modifications are (1) limited in application to physically settled contracts, and (2) designed to enhance the utility of NBI futures in connection with hedging, arbitrage and other investment applications.

CME contemplates the possibility that it may seek to list physically settled NBI futures per its belief that physical settlement might reduce basis risk and result in tighter bid/offer spreads, limiting the potential for market manipulation, under certain circumstances where the NBI is comprised of a very limited number of securities.

CME believes that it is impracticable to make delivery of securities in lot sizes smaller than the customary transactional unit of 100 shares or receipts. Thus, rounding is required with respect to the initial composition and subsequent rebalancing of physically settled futures based on NBIs. If the composition of NBIs were subject to frequent or retroactive changes as a result of index rebalancings, NBI futures would lose their potential as particularly effective tools in the implementation of hedging, arbitrage and other investment applications.

The Sample Listing Standards contemplate at least quarterly rebalancings of equal dollar-weighted indices. The CME Listing Standards modify this requirement by providing that an approximately equal dollar-weighted NBI underlying a physically settled security futures product is to be rebalanced annually, but only if the aggregate value of the security position with the highest value is two or more times greater than the aggregate value of the security position with the lowest value in the index for a specified time period. CME believes that this procedure effectively balances the potential adverse consequences of frequent composition adjustments with concerns regarding the degree to which an NBI represents the subject industry sector.

CME may rebalance NBIs on an interim basis if warranted as a result of extraordinary changes in the relative values of the component securities. To the extent investors with open positions must rely upon the continuity of the futures contract, CME Listing Standards clarify that outstanding contracts are unaffected by rebalancings. Precedent for these provisions may be found in the rules of the American Stock Exchange (''Amex'') for portfolio depositary receipts[12] and index fund shares[13]

Commission, dated October 31, 2002 (''Amendment No. 1'').

[4] *See* letter from Richard J. McDonald, Managing Director, Product Development, CME, to Office of Market Supervision, Division of Market Regulation, Commission, dated November 5, 2002 (''Amendment No. 2'').

[5] *See* letter from Richard J. McDonald, Managing Director, Product Development, CME, to Office of Market Supervision, Division of Market Regulation, Commission, dated November 19, 2002 (''Amendment No. 3'').

[6] 7 U.S.C. 7a–2(c).

[7] 15 U.S.C. 78f(h).

[8] SEC Division of Market Regulation: Staff Legal Bulletin No. 15: Listing Standards for Trading Security Futures Products (September 5, 2001).

[9] *See* Joint Order Granting the Modification of Listing Standards Requirements (American Depository Receipts), Securities Exchange Act Release No. 44725 (August 20, 2001) *and* Joint Order Granting the Modification of Listing Standards Requirements (Exchange Traded Funds, Trust Issued Receipts and shares of Closed-End Funds), Securities Exchange Act Release No. 46090 (June 19, 2002), 67 FR 42760 (June 25, 2002).

[10] 15 U.S.C. 78f(h)(3)(I).

[11] *See supra*, n. 9.

[12] *See* Amex Rule 1000, in particular Commentary .03 thereto.

[13] *See* Amex Rule 1000A, in particular Commentary .02 thereto.

which provide for a ''modified equal-dollar weighting'' and do not appear to provide for rebalancing. Rebalancing is likewise not required in the context of trust-issued receipts traded on Amex.[14]

The contents of the CME Listing Standards, including the approximately equal dollar-weighting methodology described above, will be publicly available and fully disclosed.

Section 6(h)(3) Requirements—Section 6(h)(3) of the Act[15] contains detailed requirements for listing standards and conditions for trading applicable to security futures products. Set forth below is a summary of each such requirement or condition, followed by a brief explanation of how CME will comply with it, whether by particular provisions in the CME Listing Standards or otherwise.

Clause (A) of Section 6(h)(3)[16] requires that any security underlying a security future be registered pursuant to Section 12 of the Act.[17] This requirement is addressed by CME Rules 70001.2, 70003.2.b. and 70004.2.a.

Clause (B) of Section 6(h)(3)[18] requires that a market on which a physically settled security futures product is traded have arrangements in place with a registered clearing agency for the payment and delivery of the securities underlying the security futures product. CME has reached an agreement with a registered clearing agency to facilitate the payment and delivery of securities underlying security futures products. This agreement will be fully operational prior to any possible delivery event associated with such security futures products.

Clause (C) of Section 6(h)(3)[19] provides that listing standards for security futures products must be no less restrictive than comparable listing standards for options traded on a national securities exchange or national securities association registered pursuant to Section 15A(a) of the Act.[20] For the reasons discussed above, notwithstanding specified differences between the Sample Listing Standards and the CME Listing Standards, CME believes that the latter are no less restrictive than comparable listing standards for exchange-traded options.

Clause (D) of Section 6(h)(3)[21] requires that each security future be based on common stock or such other equity securities as the Commission and the Commodity Futures Trading Commission jointly determine appropriate. This requirement is addressed by Rules 70001.1, 70003.2.c. and 70004.2.b.

Clause (E) of Section 6(h)(3)[22] requires that each security futures product be cleared by a clearing agency that has in place provisions for linked and coordinated clearing with other clearing agencies that clear security futures products, which permits the security futures product to be purchased on one market and offset on another market that trades such product. CME intends to clear security futures products traded through Exchange facilities through the CME Clearing House Division. The Clearing House Division will have in place all provisions for linked and coordinated clearing as mandated by law and statute as of the effective date of such laws and statutes.

Clause (F) of Section 6(h)(3)[23] requires that only a broker or dealer subject to suitability rules comparable to those of a national securities association registered pursuant to Section 15A(a) of the Act[24] effect transactions in a security futures product.

CME clearing members, and their correspondents, are bound by the applicable sales practice rules of the National Futures Association (''NFA''), which is a national securities association. As such, the sales practice rules of the NFA are, perforce, comparable to those of a national securities association registered pursuant to Section 15A(a) of the Act.[25] The application of NFA sales practice rules is extended beyond the CME clearing membership to the extent that NFA By-Law 1101 provides that ''[n]o member may carry an account, accept an order or handle a transaction in commodity futures contracts for or on behalf of any non-Member of NFA.''

Clause (G) of Section 6(h)(3)[26] requires that each security futures product be subject to the prohibition against dual trading in Section 4j of the Commodity Exchange Act[27] and the rules and regulations thereunder or the provisions of Section 11(a) of the Act[28] and the rules and regulations thereunder. Exchange Rule 123 requires Exchange members to comply with all applicable ''provisions of the Commodity Exchange Act and regulations duly issued pursuant thereto by the CFTC.''

Note that the prohibition of dual trading in security futures products per CFTC Regulation § 41.27[29] adopted pursuant to Section 4j(a) of the Commodity Exchange Act[30] applies to a contract market operating an electronic trading system if such market provides participants with a time or place advantage or the ability to override a predetermined matching algorithm. CME anticipates that trading of security futures products on CME will be fully electronic. Further, the Exchange will not provide participants with a time or place advantage or the ability to override a predetermined matching algorithm in the context of security futures products.

Clause (H) of Section 6(h)(3)[31] provides that trading in a security futures product must not be readily susceptible to manipulation of the price of such security futures product, nor to causing or being used in the manipulation of the price of any underlying security, option on such security, or option on a group or index including such securities.

CME Listing Standards are designed to ensure that CME products and the underlying securities will not be readily susceptible to price manipulation. Exchange Rule 432 defines activity ''to manipulate prices or to attempt to manipulate prices'' as a ''major offense,'' punishable, per Exchange Rule 430, by ''expulsion, suspension, and/or a fine of not more than $1,000,000 plus the monetary value of any benefit received as a result of the violative action.''

Clause (I) of Section 6(h)(3)[32] requires that procedures be in place for coordinated surveillance amongst the market on which a security futures product is traded, any market on which any security underlying the security futures product is traded, and other markets on which any related security is traded to detect manipulation and insider trading.

CME is an affiliate member of the Intermarket Surveillance Group (''ISG'') and is party to an affiliate agreement and an agreement to share market surveillance and regulatory information with the other ISG members. Further, CME is party to a supplemental agreement regarding security futures

[14] *See* Amex Rule 1202, in particular Commentary .01 thereto.

[15] 15 U.S.C. 78f(h)(3).

[16] 15 U.S.C. 78f(h)(3)(A).

[17] 15 U.S.C. 78l.

[18] 15 U.S.C. 78f(h)(3)(B).

[19] 15 U.S.C. 78f(h)(3)(C).

[20] 15 U.S.C. 78o–3f(a).

[21] 15 U.S.C. 78f(h)(3)(D).

[22] 15 U.S.C. 78f(h)(3)(E).

[23] 15 U.S.C. 78f(h)(3)(F).

[24] 15 U.S.C. 78o–(a).

[25] 15 U.S.C. 78o–(a).

[26] 15 U.S.C. 78f(h)(3)(G).

[27] 7 U.S.C. 6j.

[28] 15 U.S.C. 78k.

[29] 17 CFR 41.27.

[30] 7 U.S.C. 4j(a).

[31] 15 U.S.C. 78f(h)(3)(H).

[32] 15 U.S.C. 78f(h)(3)(I).

with the other ISG members with respect to affiliate ISG membership.[33]

Note that CME Rule 424 permits CME to enter into agreements for the exchange of information and other forms of mutual assistance with domestic or foreign self-regulatory organizations, associations, boards of trade and their respective regulators.

Clause (J) of Section 6(h)(3)[34] requires that a market on which a security futures product is traded have in place audit trails necessary or appropriate to facilitate the coordinated surveillance referred to in the preceding paragraph.

The audit trail capability provided by GLOBEX®, the Exchange's trade matching engine, includes specialized electronic surveillance programs to identify potentially abusive trades and trade patterns. GLOBEX creates and maintain an electronic transaction history database that contains information with respect to all transactions executed on the Exchange. The audit trail capability includes an electronic analysis capability, permitting the sorting and presentation of data included in the transaction history in order to reconstruct trading and to identify possible trading violations with respect to both customer and market abuses.

Information recorded with respect to each order includes: Time entered, terms of the order, order type, instrument and contract month, price, quantity, account type, account designation, user code and clearing firm. This information is archived and maintained by the CME Market Regulation Department.

For orders that cannot be immediately entered into CME's systems and, therefore, will not be recorded electronically at the time they are received, Exchange Rule 536 requires that the complete written records of each order must be prepared and retained. Each such record must be retained for at least five years.

Clause (K) of Section 6(h)(3)[35] requires that a market on which a security futures product is traded have in place procedures to coordinate trading halts between such market and any market on which any security underlying the security futures product is traded and other markets on which any related security is traded.

The Exchange proposes to amend its Rules 71001.E. and 71301.E. to clarify that trading in security futures shall be halted when a regulatory halt occurs in the underlying security or securities, as defined in CFTC Regulation 41.1(l). The Exchange intends to make such amendment by certification of such amendments with the CFTC per Section 5c(c) of the Commodity Exchange Act and Regulation 41.24 thereunder, with a copy to the SEC.

Clause (L) of Section 6(h)(3)[36] requires that the margin requirements for a security futures product comply with the regulations prescribed pursuant to Section 7(c)(2)(B) of the Act.[37] As set forth in Amendment No. 1 to a Form 19b–4 separately filed by CME with the Commission on October 3, 2002, CME believes that its proposed Rules regarding customer margin are consistent with the requirements of the Act.

For the reasons described above, CME submits that the CME Listing Standards submitted herewith, satisfy the requirements set forth in Section 6(h)(3) of the Act.[38]

2. Statutory Basis

The CME Listing Standards are authorized by, and consistent with, Section 6(b)(5)[39] of the Act because they are designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

CME does not believe that the CME Listing Standards will have an impact on competition because (1) it may be anticipated that other self-regulatory organizations that will list security futures products will adopt substantially similar listing standards; and (2) any concerns about possible anti-competitive effects should be evaluated in light of the standards applicable to other financial instruments based on narrowly based security indices or baskets, which are consistent with the CME Listing Standards.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments on the CME Listing Standards have not been solicited.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective on October 28, 2002, except that the technical changes made in Amendment Nos. 2 and 3 have become effective on November 5 and 19, respectively. Within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of Section 19(b)(1) of the Act.[40]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change conflicts with the Act. Persons making written submissions should file nine copies of the submission with the Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically to the following e-mail address: *rule-comments@sec.gov*. 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 these filings also will be available for inspection and copying at the principal office of CME. Electronically submitted comments will be posted on the Commission's Internet website (*http://www.sec.gov*). All submissions should refer to File No. SR–CME–2002–02 and should be submitted by January 7, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[41]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–31652 Filed 12–16–02; 8:45 am]

BILLING CODE 8010–01–U

[33] *See* Joint Notice of Final Rules, Release No. 34–45956 (May 17, 2002), 67 FR 36740, 36750–51 (May 24, 2002).

[34] 15 U.S.C. 78f(h)(3)(J).

[35] 15 U.S.C. 78f(h)(3)(K).

[36] 15 U.S.C. 78f(h)(3)(L).

[37] 15 U.S.C. 78g(c)(2)(B).

[38] 15 U.S.C. 78f(h)(3).

[39] 15 U.S.C. 78f(g).

[40] 15 U.S.C. 78s(b)(1).

[41] 17 CFR 200.30–3(a)(75).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46972; File No. SR–NASD–2002–165]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto Relating to Retroactive Fees for Software Products Offered by The Nasdaq Stock Market, Inc.

December 9, 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'' or ''Association''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. On November 27, 2002, Nasdaq filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is proposing to amend NASD Rule 7050 to establish the fees for software products sold by Nasdaq Trading Applications as part of Nasdaq's Transaction Services for business products. Nasdaq will apply the proposed rule change on a retroactive basis for the period from July 25, 2002 to the date of this filing.[4] Below is the text of the proposed rule change. Proposed new language is *italicized.*

* * * * *

7050. Other Services

(a)–(d) No Change.

(e) Software Products

(1) The following fees shall be paid by customers of Tools™:

(A) Fee charge	*Price*
Minimum fee per market participant (includes coverage of up to 49 stocks on an unlimited number of Nasdaq Workstation II terminals located at a single office).	*$1,000/month*
Coverage of each additional block of 25 or fewer stocks	*$500/month*
Each additional office equipped with Tools	*$1,000/month*
Aggregate maximum fee per market participant	*$15,000/month*

(B) Customers who also subscribe to Tools Plus℠ services shall receive the following reduction on fees incurred pursuant to subsection (1)(A):

Number of Tools Plus terminals	*Discount*
Five or fewer Tools Plus terminals	*50%*
Between six and 15 Tools Plus terminals	*75%*
Greater than 15 Tools Plus terminals	*100%*

(2) The following deposits and fees shall be paid by all customers of Tools Plus:

(A) Each customer shall pay a deposit at the time it initially subscribes to Tools Plus equal to two times the subscriber's aggregate monthly Terminal Charge (as defined below), calculated based on the number of terminals ordered by the subscriber upon subscribing to Tools Plus (the ''Deposit''). The Deposit shall be refunded to the customer upon termination of its subscription to Tools Plus after deducting any outstanding balances owed Nasdaq.

(B) Terminal Charge

Fee charge	*Price*
Terminal Charge per terminal (''PT'') equipped with Tools Plus (More than 30 terminals if customer signs two year contract).	*$500/PT/month*
(All other situations)	*$750/PT/month*
Minimum fee	*$2,000/month*

(C) Fee charge	*Price*
Connection Charge to Nasdaq Computer-to-Computer Interface (CTCI) Connection Charge to Nasdaq Service.	*$265/month*
Delivery Platform (SDP) (charged to subscribers who handle customer orders)	*$250/month*
Installation Fee (one-time charge for Tools Plus and includes one terminal)	*$13,550*
(Each additional terminal)[5]	*$140*
Port Charges (one-time charge per line)	*$1,250*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from John A Zecca, Assistant General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated November 26, 2002 (''Amendment No. 1''). In Amendment No. 1, Nasdaq deleted text from Section 3(a)(1) of the 19b–4 filing and from Exhibit 1 to the 19b–4 filing discussing filings previously approved by the Commission.

[4] Nasdaq has filed a separate proposal that was immediately effective pursuant to Section 19(b)(3) of the Act and Rule 19b–4 thereunder, to impose these same fees prospectively from November 15, 2002, the date of this filing. *See* Securities Exchange Act Release No. 46973 (December 9, 2002) (SR–NASD–2002–164).

(C) Fee charge	Price
(One-time aggregate charge for two lines)	$2,500
Training Fee on-site at customer	$400/day (plus travel expenses)
Training Fee for course at Nasdaq Tools	$150/course
Electronic communication network (ECN) maintenance charge (charged to subscribers who route orders to ECN).	$250/per ECN/month

[5] Installation Fee includes two hours of on-site training of customer personnel and all programming costs associated with one customized interface for the customer to access its clearing firm.

Market data redistribution charges, which are set by the relevant market data provider, are passed through to Tools Plus subscribers at cost.

(D) Labor rates for programming customized interfaces and maintenance on interfaces for customers of Nasdaq Tools Plus shall be billed according to the following rates:

Calendar Year 2002	Calendar Year 2003 and thereafter
Senior Programmer: $175/hour	$200/hour
Programmer: $125/hour	$150/hour
Junior Programmer: $100/hour	$125/hour
Project Management: $150/hour	$175/hour
Network Engineer: $125/hour	$150/hour
Operations Support: $100/hour	$125/hour

* * * * *

II. Self Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. Nasdaq has prepared summaries, set forth below in Sections A, B, and C, 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

a. *Background.* Nasdaq has integrated the software product line of its former subsidiary, Nasdaq Tools, Inc., into Nasdaq. The purpose of this proposed rule change is to establish fees for these software products.

On March 7, 2000, Nasdaq purchased Financial Systemware, Inc., a manufacturer of software products for the financial services industry. Financial Systemware was renamed ''Nasdaq Tools, Inc.'' and became a wholly-owned subsidiary of Nasdaq.[6] On July 31, 2002, Nasdaq Tools, Inc. was merged into Nasdaq, with Nasdaq assuming all of the assets and liabilities of Nasdaq Tools, Inc. Nasdaq now provides these software products through Nasdaq Trading Applications, a part of Nasdaq's Transactions Services business products. Nasdaq Trading Applications currently sells two products: Tools ™ and Tools Plus SM. These products assist market participants with their trading.

Tools is a management software product that enhances the functionality of the Nasdaq Workstation II (''NWII'') and assists market participants (primarily market makers) [7] in efficiently managing their quotes, monitoring and executing incoming orders, checking for closed, locked, or crossed markets, and monitoring the depth of the market. Tools Plus is an order management service for market participants that improves order and quote features and facilitates trade reporting and compliance with SEC and NASD requirements. The order and quote features include: Real-time valuation (including tracking positions, profits and losses, automatic execution and display of orders); direct access to electronic communication networks (''ECNs''); and risk management. In addition, Tools Plus assists subscribers with trade reporting to the Automated Confirmation Transaction Service (''ACT''). Tools Plus distributes data associated with compliance obligations including the NASD's Order Audit Trail System (''OATS'') and Rules 11Ac1–5 [8] and 11Ac1–6 [9] under the Act. Tools Plus also aids market participants in fulfilling SEC-mandated compliance and reporting obligations by delivering customer data to the market maker's clearing firm. The Tools and Tools Plus products are discussed in more detail below.

b. *Tools:* Tools is a Microsoft Windows-based software product for market participants that provides quote and order management features. Tools increases the functionality of NWII by eliminating or reducing the number of mouse point-and-click features required to execute functions on NWII terminals and providing access to compliance alerts. Tools functions on the NWII without the purchase of additional hardware. Customers of Tools do not receive any priority or other advantage in accessing Nasdaq's systems as a result of their subscription to Tools. The Tools software allows a NWII user to:

[6] On April 18, 2001, the Securities and Exchange Commission (the ''Commission'') issued an order entitled ''Order Granting Application for a Conditional Exemption by the National Association of Securities Dealers, Inc. Relating to the Acquisition and Operation of a Software Development Company by the Nasdaq Stock Market, Inc.'' (the ''Exemption Order''). *See* Securities Exchange Act Release No. 44201 (April 18, 2001), 66 FR 21025 (April 26, 2002). The Exemption Order gave Nasdaq a conditional exemption from Section 19(b) of the Securities Exchange Act of 1934 (the ''Act'') that allowed Nasdaq Tools, Inc. to operate its business without triggering the proposed rule change requirements of Section 19(b). Nasdaq filed a letter dated July 25, 2002 informing the Commission that from that date forward Nasdaq would comply with Section 19(b) with respect to Nasdaq Tools' products. *See* Letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Jonathan G. Katz, Secretary, Commission, dated July 25, 2002. In the letter, Nasdaq acknowledged that it would have to seek a new exemption order from the Commission if Nasdaq subsequently determined to operate Nasdaq Tools in a manner requiring exemptive relief of Section 19(b) of the Act.

[7] Nasdaq has represented that only members will be affected by these fees. Telephone conversation between John A. Zecca, Assistant General Counsel, Nasdaq and Susie Cho, Special Counsel, Division, Commission, December 3, 2002.

[8] 17 CFR 240.11Ac1–5.

[9] 17 CFR 240.11Ac1–6.

• Monitor on a single display window selected securities for a number of preset criteria and quickly edit or activate the main quote management features.

• Automatically send for execution an order equal to the aggregate number of shares available for a particular stock through the Nasdaq National Market Execution System (also known as ''SuperSoes'') and Nasdaq Order Display Facility (also known as ''SuperMontage'') at the inside market and simultaneously update the quote for the stock.

• Monitor SelectNet broadcast orders for electronic execution based on pre-selected order size and price increment parameters and simultaneously update the quote for the stock.

• Limit the impact of a single large order on the price of a security by dividing the order and executing block orders of a size that will not update the quote for the stock.

• Preset trading parameters for selected groups of stocks, called ''baskets,'' which Tools will execute in order sizes up to the aggregate number of shares available for each stock at the inside market.

• Monitor securities for locked/crossed markets through a Locked/Crossed Market Alert Window and communicate with another market maker who has locked or crossed the market for a stock.

Tools is distributed as an integrated product that includes all features without additional charge. The fee schedule for Tools proposed in the rule change would apply to all customers of Tools and are comparable to fees previously charged for Tools. In accordance with prior practice, the proposed fee schedule calculates fees for use of the Tools product on a monthly basis.

Specifically, the market participant would pay a minimum monthly fee of $1,000 that entitles it to cover up to 49 stocks on an unlimited number of NWII terminals in a single office, with coverage of additional stocks sold in blocks of 25 stocks for $500 per block. Nasdaq also would assess an additional fee of $1,000 for each additional branch office equipped with Tools software. There would be a maximum monthly fee of $15,000 per market participant. Nasdaq would discount the fees charged on Tools for customers who also subscribe to Tools Plus. Such customers would receive the following discounts on any Tools fees:

• Five or fewer Tools Plus terminals—50% discount on Tools fees;

• Between six and 15 Tools Plus terminals—75% discount on Tools fees; and

• Greater than 15 Tools Plus terminals—100% discount (no additional Tools fees charged).

Nasdaq believes that the proposed discount on Tools fees for customers who also subscribe to Tools Plus is consistent with the provisions of Section 15A(b)(5) [10] and 15A(b)(6) [11] of the Act. Section 15A(b)(5) requires the equitable allocation of reasonable fees and charges among members and other users of facilities operated or controlled by a national securities association. Section 15A(b)(6) requires rules that foster cooperation and coordination with persons engaged in facilitating transactions in securities and that are not designed to permit unfair discrimination between customers, issuers, brokers or dealers. Nasdaq receives cost savings when delivering two software products to the same customer. These savings include reductions in:

• Installation costs, through savings in travel and work hours;

• Training expenses, as Nasdaq personnel can train the same personnel on both systems simultaneously, reducing on-site travel;

• Costs of ongoing technical support; and

• Billing and collection costs.

The incremental discount on Tools also reflects economies of scale for larger volume customers of Tools Plus who are likely to use Tools on a large number of terminals. In addition, there is overlap between the functionality of the two products. For example, both Tools and Tools Plus deliver market information disseminated by Nasdaq and provide quote update features. Thus, the discount also serves to avoid charging customers of both products twice for similar functionality. For these reasons, Nasdaq believes that the discount allows an equitable allocation of fees among Tools and Tools Plus customers.

c. *Tools Plus*. Nasdaq Tools, Inc. launched Tools Plus in the fall of 2001 as an order management service for NWII users that provides continuously updated valuation (including tracking positions, profits and losses, automatic execution), order display and risk management functions. Tools Plus also assists subscribers with trade reporting to ACT and connections to ECNs. Tools Plus distributes data associated with compliance obligations including the NASD's OATS Rules and Rules 11Ac1–5 [12] and 11Ac1–6 [13] under the Act. Tools Plus also delivers customer data to the customer's clearing firm. In particular, Tools Plus allows a customer to:

• Pre-configure the screen layout to monitor orders and quotes using various criteria.

• Combine multiple keystroke or mouse functions when executing orders and routing orders through Nasdaq systems (SuperMontage, SuperSoes, SelectNet or the Advanced Computerized Execution System (''ACES'')), and non-Nasdaq systems (such as ECNs or other Tools Plus customers).

• Access a single screen quote montage displaying customized quote information from various ECNs connected to Tools Plus (currently, Wave Securities, LLC (ARCA) and Redibook ECN, LLC; Brut, LLC; The Island ECN; Instinet; MarketXT, Inc.; and B-Trade Services, LLC), if the customer has a subscriber agreement with the ECN.

• Access the following tools to manage risk and assess the profitability of trading activity at the firm:

—A monitoring feature that allows a supervisor to see the activity of each trader in the firm and track on a continuous basis each trader's profitability and long, short and total trade exposure.

—Updated information on the profitability for the firm of trading in a particular security.

• Facilitate compliance with Commission and self regulatory organization requirements by:

—Tracking and displaying all orders covered by NASD IM–2110–2, which prohibits NASD members from trading ahead of customer limit orders.

—Compiling order and trade data that can automatically be sent to the market maker's clearing firm after the close of the trading day.

—Reporting statistical information on order execution required by Rules 11Ac1–5 and 11Ac1–6 under the Act to third-party disclosure services.

—Creating a data file that meets the NASD's OATS requirements, which can be transmitted to the NASD on a nightly basis.[14]

[10] 15 U.S.C. 78o–3(b)(5).

[11] 15 U.S.C. 78o–3(b)(6).

[12] 17 CFR 240.11Ac1–5.

[13] 17 CFR 240.11Ac1–6.

[14] Nasdaq reaffirms the representation ;made in a prior rule change that we commit that we will not use OATS data to gain a competitive advantage over another SRO or broker dealer (market maker or ECN) and confirms that we have put in place effective internal controls to carry out this policy of not using OATS data to obtain a competitive advantage. *See* Letter from Richard G. Ketcheum,

Continued

• Customize Tools Plus software to accept order flow from any custom interface and to route orders to any system that the market maker requests.

Nasdaq provides two Microsoft NT database servers per market maker (the ''client servers''). These servers are housed at the Nasdaq Trading Applications facility, currently in Jersey City, New Jersey. The client servers are connected through Nasdaq Trading Applications' network infrastructure to the Tools Plus core servers that re-distribute market data that is provided from the multiple data sources, including Nasdaq systems and ECNs and other non-Nasdaq systems discussed above. The client servers also store all order, position tracking and profit and loss information. Customers of Tools Plus do not receive any priority or other advantage in accessing Nasdaq's systems as a result of their subscription to Tool Plus. Tools Plus is designed to comply with the requirements of Rule 11Ac1–2(c) under the Act.[15]

The fees schedule for Tools Plus proposed in the rule change would apply to all customers and are comparable to fees previously charged for Tools Plus. The Tools Plus proposed fee structure consists of charges for installation, monthly terminal fees, connection to ECNs, monthly maintenance, equipment and pass through fees from the various data providers. The fee proposal includes a monthly fee per terminal of $750, with a volume reduction to $500 per terminal for customers with more than 30 or more terminals equipped with Tools Plus if the customer signs a two year contract (collectively, ''Terminal Charges''). There is a monthly minimum aggregate fee for Terminal Charges of $2,000 per subscriber. Nasdaq Tools requires a deposit equal to two times the customer's actual monthly Terminal Charges, which is refunded to the customer upon termination of the contract net of any outstanding balances owed Nasdaq.

In addition, Nasdaq would charge subscribers for Computer to Computer Interface (''CTCI'') and Service Delivery Platform (''SDP'') [16] connections and for market data redistribution charges. Prior to the merger of Nasdaq and Nasdaq Tools, Inc., Nasdaq charged Nasdaq Tools, Inc. as a vendor for such purposes according to the same fee schedule applied to other vendors.[17] Nasdaq proposes to continue to use the same fee schedule applied to Nasdaq Tools, Inc. for these Nasdaq connections and information unless and until Nasdaq files a new proposed rule change. Nasdaq anticipates that the CTCI and SDP fees charged to customers of Tools Plus would continue to approximate the fees charged to vendors of Nasdaq.[18] The proposed fees are as follows:

• Connection to Nasdaq CTCI: $265 per subscriber (regardless of number of terminals);

• Connection to Nasdaq SDP: $250 per month per subscriber (regardless of number of terminals); and

• Market data redistribution charges: as set by relevant market data provider and passed through to Tools Plus subscribers at cost.

The SDP and CTCI charges relate to Tools Plus' CTCI and SDP connections to Nasdaq's systems and are in addition to any SDP and CTCI connections a customer may have to link directly to Nasdaq. The purposes for which Tools Plus connects to Nasdaq are limited and, accordingly, do not require a large amount of bandwidth. Nasdaq Trading Applications is able to send and receive data for a number of customers using the same SDP and CTCI connections and the fees charged to the subscribers to Tools Plus for the connections reflect these economies of scale. An NWII that displays Tools Plus connects directly to Nasdaq systems through an application-programming interface (''API''). Nasdaq directly bills customers of Tools Plus for API linkages.[19]

In addition, Nasdaq proposes to charge the following fees for Tools Plus:

• Installation fee of $13,550 for Tools Plus and one terminal and $140 for each additional terminal;

• One-time port charge of $1,250 for each line or $2,500 for two lines for access to Tools Plus;

• Training Fees of $400 per day plus travel expenses for on-site training and $150 for training course at Nasdaq (2 hours of training per user is included in price of installation); and

• ECN access maintenance charge of $250 per month for each customer (regardless of number of terminals) for each ECN accessed through Tools Plus.[20]

Nasdaq also creates custom interfaces for Tools Plus subscribers. Subscribers are supplied with a Statement of Work that outlines the time and resources needed to complete the project. The Statement of Work must be approved and signed by both the subscriber and Nasdaq before any programming begins. As is currently the case, each Tools Plus subscriber would receive one custom interface to the subscriber's clearing firm as part of the cost of installation of Tools Plus. Nasdaq proposes to charge by the hour for all other customized programming and maintenance on custom interfaces based on the labor schedule set forth below:

Standard labor rates for:

Calendar Year 2002	Calendar Year 2003 and thereafter
Senior Programmer: $175/hour.	$200/hour.
Programmer: $125/hour	$150/hour.
Junior Programmer: $100/hour.	$125/hour.
Project Management: $150/hour.	$175/hour.
Network Engineer: $125/hour	$150/hour.
Operations Support: $100/hour.	$125/hour.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[21] in general, and with Section 15A(b)(5) of the Act,[22] in particular, in that it provides for the equitable allocation of reasonable fees, dues, and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. Nasdaq believes that the fees are reasonable in that they have been calculated to approximate the fees previously charged for Tools and Tools Plus products.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

President, Nasdaq, to Robert L.D. Colby, Deputy Director, Division, Commission, dated January 8, 2001.

[15] 17 CFR 240.11Ac1–2(c).

[16] SDP charges are only paid by subscribers who handle customer orders.

[17] See NASD Rule 7010(f)(2) (SDP) and Rule 7010(f)(3) (CTCI). The SDP and CTCI fees charged customers of Tools Plus under the proposed fee schedule reflect band width savings that allow multiple customers to use the same SDP and CTCI connections, as discussed *infra*.

[18] Telephone conversation between John A. Zecca, Assistant General Counsel, Nasdaq and Susie Cho, Special Counsel, Division, Commission, December 9, 2002.

[19] Fees related to API linkages are set forth at NASD Rule 7010(f).

[20] This charge only applies to subscribers who route orders to the ECN.

[21] 15 U.S.C. 78*o*–3.

[22] 15 U.S.C. 78*o*–3(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received on the proposed rule change contained in this filing.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the 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–2002–165 and should be submitted by January 7, 2003.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

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 association,[23] and in particular, the requirements of Section 15A(b)(5) of the Act,[24] which requires that the rules of an association provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the association operates or controls. The Commission notes that these fees will only be charged to users of Tools and Tools Plus and that the fees will be applied uniformly to all customers. In addition, the Commission notes that these fees have been calculated to be comparable with fees previously charged for Tools and Tools Plus.

The Commission also notes that Nasdaq has represented that when Nasdaq Tools Inc. was a subsidiary, Nasdaq treated Nasdaq Tools Inc. as a vendor in assessing certain fees and that it will continue to apply the same schedule as applied to Nasdaq Tools Inc. For example, Nasdaq proposes to continue to use the same fee schedule applied to Nasdaq Tools, Inc. for CTCI and SDP connections and information unless and until Nasdaq files a new proposed rule change.[25] The Commission also notes that customers of Tools and Tools Plus do not receive any other advantage in accessing Nasdaq's systems as a result of their subscription to Tools or Tools Plus.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission notes that Nasdaq has requested accelerated approval because these fees are the same fees that are being charged prospectively for the same products and are consistent with the fees previously charged to customers of Tools and Tools Plus.[26] The Commission believes that accelerated approval of the proposal will permit the most efficient implementation of the fees and reduce confusion for existing customers of Tools and Tools Plus. Based on the above, the Commission believes that there is good cause, consistent with Section 15A(b)(5) [27] and Section 19(b) [28] of the Act to approve the proposal on an accelerated basis.

V. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[29] that the proposed rule change (SR–NASD–2002–165), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[30]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–31650 Filed 12–16–02; 8:45 am]

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[23] 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).

[24] 15 U.S.C. 78*o*–3(b)(5).

[25] *See supra* note 17.

[26] *See supra* note 4.

[27] 15 U.S.C. 78*o*–3(b)(5).

[28] 15 U.S.C. 78s(b).

[29] 15 U.S.C. 78s(b)(2).

[30] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46973; File No. SR–NASD–2002–164]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees for Software Products Offered by the Nasdaq Stock Market, Inc.

December 9, 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'' or ''Association''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is proposing to amend NASD Rule 7050 to establish the fees for software products sold by Nasdaq Trading Applications as part of Nasdaq's Transaction Services for business products.[3] Below is the text of the proposed rule change. Proposed new language is *italicized*.[4]

* * * * *

7050. Other Services

(a)–(d) No Change.

(e) Software Products

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Telephone conversation between John A. Zecca, Assistant General Counsel, Nasdaq and Susie Cho, Special Counsel, Division, Commission, December 3, 2002.

[4] Nasdaq has filed a separate proposal pursuant to Section 19(b)(1) of the Act and Rule 19b–4 thereunder, to impose these same fees on a retroactive basis for the period from July 25, 2002 to the date of this filing. *See* Securities Exchange Act Release No. 46972 (December 9, 2002) (SR–NASD–2002–165).

(1) The following fees shall be paid by customers of Tools™:

(A) Fee charge	Price
Minimum fee per market participant (includes coverage of up to 49 stocks on an unlimited number of Nasdaq Workstation II terminals located at a single office).	$1,000/month
Coverage of each additional block of 25 or fewer stocks	$500/month
Each additional office equipped with Tools	$1,000/month
Aggregate maximum fee per market participant	$15,000/month

(B) Customers who also subscribe to Tools Plus℠ services shall receive the following reduction on fees incurred pursuant to subsection (1)(A):

Number of tools plus terminals	Discount
Five or fewer Tools Plus terminals	50%
Between six and 15 Tools Plus terminals	75%
Greater than 15 Tools Plus terminals	100%

(2) The following deposits and fees shall be paid by all customers of Tools Plus:

(A) Each customer shall pay a deposit at the time it initially subscribes to Tools Plus equal to two times the subscriber's aggregate monthly Terminal Charge (as defined below), calculated based on the number of terminals ordered by the subscriber upon subscribing to Tools Plus (the ''Deposit''). The Deposit shall be refunded to the customer upon termination of its subscription to Tools Plus after deducting any outstanding balances owed Nasdaq.

(B) Terminal Charge	
Fee charge	Price
Terminal charge per terminal (''PT'') equipped with Tools Plus (More than 30 terminals if customer signs two year contract).	$500/PT/month
(All other situations)	$750/PT/month
Minimum fee	$2,000/month

(C) Fee charge	Price
Connection Charge to Nasdaq Computer-to-Computer Interface (CTCI)	$265/month
Connection Charge to Nasdaq Service Delivery Platform (SDP)(charged to subscribers who handle customer orders).	$250/month
Installation Fee (one-time charge for Tools Plus and includes one terminal)	$13,550
(Each additional terminal)[5]	$140
Port Charges (one-time charge per line)	$1,250
(One-time aggregate charge for two lines)	$2,500
Training Fee on-site at customer	$400/day (plus travel expenses)
Training Fee for course at Nasdaq Tools	$150/course
Electronic communication network (ECN) maintenance charge (charged to subscribers who route orders to ECN).	$250/per ECN/month

Market data redistribution charges, which are set by the relevant market data provider, are passed through to Tools Plus subscribers at cost.

(D) Labor rates for programming customized interfaces and maintenance on interfaces for customers of Nasdaq Tools Plus shall be billed according to the following rates:

Calendar year 2002	Calendar year 2003 and thereafter
Senior Programmer: $175/hour.	$200/hour
Programmer: $125/hour	$150/hour
Junior Programmer: $100/hour.	$125/hour
Project Management: $150/hour.	$175/hour
Network Engineer: $125/hour	$150/hour
Operations Support: $100/hour.	$125/hour

[5] *Installation Fee includes two hours of on-site training of customer personnel and all programming costs associated with one customized interface for the customer to access its clearing firm.*

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth below in Sections A, B, and C, 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

a. *Background.* Nasdaq has integrated the software product line of its former subsidiary, Nasdaq Tools, Inc., into Nasdaq. The purpose of this proposed rule change is to establish fees for these software products.

On March 7, 2000, Nasdaq purchased Financial Systemware, Inc., a manufacturer of software products for the financial services industry. Financial Systemware was renamed ''Nasdaq Tools, Inc.'' and became a

wholly-owned subsidiary of Nasdaq.[6] On July 31, 2002, Nasdaq Tools, Inc. was merged into Nasdaq, with Nasdaq assuming all of the assets and liabilities of Nasdaq Tools, Inc. Nasdaq now provides these software products through Nasdaq Trading Applications, a part of Nasdaq's Transactions Services business products. Nasdaq Trading Applications currently sells two products: Tools™ and Tools Plus℠. These products assist market participants with their trading.

Tools is a management software product that enhances the functionality of the Nasdaq Workstation II (''NWII'') and assists market participants (primarily market makers)[7] in efficiently managing their quotes, monitoring and executing incoming orders, checking for closed, locked, or crossed markets, and monitoring the depth of the market. Tools Plus is an order management service for market participants that improves order and quote features and facilitates trade reporting and compliance with SEC and NASD requirements. The order and quote features include: real-time valuation (including tracking positions, profits and losses, automatic execution and display of orders); direct access to electronic communication networks (''ECNs''); and risk management. In addition, Tools Plus assists subscribers with trade reporting to the Automated Confirmation Transaction Service (''ACT''). Tools Plus distributes data associated with compliance obligations including the NASD's Order Audit Trail System (''OATS'') and Rules 11Ac1–5[8] and 11Ac1–6[9] under the Act. Tools Plus also aids market participants in fulfilling SEC-mandated compliance and reporting obligations by delivering customer data to the market maker's clearing firm. The Tools and Tools Plus products are discussed in more detail below.

b. *Tools.* Tools is a Microsoft Windows-based software product for market participants that provides quote and order management features. Tools increases the functionality of NWII by eliminating or reducing the number of mouse point-and-click features required to execute functions on NWII terminals and providing access to compliance alerts. Tools functions on the NWII without the purchase of additional hardware. Customers of Tools do not receive any priority or other advantage in accessing Nasdaq's systems as a result of their subscription to Tools. The Tools software allows a NWII user to:

- Monitor on a single display window selected securities for a number of preset criteria and quickly edit or activate the main quote management features.
- Automatically send for execution an order equal to the aggregate number of shares available for a particular stock through the Nasdaq National Market Execution System (also known as ''SuperSoes'') and Nasdaq Order Display Facility (also known as ''SuperMontage'') at the inside market and simultaneously update the quote for the stock.
- Monitor SelectNet broadcast orders for electronic execution based on pre-selected order size and price increment parameters and simultaneously update the quote for the stock.
- Limit the impact of a single large order on the price of a security by dividing the order and executing block orders of a size that will not update the quote for the stock.
- Preset trading parameters for selected groups of stocks, called ''baskets,'' which Tools will execute in order sizes up to the aggregate number of shares available for each stock at the inside market.
- Monitor securities for locked/crossed markets through a Locked/Crossed Market Alert Window and communicate with another market maker who has locked or crossed the market for a stock.

Tools is distributed as an integrated product that includes all features without additional charge. The fee schedule for Tools proposed in the rule change would apply to all customers of Tools and are comparable to fees previously charged for Tools. In accordance with prior practice, the proposed fee schedule calculates fees for use of the Tools product on a monthly basis.

Specifically, the market participant would pay a minimum monthly fee of $1,000 that entitles it to cover up to 49 stocks on an unlimited number of NWII terminals in a single office, with coverage of additional stocks sold in blocks of 25 stocks for $500 per block. Nasdaq also would assess an additional fee of $1,000 for each additional branch office equipped with Tools software. There would be a maximum monthly fee of $15,000 per market participant. Nasdaq would discount the fees charged on Tools for customers who also subscribe to Tools Plus. Such customers would receive the following discounts on any Tools fees:

- Five or fewer Tools Plus terminals—50% discount on Tools fees;
- Between six and 15 Tools Plus terminals—75% discount on Tools fees; and
- Greater than 15 Tools Plus terminals—100% discount (no additional Tools fees charged).

Nasdaq believes that the proposed discount on Tools fees for customers who also subscribe to Tools Plus is consistent with the provisions of Sections 15A(b)(5)[10] and 15A(b)(6)[11] of the Act. Section 15A(b)(5) requires the equitable allocation of reasonable fees and charges among members and other users of facilities operated or controlled by a national securities association. Section 15A(b)(6) requires rules that foster cooperation and coordination with persons engaged in facilitating transactions in securities and that are not designed to permit unfair discrimination between customers, issuers, brokers or dealers. Nasdaq receives cost savings when delivering two software products to the same customer. These savings include reductions in:

- Installation costs, through savings in travel and work hours;
- Training expenses, as Nasdaq personnel can train the same personnel on both systems simultaneously, reducing on-site travel;
- Costs of ongoing technical support; and
- Billing and collection costs.

The incremental discount on Tools also reflects economies of scale for larger volume customers of Tools Plus who are likely to use Tools on a large number of terminals. In addition, there is overlap between the functionality of the two products. For example, both Tools and Tools Plus deliver market information disseminated by Nasdaq

[6] On April 18, 2001, the Securities and Exchange Commission (the ''Commission'') issued an order entitled ''Order Granting Application for a Conditional Exemption by the National Association of Securities Dealers, Inc. Relating to the Acquisition and Operation of a Software Development Company by the Nasdaq Stock Market, Inc.'' (the ''Exemption Order''). *See* Securities Exchange Act Release No. 44201 (April 18, 2001), 66 FR 21025 (April 26, 2002). The Exemption Order gave Nasdaq a conditional exemption from Section 19(b) of the Securities Exchange Act of 1934 (the ''Act'') that allowed Nasdaq Tools, Inc. to operate its business without triggering the proposed rule change requirements of Section 19(b). Nasdaq filed a letter dated July 25, 2002 informing the Commission that from that date forward Nasdaq would comply with Section 19(b) with respect to Nasdaq Tools' products. *See* Letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Jonathan G. Katz, Secretary, Commission, dated July 25, 2002. In the letter, Nasdaq acknowledged that it would have to seek a new exemption order from the Commission if Nasdaq subsequently determined to operate Nasdaq Tools in a manner requiring exemptive relief of Section 19(b) of the Act.

[7] Nasdaq has represented that only members will be affected by these fees. *See supra* note 3.

[8] 17 CFR 240.11Ac1–5.

[9] 17 CFR 240.11Ac1–6.

[10] 15 U.S.C. 78*o*–3(b)(5).

[11] 15 U.S.C. 78*o*–3(b)(6).

and provide quote update features. Thus, the discount also serves to avoid charging customers of both products twice for similar functionality. For these reasons, Nasdaq believes that the discount allows an equitable allocation of fees among Tools and Tools Plus customers.

Nasdaq contends that the proposed discount is consistent with previous rebates and discounts approved by the Commission. For example, Nasdaq contends that the Commission has approved credits and discounts based on transaction volume [12] and credits provided to owners of exchange seats that were not available to certain lessees of seats.[13] Nasdaq further contends that the discount also enables Nasdaq Trading Applications to compete with discounts offered by larger unregulated providers of management software and services. According to Nasdaq, this competition gives market participants greater product choice in the management software business.

c. *Tools Plus.* Nasdaq Tools, Inc. launched Tools Plus in the fall of 2001 as an order management service for NWII users that provides continuously updated valuation (including tracking positions, profits and losses, automatic execution), order display and risk management functions. Tools Plus also assists subscribers with trade reporting to ACT and connections to ECNs. Tools Plus distributes data associated with compliance obligations including the NASD's OATS Rules and Rules 11Ac1–5 and 11Ac1–6 under the Act. Tools Plus also delivers customer data to the customer's clearing firm. In particular, Tools Plus allows a customer to:

• Pre-configure the screen layout to monitor orders and quotes using various criteria.

• Combine multiple keystroke or mouse functions when executing orders and routing orders through Nasdaq systems (SuperMontage, SuperSoes, SelectNet or the Advanced Computerized Execution System (''ACES'')), and non-Nasdaq systems (such as ECNs or other Tools Plus customers).

• Access a single screen quote montage displaying customized quote information from various ECNs connected to Tools Plus (currently, Wave Securities, LLC (ARCA) and Redibook ECN, LLC; Brut, LLC; The Island ECN; Instinet; MarketXT, Inc.; and B-Trade Services, LLC), if the customer has a subscriber agreement with the ECN.

• Access the following tools to manage risk and assess the profitability of trading activity at the firm:

—A monitoring feature that allows a supervisor to see the activity of each trader in the firm and track on a continuous basis each trader's profitability and long, short and total trade exposure.

—Updated information on the profitability for the firm of trading in a particular security.

• Facilitate compliance with Commission and self regulatory organization requirements by:

—Tracking and displaying all orders covered by NASD IM–2110–2, which prohibits NASD members from trading ahead of customer limit orders.

—Compiling order and trade data that can automatically be sent to the market maker's clearing firm after the close of the trading day.

—Reporting statistical information on order execution required by Rules 11Ac1–5 and 11Ac1–6 under the Act to third-party disclosure services.

—Creating a data file that meets the NASD's OATS requirements, which can be transmitted to the NASD on a nightly basis.[14]

• Customize Tools Plus software to accept order flow from any custom interface and to route orders to any system that the market maker requests.

Nasdaq provides two Microsoft NT database servers per market maker (the ''client servers''). These servers are housed at the Nasdaq Trading Applications facility, currently in Jersey City, New Jersey. The client servers are connected through Nasdaq Trading Applications' network infrastructure to the Tools Plus core servers that re-distribute market data that is provided from the multiple data sources, including Nasdaq systems and ECNs and other non-Nasdaq systems discussed above. The client servers also store all order, position tracking and profit and loss information. Customers of Tools Plus do not receive any priority or other advantage in accessing Nasdaq's systems as a result of their subscription to Tool Plus. Tools Plus is designed to comply with the requirements of Rule 11Ac1–2(c) under the Act.[15]

The fees schedule for Tools Plus proposed in the rule change would apply to all customers and are comparable to fees previously charged for Tools Plus. The Tools Plus proposed fee structure consists of charges for installation, monthly terminal fees, connection to ECNs, monthly maintenance, equipment and pass through fees from the various data providers. The fee proposal includes a monthly fee per terminal of $750, with a volume reduction to $500 per terminal for customers with more than 30 or more terminals equipped with Tools Plus if the customer signs a two year contract (collectively, ''Terminal Charges''). There is a monthly minimum aggregate fee for Terminal Charges of $2,000 per subscriber. Nasdaq Tools requires a deposit equal to two times the customer's actual monthly Terminal Charges, which is refunded to the customer upon termination of the contract net of any outstanding balances owed Nasdaq.

In addition, Nasdaq would charge subscribers for Computer to Computer Interface (''CTCI'') and Service Delivery Platform (''SDP'') [16] connections and for market data redistribution charges. Prior to the merger of Nasdaq and Nasdaq Tools, Inc., Nasdaq charged Nasdaq Tools, Inc. as a vendor for such purposes according to the same fee schedule applied to other vendors.[17] Nasdaq proposes to continue to use the same fee schedule applied to Nasdaq Tools, Inc. for these Nasdaq connections and information unless and until Nasdaq files a new proposed rule change. Nasdaq anticipates that the CTCI and SDP fees charged to customers of Tools Plus would continue to approximate the fees charged to vendors of Nasdaq.[18] The proposed fees are as follows:

• Connection to Nasdaq CTCI: $265 per subscriber (regardless of number of terminals);

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[12] Securities Exchange Act Release No. 44899 (October 2, 2001), 66 FR 51707 (October 10, 2001) (SR–NASD–01–63), Securities Exchange Act Release No. 44898 (October 2, 2001), 66 FR 51703 (October 10, 2001) (SR–NASD–01–64) (charges for order execution decrease incrementally as market maker's order volume increases).

[13] Securities Exchange Act Release No. 44292 (May 11, 2001), 66 FR 27715 (May 18, 2001) (SR–Phlx–01–49).

[14] Nasdaq reaffirms the representation made in a prior rule change that we commit that we will not use OATS data to gain a competitive advantage over another SRO or broker dealer (market maker or ECN) and confirms that we have put in place effective internal controls to carry out this policy of not using OATS data to obtain a competitive advantage. *See* Letter from Richard G. Ketchum, President, Nasdaq, to Robert L.D. Colby, Deputy Director, Division, Commission, dated January 8, 2001.

[15] 17 CFR 240.11Ac1–2(c).

[16] SDP charges are only paid by subscribers who handle customer orders.

[17] *See* NASD Rule 7010(f)(2) (SDP) and Rule 7010(f)(3) (CTCI). The SDP and CTCI fees charged customers of Tools Plus under the proposed fee schedule reflect band width savings that allow multiple customers to use the same SDP and CTCI connections, as discussed *infra.*

[18] Telephone conversation between John A. Zecca, Assistant General Counsel, Nasdaq and Susie Cho, Special Counsel, Division, Commission, December 9, 2002.

• Connection to Nasdaq SDP: $250 per month per subscriber (regardless of number of terminals); and

• Market data redistribution charges: as set by relevant market data provider and passed through to Tools Plus subscribers at cost.

The SDP and CTCI charges relate to Tools Plus' CTCI and SDP connections to Nasdaq's systems and are in addition to any SDP and CTCI connections a customer may have to link directly to Nasdaq. The purposes for which Tools Plus connects to Nasdaq are limited and, accordingly, do not require a large amount of bandwidth. Nasdaq Trading Applications is able to send and receive data for a number of customers using the same SDP and CTCI connections and the fees charged to the subscribers to Tools Plus for the connections reflect these economies of scale. An NWII that displays Tools Plus connects directly to Nasdaq systems through an application-programming interface (''API''). Nasdaq directly bills customers of Tools Plus for API linkages.[19]

In addition, Nasdaq proposes to charge the following fees for Tools Plus:

• Installation fee of $13,550 for Tools Plus and one terminal and $140 for each additional terminal;

• One-time port charge of $1,250 for each line or $2,500 for two lines for access to Tools Plus;

• Training Fees of $400 per day plus travel expenses for on-site training and $150 for training course at Nasdaq (2 hours of training per user is included in price of installation); and

• ECN access maintenance charge of $250 per month for each customer (regardless of number of terminals) for each ECN accessed through Tools Plus.[20]

Nasdaq also creates custom interfaces for Tools Plus subscribers. Subscribers are supplied with a Statement of Work that outlines the time and resources needed to complete the project. The Statement of Work must be approved and signed by both the subscriber and Nasdaq before any programming begins. As is currently the case, each Tools Plus subscriber would receive one custom interface to the subscriber's clearing firm as part of the cost of installation of Tools Plus. Nasdaq proposes to charge by the hour for all other customized programming and maintenance on custom interfaces based on the labor schedule set forth below:

Standard Labor rates for:

Calendar year 2002	Calendar year 2003 and thereafter
Senior Programmer: $175/hour.	$200/hour
Programmer: $125/hour	$150/hour
Junior Programmer: $100/hour.	$125/hour
Project Management: $150/hour.	$175/hour
Network Engineer: $125/hour	$150/hour
Operations Support: $100/hour.	$125/hour

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[21] in general, and with Section 15A(b)(5) of the Act,[22] in particular, in that it provides for the equitable allocation of reasonable fees, dues, and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. Nasdaq believes that the fees are reasonable in that they have been calculated to approximate the fees previously charged for Tools and Tools Plus products.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

A. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received on the proposed rule change contained in this filing.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [23] and subparagraph (f) of Rule 19b–4,[24] thereunder because it establishes or changes a due, fee or other charge imposed by the self-regulatory organization. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the 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–2002–164 and should be submitted by January 7, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[25]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–31651 Filed 12–16–02; 8:45 am]

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[19] Fees related to API linkages are set forth at NASD Rule 7010(f).

[20] This charge only applies to subscribers who route orders to the ECN.

[21] 15 U.S.C. 78*o*–3.

[22] 15 U.S.C. 78*o*–3(b)(5).

[23] 15 U.S.C. 78s(b)(3)(A)(ii).

[24] 17 CFR 240.19b–4(f).

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46982; File No. SR–PCX–2002–70]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. To Amend Its Schedule of Fees and Charges Relating to the Archipelago Exchange

December 11, 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 Pacific Exchange, Inc. (''PCX'') filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which the PCX has prepared. The Commission is

[1] 15 U.S.C. 78s(b)(1).

[2] CFR 240.19b–4.

publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX, through its wholly owned subsidiary PCX Equities, Inc. (''PCXE''), proposes to amend its fee schedule for services provided to ETP Holders and Sponsored Participants (collectively ''Users'') on the Archipelago Exchange (''ArcaEx''), the equities trading facility of PCXE. Specifically, the PCX proposes to (1) increase the per share transaction fee for odd-lot orders in listed securities that are routed away via ArcaEx and executed by another market center; and (2) increase the transaction credit for Market Makers who provide liquidity in exchange-listed American Depositary Receipts (''ADRs''). The text of the proposed rule change is available at the PCX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of the statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Routing Service Fee

The PCX currently charges all Users a transaction fee of $0.004 per share for any unfilled or residual portion of an odd-lot order in a listed security, including exchange-traded funds (''ETFs''), that is routed away via ArcaEx and executed by another market center or participant. The PCX proposes to increase this transaction fee to $0.03 per share to conform to the current fee of $0.03 per share that is applied to odd-lot orders executed on ArcaEx. The PCX notes that odd-lot orders that are created as a result of a partial fill of a round lot that are subsequently routed away and executed on another market will continue to be subject to the $0.004 per-share fee applicable to round lot orders. The PCX believes that this fee is reasonable and is structured to allocate fairly the costs of operating the ArcaEx facility.

2. Market Maker Transaction Credit

The PCX is proposing to increase the level of the transaction credit paid to market makers who provide liquidity in exchange-listed American Depositary Receipts (''ADRs''). Currently, market makers who enter ''Q Orders'' [3] in exchange-listed ADRs that are subsequently executed against incoming marketable orders earn a credit of $0.0015 per share. The PCX proposes to increase the level of the transaction credit for ADRs from $0.0015 to $0.002 per share.[4] The increased credit of $0.002 is the same amount that is currently applied to orders that provide liquidity in ETFs.[5] The PCX states that this credit is intended to create additional incentives to market makers to provide liquidity in ADRs that are traded on the ArcaEx facility.

The PCX believes that the proposal is consistent with section 6(b) of the Act,[6] particularly section 6(b)(4) of the Act,[7] in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PCX does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The PCX neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act [8] and Rule 19b–4 (f) thereunder [9] because it changes a PCX fee. At any time within 60 days after the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that that 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 in Washington, DC. Copies of the filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2002–70 and should be submitted by January 7, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–31654 Filed 12–16–02; 8:45 am]

BILLING CODE 8010–01–P

[3] Q Orders are limit orders that are submitted to ArcaEx by a market maker in those securities in which the market maker is registered to trade. *See* PCXE Rule 7.31(k).

[4] The current $0.02 per share credit that is provided to any market maker that executes against an odd-lot order in the Odd Lot Tracking Order Process will remain in effect.

[5] The increased credit of $0.002 parallels a recent change to the User Transaction Credit for certain transactions in ADRs. *See* Securities Exchange Act Release No. 46784 (November 7, 2002), 67 FR 69283 (November 15, 2002) (SR–PCX–2002–68).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f).

[10] 17 CFR 200.30–3(a)(12).

OFFICE OF SPECIAL COUNSEL

Change of Address for Dallas Office

AGENCY: Office of Special Counsel

ACTION: Notice

SUMMARY: Effective Monday, December 9, 2002, the Dallas Field Office (DFO) of the U.S. Office of Special Counsel (OSC) moved to the A. Maceo Smith Federal Building, 525 Griffin Street, Room 824, Box 103, Dallas, TX 75202. The DFO telephone number continues to be (214) 767–8871. Additional OSC contact information can be found on the agency Web site at *http://www.osc.gov*.

EFFECTIVE DATE: December 9, 2002.

FOR FURTHER INFORMATION CONTACT: Kathryn Stackhouse, by mail to the Planning and Advice Division, 1730 M Street, NW. (Suite 201), Washington, DC 20036; by telephone, at (202) 653–8971; or by fax, at (202) 653–5161.

Dated: December 10, 2002.

Elaine D. Kaplan,

Special Counsel.

[FR Doc. 02–31648 Filed 12–16–02; 8:45 am]

BILLING CODE 7405–01–S

DEPARTMENT OF STATE

[Public Notice 4231]

Culturally Significant Objects Imported for Exhibition; Determinations: ''Origins of the Russian Avant-Garde''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999 (64 FR 56014), and Delegation of Authority No. 236 of October 19, 1999 (64 FR 57920), as amended, I hereby determine that the objects to be included in the exhibition, ''Origins of the Russian Avant-Garde,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with a foreign lender. I also determine that the exhibition or display of the exhibit objects at the Walters Art Museum, Baltimore, Maryland, from on or about February 13, 2003, to on or about May 25, 2003, the Fine Arts Museum of San Francisco, San Francisco, California, from on or about June 29, 2003, to on or about September 21, 2003, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, 202/619–5997, and the address is United States Department of State, SA–44, Room 700, 301 4th Street, SW., Washington, DC 20547–0001.

Dated: December 11, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–31688 Filed 12–16–02; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4230]

Determination Pursuant to Section 1(b) of Executive Order 13224 Relating to the Moroccan Islamic Combatant Group (GICM)

Acting under the authority of Section 1(b) of Executive Order 13224 of September 23, 2001, and in consultation with the Secretary of the Treasury and the Attorney General, I hereby determine that the Moroccan Islamic Combatant Group (GICM) has committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that ''prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously,'' I determine that no prior notice need be provided to any person subject to this determination who might have a constitutional presence in the United States because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register.**

Dated: December 5, 2002.

Colin L. Powell,

Secretary of State, Department of State.

[FR Doc. 02–31687 Filed 12–16–02; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Privacy Act of 1974: System of Records

AGENCY: Transportation Security Administration, DOT.

ACTION: Notice to establish three systems of records.

SUMMARY: DOT proposes to establish three systems of records under the Privacy Act of 1974 and to exempt them from certain provisions of the Act.

EFFECTIVE DATE: January 27, 2003. If no comments are received, the proposal will become effective on the above date. If comments are received, the comments will be considered and, where adopted, the documents will be republished with changes.

FOR FURTHER INFORMATION CONTACT: Yvonne L. Coates, Department of Transportation, Office of the Secretary, 400 7th Street, SW., Washington, DC 20590, (202) 366–6964 (telephone), (202) 366–7024 (fax), *Yvonne.Coates@ost.dot.gov* (Internet address).

SUPPLEMENTARY INFORMATION: The Department of Transportation systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the above mentioned address.

DOT/TSA 001

SYSTEM NAME:

Transportation Security Enforcement Record System (TSERS).

SECURITY CLASSIFICATION:

Classified, sensitive.

SYSTEM LOCATION:

Records are maintained in the Office of Chief Counsel, the Office of the Associate Under Secretary for Aviation Operations, and the Office of the Associate Under Secretary for Inspection, Transportation Security Administration (TSA), Department of Transportation, 400 7th Street, SW., Washington, DC 20590. Records will also be maintained at the various TSA field offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Owners, operators, and employees in all modes of transportation for which TSA has security-related duties; witnesses; passengers undergoing screening of their person or property; and individuals against whom investigative, administrative, or legal enforcement action has been initiated for violation of certain Transportation Security Administration Regulations (TSR), relevant provisions of 49 U.S.C. chapter 449, or other laws.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information related to the screening of passengers and property and the investigation or prosecution of any alleged violation, including name of and demographic information about alleged violators and witnesses; place of violation; Enforcement Investigative Reports (EIRs); security incident reports, screening reports, suspicious-activity

reports and other incident or investigative reports; statements of alleged violators and witnesses; proposed penalty; investigators' analyses and work papers; enforcement actions taken; findings; documentation of physical evidence; correspondence of TSA employees and others in enforcement cases; pleadings and other court filings; legal opinions and attorney work papers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

49 U.S.C. 114(d), 44901, 44903, 44916, 46101, 46301.

PURPOSE(S):

The records are created in order to maintain a civil enforcement and inspections system for all modes of transportation for which TSA has security related duties. They may be used, generally, to identify, review, analyze, investigate, and prosecute violations or potential violations of transportation security laws.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Furnish responses to queries from Federal, State, tribal, territorial, and local law enforcement and regulatory agencies, both foreign and domestic, regarding individuals who may pose a risk to transportation or national security; a risk of air piracy or terrorism or a threat to airline or passenger safety; or a threat to aviation safety, civil aviation, or national security.

(2) Furnish information to airport operators, aircraft operators, and maritime and land transportation operators about individuals who are their employees, job applicants, or contractors, or persons to whom they issue identification credentials, or grant clearances to secured areas in transportation facilities.

(3) Disclose information to a Federal, State, or local agency, maintaining a civil, criminal or other relevant enforcement information or other pertinent information, that has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit.

(4) Furnish information to the news media in accordance with the guidelines contained in 28 CFR 50.2, which relate to civil and criminal proceedings.

(5) Furnish information to the Department of State and the Intelligence Community to further those agencies' efforts with respect to individuals who may pose a risk to transportation or national security; a risk of air piracy or terrorism or a threat to airline or passenger safety; or a threat to aviation safety, civil aviation, or national security.

(6) Provide information or records, when appropriate, to international and foreign governmental authorities in accordance with law and formal or informal international agreement.

(7) To any person performing a contract for TSA to the extent necessary to perform the contract.

(8) To any agency or instrumentality charged under applicable law with the protection of the public health or safety under exigent circumstances where the public health or safety is at risk.

(9) To provide information contained in the records to third parties during the course of any law enforcement investigation into violations or potential violations of transportation security laws to the extent necessary to obtain information pertinent to the investigation.

(10) To the Department of Justice, United States Attorney's Office, or other Federal agencies for further collection action on any delinquent debt when circumstances warrant.

(11) To a debt collection agency for the purpose of debt collection. *See also* DOT Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Privacy Act information may be reported to consumer reporting agencies pursuant to 5 U.S.C. 552a(b)(12) collecting on behalf of the United States Government.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper and in computer-accessible storage media. Records are also stored on microfiche and roll microfilm.

RETRIEVABILITY:

Records are retrieved by name, address, social security account number, administrative action or legal enforcement numbers, or other assigned identifier of the individual on whom the records are maintained.

SAFEGUARDS:

Access to TSA working and storage areas is restricted to DOT employees on a ''need to know'' basis. Strict control measures are enforced to ensure that access to classified and/or sensitive information in these records is also based on ''need to know.'' Electronic access is limited by computer security measures that are strictly enforced. Generally, TSA file areas are locked after normal duty hours and the facilities are protected from the outside by security personnel.

RETENTION AND DISPOSAL:

National Archives and Records Administration approval is pending for the records in this system. Paper records and information stored on electronic storage media are maintained within TSA for 5 years and then forwarded to Federal Records Center. Records are destroyed after 10 years.

SYSTEM MANAGER(S) AND ADDRESS:

Information Systems Program Manager, Office of the Chief Counsel, Transportation Security Administration, GSA Regional Office Building Room 5002, 400 7th Street, SW., Washington, DC 20590.

NOTIFICATION PROCEDURE:

Individuals who wish to determine whether this system of records contains information about them should contact the System Manager at the above address. Inquiries should include the individual's full name, social security number, and return address.

RECORD ACCESS PROCEDURE:

See ''Notification Procedure.'' Individuals requesting access must comply with the DOT's Privacy Act regulations on verification of identity (49 CFR 10.37).

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure.''

RECORD SOURCE CATEGORIES:

Information contained in this system is obtained from the alleged violator, TSA employees or contractors, witnesses to the alleged violation or events surrounding the alleged violation, other third parties who provided information regarding the alleged violation, state and local agencies, and other Federal agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Portions of this system are exempt under 5 U.S.C. 552a(k)(2).

DOT/TSA 002

SYSTEM NAME:

Transportation Workers Employment Investigations System (TWEI).

SECURITY CLASSIFICATION:

Classified, sensitive.

SYSTEM LOCATION:

Records are maintained at the offices of the Transportation Security

Administration (TSA), Department of Transportation (DOT), 400 7th Street, SW., Washington, DC 20590. Some records may also be maintained at the offices of a TSA contractor, or in TSA field offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. Individuals, other than employees of Federal, State, tribal, territorial, and local governments (including law enforcement officers), who require or seek access to airport sterile areas; have unescorted access authority to a security identification display area (SIDA); have authority to grant others unescorted access to a SIDA; are seeking unescorted access authority to a SIDA; are seeking to have authority to grant others unescorted access to a SIDA; have regular escorted access to a SIDA; or are seeking regular escorted access to a SIDA.

b. Individuals who have or are seeking responsibility for screening passengers or carry-on baggage, and those individuals serving as immediate supervisors and the next supervisory level to those individuals, other than employees of the TSA who perform or seek to perform these functions.

c. Individuals who have or are seeking responsibility for screening checked baggage or cargo, and their immediate supervisors, other than employees of the TSA who perform or seek to perform these functions.

d. Individuals who have or are seeking the authority to accept checked baggage for transport on behalf of an aircraft operator that is required to screen passengers.

e. Pilots, flight engineers, flight navigators, and flight attendants assigned to duty in an aircraft during flight time for an aircraft operator that is required to adopt and carry out a security program.

f. Individuals, other than employees of Federal, State, tribal, territorial, and local governments, who have or are seeking access to a transportation facility in the maritime or land transportation system.

g. Other individuals who are connected to the transportation industry for whom TSA may be required by statute to conduct background investigations to provide an adequate level of transportation security.

CATEGORIES OF RECORDS IN THE SYSTEM:

TSA's automated system may contain any or all of the following: (a) Name; (b) social security number; (c) date of birth; (d) submitting office number of the airport, aircraft operator, or maritime or land transportation operator submitting the individual's information; (e) OPM case number; (f) other data as required by form FD 258 (fingerprint card); (g) dates of submission and transmission of the information, as necessary to assist in tracking submissions, payments, and transmission of records; (h) identification records obtained from the Federal Bureau of Investigation (FBI), which are compilations of criminal history record information pertaining to individuals who have criminal fingerprints maintained in the FBI's Fingerprint Identification Records System (FIRS); (i) data gathered from foreign governments that is necessary to address security concerns in the aviation, maritime, or land transportation systems; (j) information provided by the Central Intelligence Agency and other members of the Intelligence Community, and (k) other information provided by the information systems of other Federal, State, tribal, and local governmental agencies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

49 U.S.C. sections 114 and 44936.

PURPOSE(S):

To facilitate the performance of employment investigations, including fingerprint-based criminal history records checks (CHRCs), which Federal law and TSA regulations require for the individuals identified in ''Categories of individuals covered by the system'' above.

a. To assist in the management and tracking of the status of employment investigations.

b. To permit the retrieval of the results of employment investigations, including criminal history records checks and searches in other governmental identification systems, performed on the individuals covered by this system.

c. To permit the retrieval of information from other law enforcement and intelligence databases on the individuals covered by this system.

d. To track the fees incurred and payment of those fees by the airport operators, aircraft operators, and maritime and land transportation operators for services related to the employment investigations.

e. To facilitate the performance of other investigations that TSA may be required by statute to complete to provide an adequate level of transportation security.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Furnish information or records, electronically or manually, to contractors, grantees, experts, consultants, agents and other non-DOT employees performing or working on a contract, service, grant, cooperative agreement, or other assignment from the Federal government for the purpose of providing consulting, data processing, clerical, or secretarial functions to assist TSA in all functions relevant to the employment investigations.

(2) Furnish to airport operators, aircraft operators, and maritime and land transportation operators that are required to conduct an employment investigation, or to be informed of the results of an employment investigation, for individuals covered by this system pursuant to 49 U.S.C. 114 and 44936 and regulations in 49 CFR chapter XII.

(3) Furnish to the Office of Personnel Management (OPM), the FBI, and other government agencies, as necessary, to conduct the employment investigations and to facilitate payment and accounting.

(4) Furnish responses to queries from Federal, State, tribal, territorial, and local law enforcement and regulatory agencies, both foreign and domestic, regarding individuals who may pose a risk to transportation or national security; a risk of air piracy or terrorism or a threat to airline or passenger safety; or a threat to aviation safety, civil aviation, or national security.

(5) Furnish information to individuals and organizations, in the course of enforcement efforts, to the extent necessary to elicit information pertinent to the investigation, prosecution, or enforcement of civil or criminal statutes, rules, regulations or orders regarding individuals who may pose a risk to transportation or national security; a risk of air piracy or terrorism or a threat to airline or passenger safety; or a threat to aviation safety, civil aviation, or national security.

(6) Disclose information to a Federal, State, tribal, territorial, or local agency maintaining a civil, criminal or other relevant enforcement information or other pertinent information, that has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit.

(7) Furnish information to the news media in accordance with the guidelines contained in 28 CFR 50.2, which relate to civil and criminal proceedings.

(8) Furnish information to the Department of State and the Intelligence Community to further those agencies' efforts with respect to individuals who may pose a risk to transportation or national security; a risk of air piracy or

terrorism or a threat to airline or passenger safety; or a threat to aviation safety, civil aviation, or national security.

(9) Provide information or records, when appropriate, to international and foreign governmental authorities in accordance with law and formal or informal international agreement.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

In electronic storage media and hard copy.

RETRIEVABILITY:

TSA system administrators can retrieve information by the unique ''submitting office number'' of the aviation, maritime, or land transportation operator that submitted the individual's information, the individual's social security number, individual's name and date of birth, the date the request was scheduled for processing, date the investigation is closed, and the OPM case number.

Aviation, maritime, and land transportation operators retrieve the status and results of the employment investigations only for those individuals whose information they have submitted, and can do so electronically. Aviation, maritime, and land transportation operators use their submitting office number combined with the social security number of the requested subject to retrieve an individual's records.

SAFEGUARDS:

All records are protected from unauthorized access through appropriate administrative, physical, and technical safeguards. These safeguards include restricting access to those authorized with a need-to-know; using locks, alarm devices, and passwords; and encrypting data communications.

RETENTION AND DISPOSAL:

National Archives and Records Administration approval is pending for the records in this system. The request is for all records to be purged one year after receipt by TSA.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Security, Office of Finance and Administration, TSA, 400 7th Street, SW., Washington, DC 20590.

NOTIFICATION PROCEDURE:

To determine whether this system contains records relating to you, write to the System Manager identified above.

RECORD ACCESS PROCEDURES:

Same as ''Notification Procedures'' above. Provide your full name and a description of information that you seek, including the time frame during which the record(s) may have been generated. Individuals requesting access must comply with the DOT's Privacy Act regulations on verification of identity (49 CFR 10.37).

CONTESTING RECORD PROCEDURES:

Same as ''Notification Procedures,'' and ''Record Access Procedures'' above.

RECORD SOURCE CATEGORIES:

Information is collected from individuals subject to a criminal history records check under 49 U.S.C. 114 and 44936 and 49 CFR chapter XII. Information is also collected from aviation, maritime, and land transportation operators. Information is also collected from domestic and international intelligence sources, including the Central Intelligence Agency. The sources of information in the criminal history records obtained from the FBI are set forth in the Department of Justice Privacy Act system of records notice ''JUSTICE/FBI–009.''

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Portions of this system are exempt under 5 U.S.C. 552a(k)(1) and (k)(2).

DOT/TSA 004

SYSTEM NAME:

Personnel Background Investigation File System.

SECURITY CLASSIFICATION:

Classified, sensitive.

SYSTEM LOCATION:

Records are maintained at the offices of the Transportation Security Administration (TSA), Department of Transportation (DOT), 400 7th Street, SW., Washington, DC 20590. Some records may also be maintained at the offices of a TSA contractor, or in TSA field offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former TSA employees, applicants for TSA employment, and TSA contract employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains an index reference record used to track the status of an applicant's background investigation, standard form 85P—Questionnaire For Public Trust Positions,'' investigative summaries and compilations of criminal history record checks, and administrative records and correspondence incidental to the background investigation process.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 3301, 3302; 49 U.S.C. 114, 44935; and Executive Orders 10,450, 10,577, and 12,968.

PURPOSE(S):

The system will maintain investigative and background records used to make suitability and eligibility determinations for the individuals listed under ''Categories of individuals.''

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Except as noted in Question 14 of the Questionnaire for Public Trust Positions, when a record on its face, or in conjunction with other records, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute, particular program statute, regulation, rule, or order issued pursuant thereto, the relevant records may be disclosed to the appropriate Federal, State, tribal, territorial, foreign, local, or other public authority responsible for enforcing, investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation or order.

2. To any source or potential source from which information is requested in the course of an investigation concerning the hiring or retention of an employee or other personnel action, or the issuing or retention of a security clearance, contract, grant, license, or other benefit, to the extent necessary to identify the individual, inform the source of the nature and purpose of the investigation, and to identify the type of information requested.

3. To contractors, grantees, experts, consultants, or volunteers when necessary to perform a function or service related to this record for which they have been engaged. Such recipients are required to comply with the Privacy Act, 5 U.S.C. 552a, as amended.

4. To contractors, grantees, experts, consultants or volunteers to communicate the results of a suitability and/or eligibility determination for their employee or contractor, or for any other individual performing work for the agency under their direction and control.

5. To any agency or instrumentality charged under applicable law with the

protection of the public health or safety under exigent circumstances where the public health or safety is at risk.

See also Department of Transportation Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper and in computer-accessible storage media. Records are also stored on microfiche and roll microfilm.

RETRIEVABILITY:

Records are retrieved by name, address, and social security account number or other assigned tracking identifier of the individual on whom the records are maintained.

SAFEGUARDS:

Access to TSA working and storage areas is restricted to DOT employees on a ''need to know'' basis. Strict control measures are enforced to ensure that access to these records is also based on ''need to know.'' Generally, TSA file areas are locked after normal duty hours and the facilities are protected from the outside by security personnel.

RETENTION AND DISPOSAL:

Paper records and information stored on electronic storage are destroyed upon notification of death or not later than 5 years after separation or transfer of employee or no later than 5 years after contract relationship expires, whichever is applicable.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Security, Transportation Security Administration, 400 7th Street, SW., Washington, DC 20590.

NOTIFICATION PROCEDURE:

To determine whether this system contains records relating to you, write to the System Manager identified above.

RECORD ACCESS PROCEDURES:

Same as ''Notification Procedures'' above. Provide your full name and a description of information that you seek, including the time frame during which the record(s) may have been generated. Individuals requesting access must comply with the Department of Transportation's Privacy Act regulations on verification of identity (49 CFR 10.37).

CONTESTING RECORD PROCEDURES:

Same as ''Notification Procedure,'' and ''Record Access Procedures'' above.

RECORD SOURCE CATEGORIES:

Information contained in this system is obtained from the job applicant on the Questionnaire For Public Trust Positions, law enforcement and intelligence agency record systems, publicly-available government records and commercial data bases.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Portions of this system are exempt under 5 U.S.C. 552a(k)(5).

OMB CONTROL NUMBERS:

OMB No. 3206–0191, standard form 85P—Questionnaire For Public Trust Positions.

Dated: December 10, 2002.

Yvonne L. Coates,

Privacy Act Coordinator.

[FR Doc. 02–31594 Filed 12–16–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34269]

RailAmerica, Inc., et al.—Control and Merger Exemption—A&R Line, Inc., and J.K. Line, Inc.

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: The Board grants an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 11323–25 for noncarrier RailAmerica, Inc., *et al.*, to acquire control of A&R Line, Inc. (A&R Line), and J.K. Line, Inc. (J.K. Line), two wholly owned Class III railroad subsidiaries of Cargill, Incorporated, and to merge A&R Line and J.K. Line into the Toledo, Peoria & Western Railway Corporation, subject to the employee protective conditions described in *Wisconsin Central Ltd.—Acquisition Exem.—Union Pac. RR*, 2 S.T.B. 218 (1997).

DATES: This exemption will be effective on December 31, 2002. Petitions to stay must be filed by December 23, 2002. Petitions to reopen must be filed by December 27, 2002.

ADDRESSES: An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34269, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of all pleadings must be served on petitioners' representative, Louis E. Gitomer, Esq., Ball Janik LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565–1600. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. Copies of the decision may be purchased from Dā 2 Dā Legal Copy Service by calling (202) 293–7776 (assistance for the hearing impaired is available through FIRS at 1–800–877–8339) or by visiting Suite 405, 1925 K Street, NW., Washington, DC 20006.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: December 11, 2002.

By the Board, Chairman Nober, Vice Chairman Burkes, and Commissioner Morgan.

Vernon A. Williams,

Secretary.

[FR Doc. 02–31683 Filed 12–16–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Financial Management Service

Privacy Act of 1974; Computer Matching Programs

AGENCY: Financial Management Service, Treasury.

ACTION: Notice.

SUMMARY: Pursuant to 5 U.S.C. 552a, the Privacy Act of 1974, as amended, and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs, notice is hereby given of the conduct by Financial Management Service (FMS) of matching programs.

EFFECTIVE DATE: January 16, 2003.

ADDRESSES: Comments or inquiries may be submitted to the Debt Management Services, Financial Management Service, 401 14th Street, SW., Room 448B, Washington, DC 20227.

FOR FURTHER INFORMATION CONTACT: Gerry Isenberg, Financial Program Specialist, Debt Management Services, (202) 874–6660.

SUPPLEMENTARY INFORMATION: FMS is the lead agency in the Federal government for administrative debt collection, and collects delinquent non-tax debts owed to the Federal government and delinquent debts owed to States, including past-due child support

obligations being enforced by States. One of the key debt collection tools used by FMS is administrative offset. As amended by the Debt Collection Improvement Act of 1996 (DCIA), Pub. L. 104–134 (April 26, 1996), 31 U.S.C. 3716 requires Federal disbursing officials to offset payments to collect delinquent debts submitted to FMS by Federal agencies for collection by offset. This process is known as ''centralized administrative offset'' or ''centralized offset.'' In addition, 31 U.S.C. 3716 authorizes the use of centralized offset to collect delinquent debts owed to states. Federal and State agencies submit delinquent debtor information to FMS, and FMS maintains information about individuals in a ''system of records'' for debt collection entitled ''Debt Collection Operations System,'' identified as Treasury/FMS .014.

To implement the centralized offset provisions of the DCIA, FMS matches records concerning Federal payments with its debt collection records. To date, FMS has concentrated its efforts on offsetting Treasury-disbursed payments made by FMS. For this purpose, a comprehensive notice of computer matches was published in the **Federal Register** on August 28, 1997, Volume 62 at page 45699 concerning records contained in FMS' payment systems of records (Payment Issue Records for Regular Recurring Benefit Payments (Treasury/FMS .002) and Payment Records for Other than Regular Recurring Benefit Payments (Treasury/FMS .016)) with records contained in the FMS' Debt Collection Operations System.

FMS is working with other Federal agencies authorized to disburse Federal payments, known as Non-Treasury Disbursing Officials (NTDOs), to implement centralized offset of payments disbursed by Federal agencies other than FMS. *See, for example*, the notice published in the **Federal Register** on September 23, 2002, Volume 67 at page 59596 concerning payments disbursed by the United States Postal Service. This notice concerns the computer matching programs used to facilitate administrative offset involving records from FMS' ''Debt Collection Operations System'' and records from the following system maintained by an NTDO: United States Department of Defense: DFAS Payroll Locator File System (PLFS) (T7330).

The DCIA provides authority for Treasury to waive subsections (o) and (p) of 5 U.S.C. 552a (relating to computer matching agreements and post-offset notification and verification) upon written certification by the head of a state or an executive, judicial, or legislative agency seeking to collect the claim that the requirements of subsection (a) of 31 U.S.C. 3716 have been met. Treasury has exercised its authority to waive the aforementioned requirements, and the waiver will be in effect prior to the commencement of the computer matching program(s) identified in this notice. Interested parties may obtain documentation concerning the waiver from the contact listed above.

NAME OF SOURCE AGENCY:

United States Department of Defense

NAME OF RECIPIENT AGENCY:

Financial Management Service

BEGINNING AND COMPLETION DATES:

These programs of computer matches will commence not earlier than the thirtieth day after this notice appears in the **Federal Register**. The matching will continue indefinitely, or until the waiver from the requirements of 5 U.S.C. 552a(o) and (p) is revoked.

PURPOSE:

The purpose of these programs of computer matches is to identify payments made to individuals who owe delinquent debts to the Federal government or to state governments, as well as individuals who owe past-due support being collected by state governments, which will be collected by offset pursuant to 31 U.S.C. 3716, and to offset such payments where appropriate to satisfy those debts.

AUTHORITY:

Authority for these programs of computer matches is granted under 31 U.S.C. 3716.

CATEGORIES OF INDIVIDUALS COVERED:

Individuals receiving payments from the Federal government which are disbursed by the United States Department of Defense; and individuals who owe debts to the United States and/or a state government, or who owe past-due support being enforced by a state government, and whose debts may be collected by offset in accordance with 31 U.S.C. 3716.

CATEGORIES OF RECORDS COVERED:

Included in these programs of computer matches is information concerning the debtor contained in the Debt Collection Operations System (Treasury/FMS .014) including name, taxpayer identification number, the amount of the indebtedness, the name and address of the state or Federal agency who is principally responsible for collecting the debt, and the name, phone number and address of a state or agency contact. Information contained in the following system: United States Department of Defense: DFAS Payroll Locator File System (PLFS) (T7330), which shall be included in these programs of computer matches shall include name, taxpayer identification number, mailing address, and the amount and type of payment.

Dated: December 9, 2002.

W. Earl Wright, Jr.,

Chief Management and Administrative Programs Officer.

[FR Doc. 02–31587 Filed 12–16–02; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF THE TREASURY

Departmental Offices; Privacy Act of 1974; System of Records

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of proposed Privacy Act system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, the Department of the Treasury (Department) gives notice of a proposed system of records entitled ''Treasury/DO .216—Treasury Security Access Control and Certificates Systems.''

DATES: Comments must be received no later than January 16, 2003. The proposed system of records will be effective January 27, 2003, unless the Department receives comments that would result in a contrary determination.

ADDRESSES: Comments should be sent to Patrick Geary, Director, Physical Security, Department of the Treasury, 1500 Pennsylvania Ave., NW., Washington, DC. E-mail: *patrick.geary@do.treas.gov*

FOR FURTHER INFORMATION CONTACT: Patrick Geary, Office of Security, (202) 622–1058.

SUPPLEMENTARY INFORMATION: The Department of the Treasury is giving notice of a new system of records which is subject to the Privacy Act. The proposed system of records will maintain Treasury headquarters, Departmental Offices (DO), information on all employees and contractors working in DO for the purpose of providing additional physical and cyber security for DO assets. The new system of records covers three principal areas: (1) Physical access to the Treasury headquarters complex, selected spaces in that complex and other DO spaces; (2) Access to cyber information assets; and (3) Physical access to off-site continuity of operations locations. New

identification badges will be issued containing the employee's photograph, fingerprint minutia, a public key (PKI) certificate and the employee's social security number.

DO plans to implement a new Access Control System for Treasury headquarters including the Main Treasury and Annex buildings that will utilize new DO identification badges to be issued because of the September 11, 2001 incidents. The new badge will be used to gain access to cyber assets including the DO desktop PC, the DO LAN, DO laptop and notebook computers. Finally, the new badge will be utilized by selected DO staff and contractors involved and/or designated as key personnel during conditions that require activation of the DO COOP locations. The badge, which includes biometrics, will be used as an additional level of security authentication during conditions that involve activation of COOP sites.

The new system of records report, as required by 5 U.S.C. 552a(r) of the Privacy Act, has been submitted to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated November 30, 2000. This system of records, ''Treasury/DO .216—Treasury Security Access Control and Certificates Systems,'' is published in its entirety below.

Dated: December 3, 2002.

W. Earl Wright, Jr.,

Chief Management and Administrative Programs Officer.

Treasury/DO .216

SYSTEM NAME:

Treasury Security Access Control and Certificates Systems.

SYSTEM LOCATION:

Department of the Treasury, 1500 Pennsylvania Avenue, NW, Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Treasury employees, contractors, media representatives, other individuals requiring access to Treasury facilities or to receive government property, and those who need to gain access to a Treasury DO cyber asset including the network, LAN, desktops and notebooks.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's application for security/access badge, individual's photograph, finger print record, special credentials, allied papers, registers, and logs reflecting sequential numbering of security/access badges. The system also contains information needed to establish accountability and audit control of digital certificates that have been assigned to personnel who require access to Treasury DO cyber assets including the DO network and LAN as well as those who transmit electronic data that requires protection by enabling the use of public key cryptography. It also contains records that are needed to authorize an individual's access to a Treasury network.

Records may include the individual's name, organization, work telephone number, Social Security Number, date of birth, Electronic Identification Number, work e-mail address, username and password, country of birth, citizenship, clearance and status, title, home address and phone number, biometric data including fingerprint minutia, and alias names.

Records on the creation, renewal, replacement or revocation of digital certificates, including evidence provided by applicants for proof of identity and authority, sources used to verify an applicant's identity and authority, and the certificates issued, denied and revoked, including reasons for denial and revocation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 31 U.S.C. 321; the Electronic Signatures in Global and National Commerce Act, Pub. L. 106–229, and E.O. 9397 (SSN).

PURPOSE(S):

The purpose is to: Improve security to both Treasury DO physical and cyber assets; maintain records concerning the security/access badges issued; restrict entry to installations and activities; ensure positive identification of personnel authorized access to restricted areas; maintain accountability for issuance and disposition of security/access badges; maintain an electronic system to facilitate secure, on-line communication between Federal automated systems, between Federal employees or contractors, and or the public, using digital signature technologies to authenticate and verify identity; provide a means of access to Treasury cyber assets including the DO network, LAN, desktop and laptops; and to provide mechanisms for non-repudiation of personal identification and access to DO sensitive cyber systems including but not limited to human resource, financial, procurement, travel and property systems as well as tax, econometric and other mission critical systems. The system also maintains records relating to the issuance of digital certificates utilizing public key cryptography to employees and contractors for purpose of the transmission of sensitive electronic material that requires protection.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to disclose information to: (1) Appropriate Federal, state, local and foreign agencies for the purpose of enforcing and investigating administrative, civil or criminal law relating to the hiring or retention of an employee; issuance of a security clearance, license, contract, grant or other benefit;

(2) A court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of or in preparation for civil discovery, litigation, or settlement negotiations, in response to a subpoena where relevant or potentially relevant to a proceeding, or in connection with criminal law proceedings;

(3) A contractor for the purpose of compiling, organizing, analyzing, programming, or otherwise refining records to accomplish an agency function subject to the same limitations applicable to U.S. Department of the Treasury officers and employees under the Privacy Act;

(4) A Congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(5) Third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(6) The Office of Personnel Management, Merit Systems Protection Board, Equal Employment Opportunity Commission, Federal Labor Relations Authority, and the Office of Special Counsel for the purpose of properly administering Federal personnel systems or other agencies' systems in accordance with applicable laws, Executive Orders, and regulations;

(7) Representatives of the National Archives and Records Administration (NARA) who are conducting records management inspections under authority of 44 U.S.C. 2904 and 2906; and

(8) Other Federal agencies or entities when the disclosure of the existence of the individual's security clearance is

needed for the conduct of government business.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored as electronic media and paper records.

RETRIEVABILITY:

Records are retrieved by individual's name, social security number, electronic identification number and/or access/security badge number.

SAFEGUARDS:

Entrance to data centers and support organization offices are restricted to those employees whose work requires them to be there for the system to operate. Identification (ID) cards are verified to ensure that only authorized personnel are present. Disclosure of information through remote terminals is restricted through the use of passwords and sign-on protocols which are periodically changed. Reports produced from the remote printers are in the custody of personnel and financial management officers and are subject to the same privacy controls as other documents of like sensitivity.

Access is limited to authorized employees. Paper records are maintained in locked safes and/or file cabinets. Electronic records are password-protected. During non-work hours, records are stored in locked safes and/or cabinets in locked room.

Protection and control of any sensitive but unclassified (SBU) records are in accordance with TD P 71–10, Department of the Treasury Security Manual. Access to the records is available only to employees responsible for the management of the system and/or employees of program offices who have a need for such information.

RETENTION AND DISPOSAL:

The records on government employees and contractor employees are retained for the duration of their employment at the Treasury Department. The records on separated employees are destroyed or sent to the Federal Records Center in accordance with General Records Schedule 18.

SYSTEM MANAGER(S) AND ADDRESS:

Departmental Offices: Director, Office of Physical Security, 1500 Pennsylvania Ave., NW., Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in the system of records, or seeking to contest its content, may inquire in accordance with instructions pertaining to individual Treasury components appearing at 31 CFR part 1, subpart C, appendix A.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

The information contained in these records is provided by or verified by the subject individual of the record, supervisors, other personnel documents, and non-Federal sources such as private employers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 02–31261 Filed 12–16–02; 8:45 am]

BILLING CODE 4811–16–P

DEPARTMENT OF THE TREASURY

Customs Service

Modification of National Customs Automation Program Test Regarding Electronic Presentation of Cargo Declarations

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: This notice announces modifications to the vessel paperless manifest program test that provides for the electronic transmission of certain vessel cargo declaration information to Customs through the Vessel Automated Manifest System (AMS). Specifically, the changes to the program test relate to the following: (1) Test participants must electronically transmit cargo declaration information to Customs through Vessel AMS 24 hours prior to lading the cargo aboard the vessel at the foreign port; (2) test participants must electronically transmit manifest information on empty containers to Customs through the Empty Container Module within Vessel AMS; and (3) Customs is discontinuing use of the paperless cargo declaration standards checklist that was developed for determining carrier compliance with the test. Public comments are invited on any aspect of the program test as further modified by today's announcement.

DATES: The effective date for test participants to transmit cargo declaration information 24 hours prior to lading the cargo aboard vessels at foreign ports is December 2, 2002. The effective date for test participants to electronically transmit manifest data on empty containers to Customs through the Empty Container Module within Vessel AMS is June 2, 2003. Letters requesting participation in the test and comments concerning any aspect of the test will continue to be accepted throughout the testing period.

ADDRESSES: Written comments regarding the program test and letters requesting participation in the program test should be addressed to the Manifest and Conveyance Branch, Office of Field Operations, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Room 5.2b, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: For operational or policy matters: Julie Hannan, Manifest and Conveyance Branch, (202–927–1364); or Pete Flores, Manifest and Conveyance Branch, (202–927–0333).

For legal matters: Larry L. Burton, Office of Regulations and Rulings, (202–572–8724).

SUPPLEMENTARY INFORMATION:

Background

On September 10, 1996, Customs published a notice in the **Federal Register** (61 FR 47782) announcing a program test to allow the electronic transmission of certain vessel cargo declaration information to Customs through the Automated Manifest System (AMS). The September 10, 1996, notice described the parameters and requirements of the test, informed interested members of the public of the eligibility and application criteria for participation in the test, and requested comments concerning any aspect of the test. The test commenced on February 11, 1997, and, by a notice published in the **Federal Register** (62 FR 66719) on December 19, 1997, the program test was extended and modified with respect to the presentation of manifest information on empty containers. Since its inception, as noted, the test has been running successfully with 35 vessel carriers as participants.

Pertinent Aspects of Current Program Test

As prescribed in the September 10, 1996, program test notice, a participating vessel carrier must electronically transmit to Customs complete and accurate cargo declaration information no less than 48 hours prior to the actual arrival of the vessel at a port in the United States.

Furthermore, as modified by the December 19, 1997, notice, the program test provided that empty containers were to be manifested either by transmitting through the Customs Automated Manifest System (AMS) a list of the empty containers on board the

vessel by port of discharge, or by providing the same list to Customs on paper, using a CF (Customs Form) 1302 Cargo Declaration.

Lastly, it is observed that, in implementing the program test, Customs developed a paperless manifest standards checklist for determining carrier compliance with all parameters and operating procedures established under the program test.

Modifications to the Vessel Paperless Manifest Program Test

Today's notice announces a number of changes to the above-described requirements and operating procedures for the vessel paperless manifest program test. These changes to the program test are discussed below.

Presentation of Information 24 Hours Before Foreign Lading

Most significantly, today's notice modifies the program test to provide that test participants must electronically transmit required vessel cargo declaration information to Customs 24 hours before the cargo is laden aboard the vessel at the foreign port. This modification to the program test is necessary to ensure that test participants comply with the final rule document published in the **Federal Register** (67 FR 66318) as Treasury Decision (T.D.) 02–62 on October 31, 2002. The final rule document, T.D. 02–62, amended the Customs Regulations principally to require that vessel cargo declaration information be presented to Customs at least 24 hours prior to lading the cargo aboard the vessel at the foreign port.

In this regard, it is noted that T.D. 02–62 expressly informed the public that the vessel paperless manifest program test would be amended by the effective date of the final rule (December 2, 2002) so as to require participants in the test to abide by the 24-hour requirement for presenting required vessel cargo declaration information to Customs (67 FR at 66324). As explained in the final rule document, such advance presentation of vessel cargo declaration information to Customs is required and urgently needed in order to enable Customs to evaluate the risk of smuggling weapons of mass destruction through the use of oceangoing cargo containers before goods are loaded on vessels at a foreign port for importation into the United States, and for enforcement of other Customs law violations.

Electronic Presentation of Empty Container Lists

Vessel carriers participating in the program test must electronically transmit to Customs lists of empty containers that are carried aboard any of their vessels destined for the United States. Also, any vessel carrier participating in the test that slot charters a vessel destined for the United States must electronically transmit any required lists of empty containers carried aboard the vessel for which that carrier is responsible. It is noted that there is no requirement that a bill of lading be associated with any empty container manifesting under the program test.

Moreover, as made clear in T.D. 02–62 (67 FR at 66328), all participants in the vessel paperless manifest program test must continue to file an empty container list with Customs 48 hours prior to the arrival of the vessel in the United States.

Lists Presented Through Empty Container Module of Automated Manifest System

Beginning June 2, 2003, the electronic transmission of such empty container lists to Customs must be effected through the Empty Container Module of the Customs Vessel Automated Manifest System (AMS). To successfully effect such transmissions and continue participation in this empty container manifest program, test participants using the American National Standards Institute, Accredited Standards Committee X12 (ANSI, ASCX12) electronic format must convert to the latest version of that format (4010).

Initial Empty Container List; Re-Transmitted Lists for Intermediate Ports

Specifically, 48 hours prior to the arrival of a vessel at the first port in the United States, the test participant, beginning June 2, 2003, must electronically transmit to Customs through the Empty Container Module an initial list of all empty containers carried aboard the vessel, regardless of their anticipated port(s) of unlading. The electronically transmitted list must also reflect the foreign port of loading of each empty container.

Furthermore, if the vessel is thereafter proceeding coastwise, within 24 hours after the time of the vessel's arrival at the first United States port, and at least two hours prior to its estimated time of arrival at the next United States port, the test participant must retransmit the empty container list indicating all empty containers remaining on board the vessel from foreign as well as those domestic containers which were laden aboard at the previous United States port and which are to be discharged either at other United States ports or at foreign destinations. This same procedure of re-transmitting an updated listing of empty containers to Customs must be repeated for each intermediate port at which the vessel calls in the United States.

In addition, if empty containers were laden aboard the vessel at any preceding United States port, the re-transmitted empty container list must reflect the specific United States port where those containers were laden and, if applicable, the domestic port where such containers are to be discharged from the vessel. To accomplish this, the Census Schedule D code for the domestic port of lading or discharge, if applicable, must be included in the re-transmitted list in connection with such containers; these codes may be found in the port record (P01/P4).

Final Empty Container List After Arrival at Last United States Port

After the vessel has arrived at its last United States port of call and before the vessel proceeds foreign, the test participant is required to transmit a final updated empty container list that must enumerate all empty containers then aboard the vessel; and if any of those containers were laden either at any preceding United States port and/or at the last United States port of call, the final empty container list must again specify each port where such containers were laden, with reference to the Census Schedule D code for that port. Customs presumes that all the empty containers in this final listing will be carried foreign.

Exception for Vessel Transporting Only Empty Containers

For any vessel destined to the United States carrying only empty containers, a test participant may transmit only one empty container list without also having to transmit the electronic equivalent of a cargo declaration for such containers; the empty container list must be transmitted 48 hours prior to the arrival of the vessel at the first port in the United States. However, if the vessel will call at multiple ports in the United States, an electronic equivalent of a cargo declaration covering all the ports at which the vessel will call in the United States must be transmitted to Customs prior to the submission of the empty container list.

Error in Transmitting Empty Container List

Customs wishes to advise that if the Empty Container Module registers or detects any error or omission in connection with information transmitted for any container included on an electronic empty container list,

the entire list will fail to be processed through the system. In such a case, the information for the container must be corrected or included on the list and the list re-transmitted to Customs in its entirety.

Release of Empty Containers Unladen at a Port

Any empty containers that are unladen at a United States port will be considered automatically released from Customs custody, unless the local Customs office indicates by physical means (by telephone or facsimile notification) that some empty containers are to be held. No electronic status notifications will be generated related to the empty container list transmitted. The AMS Empty Container Module does not allow electronic holds to be placed on empty containers.

Evaluations of Carrier Compliance; Checklists

In implementing the program test, Customs developed a paperless manifest standards checklist for determining carrier compliance with all test parameters and operating procedures required under the program test. However, this paperless manifest standards checklist and associated reviews that were established to evaluate carrier performance in the program test are being discontinued.

Anyone interested in participating in the test should refer to the test notice published in the September 10, 1996, **Federal Register** for eligibility and application information.

Dated: November 26, 2002.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 02–31623 Filed 12–16–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0018]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Office of General Counsel, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of General Counsel (OGC), 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 on the information needed to apply for accreditation to represent claimants for benefits before VA and to confer power of attorney on an attorney, agent or individual service organization representative for claim representation purposes.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 18, 2003.

ADDRESSES: Submit written comments on the collection of information to James T. Dehn (022G2), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to: *James.Dehn@mail.va.gov.* Please refer to ''OMB Control No. 2900–0018'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: James T. Dehn at (202) 273–6331or FAX (202) 273–6404.

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, OGC invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of OGC's functions, including whether the information will have practical utility; (2) the accuracy of OGC'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.

Titles and Form Numbers

a. Application for Accreditation as Service Organization Representative, VA Form 21.

b. Appointment of Individual as Claimant's Representative, VA Form 22a.

OMB Control Number: 2900–0018

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21 is used to obtain basic information necessary to determine whether an individual may be accredited as a service organization representative for the purposes of representation of claimants before the VA. The information is used to evaluate qualifications, ensure against conflicts of interest, and allow appropriate organization officials to certify the character and qualifications applicants. It is designed to ensure that regulatory standards for accreditation have been met so that claimants for VA benefits have available a pool of qualified claims representatives to assist them in the preparation, presentation, and prosecution of their claims.

VA Form 22a is used by a claimant for VA benefits to confer power of attorney upon an attorney, agent, or individual service organization representative in order that the attorney, agent, or individual representative may represent the claimant in proceedings before VA. Generally, this power of attorney permits VA to release to the attorney, agent, or individual representative records pertinent to the benefit claim. The form contains a release to be completed by the claimant, which permits the claimant to authorize or prohibit VA from disclosing medical records specifically protected by 38 U.S.C. 7332.

Affected Public: Individuals and households, Business or other for-profit, Not-for-profit institutions, and State, Local or Tribal Government.

Estimated Annual Burden

a. VA Form 21—600 hours.

b. VA Form 22a—1,600 hours.

Estimated Average Burden Per Respondent

a. VA Form 21—15 minutes.

b. VA Form 22a—15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents:

a. VA Form 21—2,400.

b. VA Form 22a—6,400.

Dated: December 4, 2002.

By direction of the Secretary:

Loise Russell,

Computer Specialist, Records Management Service.

[FR Doc. 02–31704 Filed 12–16–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0379]

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 on the information needed to verify the actual number of hours worked by a work-study claimant.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 18, 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. 2900–0379'' 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: Time Record (Work-Study Program), VA Form 22–8690.

OMB Control Number: 2900–0379.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 22–8690 is used to report the number of hours completed and to ensure that the amount of benefits payable to a claimant who is pursuing work-study is correct. When a claimant elects to receive an advance payment, VA will make the advance payment for 50 hours, but will withhold benefits (to recoup the advance payment) until the claimant completes his or her 50 hours of service. VA will not pay any additional amount in advance payment cases until the claimant completes a total of 100 hours of service (50 hours for the advance payment and 50 hours for an additional payment). If the claimant elects not to receive an advance payment, benefits are payable when the claimant completes 50 hours of service.

Affected Public: Not-for-profit institutions, Individuals or households, Business or other for-profit, Federal Government, and State, Local or Tribal Governments.

Estimated Annual Burden: 10,333 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 31,000.

Estimated Annual Responses: 124,000.

Dated: December 4, 2002.

By direction of the Secretary:

Loise Russell,

Computer Specialist, Records Management Service.

[FR Doc. 02–31705 Filed 12–16–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0381]

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 16, 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. 2900–0381.'' 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. 2900–0381'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Notice for Election to Convey and/or Invoice for Transfer of Property, VA Form 26–8903.

OMB Control Number: 2900–0381.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 26–8903 serves four purposes: holder's election to convey, invoice for the purchase price of the property, VA's voucher for authorizing payment to the holder, and establishment of VA's property records. When VA specifies an amount in relation to the foreclosure of a GI home loan and the holder elects to convey the property to VA, Section 3732 of Title 38, U.S.C., and 38 CFR 36.4320(a)(1), provide that if a minimum amount for credit to the borrower's indebtedness has been specified by VA in relation to the sale of the real property and the holder is the successful bidder at the sale for no more than the amount specified by VA, the holder will credit the indebtedness with that amount. The holder may then retain the property, or not later than 15 days after the date of sale, advise VA of its election to convey and transfer the property to the VA. VA needs to know the amount bid at the sale, the type of deed to be used for transferring title from the holder to VA, occupancy information, and the hazard insurance coverage. VA Form 26–8903 provides the holder, which has elected to convey a property to VA, with a convenient and uniform means of

notification to the proper VA regional office.

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 pages 53045–53046.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 4,167 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Total Respondents: 25,000.

Dated: December 4, 2002.

By direction of the Secretary.

Loise Russell,

Computer Specialist, Records Management Service.

[FR Doc. 02–31706 Filed 12–16–02; 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.

DATE: Comments must be submitted on or before January 16, 2003.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION 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: Women Veterans Ambulatory Care Use: Patterns, Barriers, and Influences, VA Form 10–21063(NR).

Type of Review: New collection.

Abstract: The purpose of the study is to gain an understanding of VA women veterans' use of health care from the perspective of women. The data collected will: (1) Provide patterns of VA and non-VA ambulatory care use by women veterans, and contrast them to those of male veterans; (2) identify barriers and influences on VA ambulatory care use, including those related to women's military experience, veteran identity, and perceptions about the availability and quality of VA women's health care; (3) identify factors associated with gender gaps in VA ambulatory care use and; (4) apply these findings to develop interventions and policies to improve access of women veterans to VA ambulatory care.

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 24, 2002 at pages 59880.

Affected Public: Individuals or households.

Estimated Annual Burden: 683 hours.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 2,050.

Dated: December 4, 2002.

By direction of the Secretary.

Loise Russell,

Computer Specialist, Records Management Service.

[FR Doc. 02–31707 Filed 12–16–02; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 67, No. 242

Tuesday, December 17, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–23–000 (Phase II)]

Consolidated Edison Company of New York, Inc. v. Public Service Electric and Gas Company; Notice Partially Vacating Procedural Schedule and Authorizing Establishment of New Dates

December 3, 2002.

Correction

In notice document 02–31087 appearing on page 72929 in the issue of Monday, December 9, 2002, make the following correction:

On page 72929, in the second column, in the document heading, add a docket number to read as set forth above.

[FR Doc. C2–31087 Filed 12–16–02; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,

December 17, 2002

Part II

Federal Aviation Administration

14 CFR Parts 1, et al.

Area Navigation (RNAV) and Miscellaneous Amendments; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 71, 91, 95, 97, 121, 125, 129, and 135

[Docket No. FAA–2002–14002; Notice No. 02–20]

RIN 2120–AH77

Area Navigation (RNAV) and Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA is proposing to amend its regulations to reflect technological advances that support area navigation (RNAV); make certain terms consistent with those of the International Civil Aviation Organization; remove the middle marker as a required component of instrument landing systems; and clarify airspace terminology. The proposed changes are intended to facilitate the transition from ground-based navigation to new reference sources, enable advancements in technology, and increase efficiency of the National Airspace System.

DATES: Send your comments on or before January 31, 2003.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room PL 401, 400 Seventh Street, SW., Washington, DC 20590. You must identify the Docket number FAA–2002–14002 at the beginning of your comments, and you should submit two copies. If you wish to receive confirmation that FAA has received your comments, include a self-addressed, stamped postcard on which the Docket number appears.

You may also submit comments through the Internet to *http://dms.dot.gov.* You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the Nassif Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Lawrence Buehler, Flight Technologies and Procedures Division, Flight Standards Service, AFS–400, Federal Aviation Administration, 800 Independence Ave. SW., Washington, DC 20591; telephone: (202) 385–4586.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The FAA also invites comments on the environmental, energy, federalism, or economic 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. The FAA asks that you send two copies of written comments.

The FAA will file all comments received, as well as a report summarizing each substantive public contact with FAA personnel in the docket. The docket for this rulemaking is available for public inspection before and after the comment closing date. You can review the docket in person or using the Internet (*see* **ADDRESSES** above).

Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed late if it is possible to do so without incurring expense or delay. The FAA may change this proposal in light of comments.

Availability of Rulemaking Documents

You can get an electronic copy of this document by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) Web Page *(http://dms.dot.gov/search).*

(2) On the search page, type in the last digits of the docket number shown at the beginning of this notice. Click on ''search.''

(3) On the next page, which contains the docket summary information for the docket you selected, click on the document number of the item you wish to review.

You can also get an electronic copy using the Internet through the Office of Rulemaking's Web Page at *http://www.faa.gov/avr/armhome.htm* or the Government Printing Office's Web Page at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling 202–267–9680. Be sure to identify the docket number, or notice number with amendment number, of this rulemaking.

Guide to Terms and Acronyms Used in This Document

AGL—Above ground level
APV—Approach procedures with vertical guidance
ASR—Airport surveillance radar
ATS—Air Traffic Service
DA—Decision altitude
DH—Decision height
DME—Distance measuring equipment
FL—Flight level
GPS—Global Positioning System
ICAO—International Civil Aviation Organization
IAP—Instrument approach procedure
IFR—Instrument flight rules
ILS—Instrument landing system
MAA—Maximum authorized IFR altitude
MCA—Minimum crossing altitude
MDA—Minimum descent altitude
MEA—Minimum en route IFR altitude
MOCA—Minimum obstruction clearance altitude
MSL—Mean sea level
NAS—National Airspace System
NAVAID—Navigational aid
NDB—Nondirectional beacon
NM—Nautical mile
OEP—Operational Evolution Plan
Over the top—Over the top of clouds
PANS—Procedures for Air Navigation Services
PAR—Precision approach radar
RNAV—Area navigation
RVR—Runway visual range
SARPs—International Standards and Recommended Practices
SIAP—Standard Instrument Approach Procedure
TLOF—Touchdown and lift-off area
VOR—Very high frequency omnidirectional range
VORTAC—VOR omnidirectional range/tactical air navigation

Outline of the Preamble

I. Background
I.A. Area Navigation (RNAV)
I.B. Recent Technological Improvements
I.C. International Standardization
I.D. Middle Markers and Outer Markers
I.D.1. Elimination of Middle Markers
I.D.2. Substitutes for Outer Markers
I.E. Operational Evolution Plan (OEP)
II. General Discussion of the Proposals
II.A. RNAV
II.B. ICAO
II.C. Middle and Outer Markers
II.D. Changes in Terminology
II.D.1. Decision Height (DH) and Decision Altitude (DA)
II.D.2. RNAV
II.D.3. En Route
II.D.4. Approach and Landing Using Instrument Approach Procedures
III. Section-by-Section Discussion of the Proposed Changes
IV. Paperwork Reduction Act
V. International Compatibility

VI. Economic Evaluation
VII. Regulatory Flexibility Determination
VIII. International Trade Impact Analysis
IX. Unfunded Mandate Assessment
X. Executive Order 13132, Federalism
XI. Environmental Analysis
XII. Energy Impact

I. Background

I.A. Area Navigation (RNAV)

Historically, the principal means of air navigation for instrument flight rules (IFR) operations in the United States National Airspace System (NAS) has been a system of ground-based navigation aids (NAVAIDs), including nondirectional beacon (NDB), very high frequency omnidirectional range (VOR), and distance measuring equipment (DME). Airways and instrument procedures were developed using these NAVAIDs; however, this has required pilots to fly directly toward, or away from, the NAVAID. This limitation has resulted in less-than-optimal routes and instrument procedures, and contributed to an inefficient use of airspace.

The advent of area navigation (RNAV) in the 1960's provided enhanced navigation capabilities to the pilot. Early RNAV allowed properly equipped aircraft to navigate via a user-defined track without the need to fly directly toward or away from a ground-based navigation aid. Early RNAV systems still relied, however, on signals from a ground-based NAVAID for source information to calculate navigational position information. To take advantage of this improved navigation capability, in the 1970's, the FAA began to publish a series of instrument approach procedures (IAPs) and routes for use by RNAV-equipped aircraft. A nationwide system of high-altitude RNAV routes was established consisting of approximately 156 route segments.

These fixed routes still depended on reference to ground-based NAVAIDs. The FAA later determined that most aircraft using RNAV in the en route system were doing so on a random basis using inertial navigation systems (INS) with little use being made of the fixed high altitude RNAV route structure. Operators were using RNAV by going from point to point. They were not using the high-altitude RNAV route structure that was designed and published by the FAA. This minimal use of the charted RNAV routes proved insufficient to justify their retention on a cost-benefit basis. As a result, in January 1983, the FAA revoked all high altitude RNAV routes in the coterminous United States. The RNAV routes in the State of Alaska were retained and remain in use today because of the scarcity of ground-based navigational aids there.

I.B. Recent Technological Improvements

The technology that evolved over the past 40 years gave avionics systems increased positional accuracy, which provided users with a greater ability to fly direct routes between any two points. In recent years, satellite navigation using the Global Positioning System (GPS) has provided even greater flexibility in defining routes, establishing instrument procedures, and designing airspace. When GPS is combined with existing RNAV system capabilities, continuous course guidance is available over longer routes than are possible with ground-based NAVAIDs, which have limited coverage due to terrain or signal reception restrictions. Augmented GPS also introduces the ability to provide vertical guidance information for nonprecision instrument approaches. This has the potential to significantly reduce the risk of accidents caused by controlled flight into terrain (CFIT).

As a result of these technological advances, the FAA has implemented a number of RNAV routes for use by air carriers operating suitably equipped aircraft in the northeast, southeast, and southwest regions of the United States. The results so far have demonstrated the potential of RNAV, when used with new navigation reference sources, such as GPS. The entire NAS can be realigned by using more direct and user-preferred routes, thus achieving greater system flexibility, efficiency, and capacity.

Air navigation is expected to become increasingly dependent on RNAV systems that navigate with reference to geographic positions specified in latitude and longitude coordinates rather than to or from a ground-based navigation aid. Reliance on RNAV in the NAS will expand as enhancements to GPS are developed and deployed, increasing its accuracy and reliability.

The changes proposed in this NPRM would facilitate the use of RNAV throughout all phases of flight (departure, en route, and approach), which is a goal of the Free Flight program. The Free Flight program is designed to enhance the safety and efficiency of the NAS. It moves the NAS from a centralized command-and-control system between pilots and air traffic controllers to a system that allows pilots, whenever practical, to choose their own routes and file flight plans that follow the most efficient and economical routes. The changes proposed in this NPRM would result in greater flexibility in air traffic routing, instrument approach procedure design, and airspace use than is now possible under a ground-based system structure. The improved navigation accuracy and flexibility would enhance both system capacity and overall flight safety, and would promote the Free Flight concept in the NAS by enabling the NAS to move from reliance on ground-based NAVAIDs.

I.C. International Standardization

The International Civil Aviation Organization (ICAO) is an agency of the United Nations that promotes the development of uniform world-wide procedures and standardization to ensure the safety and efficiency of international civil aviation operations. ICAO's standards are found in the 18 Annexes to the Convention on International Civil Aviation. To achieve this standardization, ICAO publishes various International Standards and Recommended Practices (SARPs) and Procedures for Air Navigation Services (PANS). This proposal is part of a continuing effort to recognize the advent of new technologies and international efforts to create a seamless air traffic system by making the terms used in FAA's regulations consistent with ICAO terminology.

I.D. Middle Markers and Outer Markers

Middle and outer markers are beacons that define points along the glide path on an instrument landing system (ILS) approach. An outer marker is usually located at or near the glide path intercept point of an ILS approach, normally 4 to 7 miles from the runway threshold. A middle marker indicates a position approximately 3,500 feet from the landing threshold. This is normally located near the point where an aircraft on the glide path will be at an altitude of approximately 200 feet above the elevation of the runway touchdown zone. For a Category I ILS approach, this coincides with the decision height, or the height at which a pilot must decide whether to continue the approach to landing or execute a missed approach procedure. This proposal would eliminate the middle marker as a required ILS component and would enable the use of other navigation means to substitute for the outer marker beacon.

I.D.1. Elimination of Middle Markers

According to instrument procedure design criteria, all required components must be operational in order for the pilot to fly the ILS to the lowest authorized approach minimums. Originally, the middle marker was a required component of an ILS. Terminal instrument procedure design criteria

required that, when the middle marker was inoperative, a penalty was applied to increase the published landing minimums to compensate. The higher minimums imposed by these penalties could result in the pilot being unable to land at that destination.

In January 1988, through Operations Specifications, the FAA eliminated the landing penalties of increased landing minimums for 14 CFR part 121 and part 135 operators conducting ILS approaches with inoperative middle markers. The justification for this change was the long-term operational success experienced by European air carriers and the U.S. Department of Defense when not using middle markers and when not applying penalties for inoperative middle markers. On December 4, 1990, therefore, the FAA removed the inoperative middle marker landing minimum penalties for all operators through change 10 to the Terminal Instrument Procedures (TERPS).

In June 1992, the FAA completed an evaluation of the operational effectiveness and safety benefits of middle markers during ILS operations and issued a document entitled ''Middle Marker Evaluation Project.'' A copy of the evaluation has been placed in the docket for this rulemaking. That evaluation studied 165 missed approaches—83 with the middle marker operative, and 82 with the middle marker inoperative. The approaches were conducted by 18 pilots. Two pilots worked for the FAA, and 16 worked, or had worked, in corporate aviation. None of the pilots was told the objective of the flight test until after the flight test. The result of the evaluation was that there was no significant difference in pilot performance while conducting an ILS approach with or without a middle marker. Consequently, on October 15, 1992, the landing minima penalties for conducting an ILS approach with an inoperative middle marker were removed for the Standard Instrument Approach Procedures (SIAPs). This action was taken because the FAA has determined that middle markers are redundant and are no longer needed for safety. The FAA is therefore proposing that the requirement for middle markers be removed from its regulations.

I.D.2. Substitutes for Outer Markers

The outer marker is another required component of the ILS. In lieu of a marker beacon, a compass locator transmitter, DME, or airport surveillance radar (ASR) may be used to identify the outer marker position. This proposal would allow the use of waypoints for outer markers, resulting in additional flexibility in airspace utilization and procedure design.

I.E. Operational Evolution Plan (OEP)

This proposal would address a portion of the FAA's Operational Evolution Plan (OEP), which is the FAA's overall plan to modernize the NAS. The OEP has several components, including ones to alleviate en route congestion, increase arrival and departure rates at airports, improve response to en route severe weather, and improve operational procedures and tools for operations in poor airport weather conditions. Task 3.2 of the OEP states that arrival and departure routes should be constructed independent of navigation aids. A subordinate task is to review and update the Code of Federal Regulations to allow for routing independent of ground-based navigation aids.

II. General Discussion of the Proposals

II.A. RNAV

The expanded use of RNAV and GPS navigation would fully support the FAA's Free Flight concept. RTCA's Task Force 3 issued a report in 1995 in which it defined the implementation of a concept to move from today's largely ground-based system by applying current technologies. (*See* ''Final Report of RTCA Task Force 3, Free Flight Implementation,'' October 26, 1995/ November 1995. Copies are available for purchase from RTCA, 1828 L St. NW., Suite 805, Washington, DC 20036 (telephone 202–833–9339).) Although the immediate effect of the proposed amendments would be to allow increased use of GPS, the proposed terminology changes would also be broad enough to allow for new technologies as they become available and are approved for use.

II.B. ICAO

As an ICAO Contracting State, the United States strives to adhere to the rules and procedures set forth in the ICAO SARPs and PANS as much as possible. For example, in 1993, the United States reclassified its domestic airspace to adopt, in part, the ICAO airspace classifications (*i.e.,* Class A, Class B, etc.) outlined in Annex 11 to the Convention. In formulating this NPRM, the FAA has an opportunity to make additional terminology in its regulations consistent with ICAO. The current U.S. terminology for naming routes differs from that used by ICAO. Through this proposal, the United States would adopt the ICAO term ''Air Traffic Service (ATS) Route'' to describe the U.S. en route structure. Other examples of how this proposal would promote compatibility with ICAO include the proposed addition of the term ''decision altitude (DA),'' and the proposed change of the abbreviation of HAT from ''height above touchdown'' to ''height above threshold.'' The proposed changes would be a step in bringing U.S. terminology closer to fulfilling the United States' responsibilities as an ICAO member.

II.C. Middle and Outer Markers

In addition to the proposed amendments regarding RNAV, the FAA is proposing to update its regulations to eliminate the middle marker as a required basic ground component of an ILS, and to increase the number of acceptable substitutes for the outer marker component of an ILS. These amendments would facilitate flexibility in the development of new instrument approach procedures.

II.D. Changes in Terminology

The following are subject areas in which the FAA is proposing to change the terminology in its regulations. For specific sections that are amended, *see* ''III. Section-by-Section Discussion of the Proposed Changes'' in this preamble.

II.D.1. Decision Height (DH) and Decision Altitude (DA)

References to ''decision height'' and ''DH'' are being replaced with references to ''decision altitude'' and ''DA,'' respectively, where minimums are based upon barometric altitude, which is expressed in feet above mean sea level (MSL). In contrast, where minimums are based upon height above ground level (AGL), the term decision height (DH) is used. These changes are being proposed to make the FAA's regulations consistent with ICAO terminology and to more accurately describe when the decision to continue the approach below the authorized minima or make a missed approach is made.

II.D.2. RNAV

The FAA is proposing to revise the definition of ''area navigation (RNAV).'' The FAA is also proposing to remove references to the words ''ground'' and ''radio'' where using these words restricts the type of navigation and communication systems persons can use. The amendments would either replace those words with less restrictive language or remove them entirely, which would allow the expanded use of RNAV systems and permit persons to take advantage of future changes in technology.

II.D.3. En Route

The FAA is proposing new terms, ''Air Traffic Service (ATS) route'' and ''area navigation (RNAV) route.''

''Air Traffic Service (ATS) route'' would be used to describe the U.S. en route structure. The term ''ATS route'' would include Federal airways, jet routes, and area navigation routes in the United States.

''Area navigation (RNAV) route'' would refer to ATS routes established for the use of aircraft capable of using area navigation. Note that not all RNAV-capable aircraft are suitably equipped to operate on all RNAV routes. The FAA would determine the means to qualify aircraft for various RNAV operations and the method for promulgating the requirements to operate on RNAV routes. These requirements would be promulgated similarly to the way part 71 routes and part 97 procedures are currently promulgated.

In addition, the FAA is proposing to change the current definition of ''route segment'' to facilitate RNAV operations.

II.D.4. Approach and Landing Using Instrument Approach Procedures

The FAA is proposing to amend the following definitions—

- Nonprecision approach procedure.
- Precision approach procedure.

The FAA is proposing to add the following terms—

- Approach procedure with vertical guidance (APV).
- Area navigation route.
- Category I operations.
- Decision altitude (DA).
- Instrument approach procedure (IAP).

The FAA is proposing to revise the following definitions—

- Category II, III, IIIa, IIIb, and IIIc operations
- Decision height (DH).
- Minimum descent altitude (MDA).

III. Section-By-Section Discussion of the Proposed Changes

Section 1.1 General definitions

Air Traffic Service (ATS) route: The FAA is proposing to adopt the term ''Air Traffic Service (ATS) route'' to describe the U.S. route structure. The term ATS route would include jet routes, area navigation (RNAV) routes, and arrival and departure routes. An ATS route would be defined by route specifications. These route specifications may include an ATS route designator, the path to or from fixes, distance between fixes, reporting requirements, and the lowest safe altitude determined by the appropriate authority.

Approach procedure with vertical guidance (APV): This new term would mean an instrument approach procedure based on lateral path and glide path. These approach procedures are flown to a decision altitude (DA). Although these procedures include glide path information, they may not meet the requirements currently established for precision approach and landing operations. This includes the vertical navigation performance and airport infrastructure requirements (*i.e.*, ICAO Annex 14 and FAA Advisory Circular (AC) 150/5300–16). Safety for these procedures is maintained by increasing the required obstacle clearance height or required visibility. An example of an APV approach is the LNAV/VNAV (lateral navigation/vertical navigation) approach minima currently published on RNAV approach plates.

Area navigation low route and Area navigation high route: These terms would be removed and replaced with the term ''area navigation (RNAV) route.'' *See* discussion of ''area navigation (RNAV) route'' below.

Area navigation (RNAV): The definition of ''area navigation (RNAV)'' would be broadened by removing the words ''station-referenced navigation signals,'' which refer to ground-based signals, and adding the words ''flight path'' to cover operations in both the lateral and vertical planes (*i.e.* lateral navigation (LNAV) and vertical navigation (VNAV)).

Area navigation (RNAV) route: The new term ''area navigation (RNAV) route'' would refer to those ATS routes established for aircraft capable of using area navigation equipment suitable for those routes.

Category I (CAT I) operation: The term ''Category I operation'' commonly has been used in the aviation industry and in the preambles of FAA regulatory documents for years, but it has never been defined in the CFR. The FAA is therefore proposing to add a definition of this term. The proposed definition of ''Category I (CAT I) operation'' is ''a precision approach with a decision altitude that is not lower than 200 feet (60 meters) above the threshold and with either a visibility of not less than one half statute mile (800 meters) or a runway visual range (RVR) of not less than 1,800 feet (550 meters).''

Category II (CAT II) operation, Category III (CAT III) operation, Category IIIa (CAT IIIa) operation, Category IIIb (CAT IIIb) operation, and Category IIIc (CAT IIIc) operation: These definitions would be revised to incorporate the concept of precision RNAV. In each of these definitions, the terms ''ILS approach'' or ''ILS instrument approach'' would be replaced with the terms ''precision approach'' and ''precision instrument approach,'' respectively. The definitions would also be updated to be compatible with the Joint Aviation Authorities (JAA) terminology.

Decision altitude (DA): The FAA proposes to add the definition for ''decision altitude (DA)'' to describe the mean sea level altitude at which the decision to continue the approach below the authorized minima or make a missed approach is made. This term would be consistent with ICAO terminology.

Decision height (DH): The definition of ''decision height'' would be revised to specify that it applies only to Category II and III approaches rather than Category I approaches, which would refer to decision altitude. See discussion under ''II.D.1. Decision Height (DH) and Decision Altitude (DA).''

Final approach fix (FAF): This term would be added to indicate that a final approach fix is associated with a nonprecision approach.

Instrument approach procedure (IAP): This term would be added. It is a general term that applies to all types of approach procedures.

Minimum descent altitude (MDA): The definition of ''minimum descent altitude'' would be revised to change the words ''final approach'' to ''nonprecision final approach,'' and to remove the references to ''standard instrument approach procedure'' and ''electronic glide slope.'' This change would clarify the definition, as an MDA is applicable to a SIAP without electronic glide slope.

Night: The FAA is proposing to revise the definition of the term ''night'' to reflect that local night may differ from the times published in the American Air Almanac. This concept of local night could limit operations at a particular location when the FAA determines it to be necessary for the safety of operations, for example, when terrain causes sunset significantly earlier than the Almanac indicates.

Nonprecision approach procedure (NPA): The FAA is proposing to revise the definition of this term so that there would be no reference to ''electronic glide slope.'' The term would apply to navigation systems that provide lateral (but not vertical) path deviation guidance.

Precision approach procedure (PA): The FAA is proposing to revise the definition so that there would be no references to ''standard instrument approach procedure'' and ''electronic glide slope.'' The revised term, however,

would still be based on lateral course and track information with vertical glide path information. Currently, ILS, microwave landing systems (MLS), Global Navigation Satellite System (GNSS) landing systems (GLS) and precision approach radar (PAR) are recognized precision approach systems.

Precision final approach fix (PFAF): This term would be added to indicate that a precision final approach fix is associated with a precision or APV approach procedure.

RNAV waypoint: The FAA proposes to remove the definition of ''RNAV way point (W/P)'' because it is overly restrictive.

Route segment: The definition of ''route segment'' would be revised to mean a portion of a route bounded on each end by a fix or NAVAID. The proposed change would facilitate the development of RNAV routes.

Section 1.2 Abbreviations and Symbols

The FAA proposes to add the following acronyms to the list of abbreviations and symbols in § 1.2:

APV means approach procedure with vertical guidance.

NM means nautical mile.

NPA means nonprecision approach.

PA means precision approach.

RNAV means area navigation.

Part 71 Amended

The current part 71 is limited to ground-based navigation systems, includes extraneous information, and is not organized clearly. Although the amendments would not be related directly to the RNAV proposals, the FAA proposes to take this opportunity to improve the readability of part 71 by separating the sections that provide general information about part 71 (§§ 71.1 through 71.15) from the sections that apply only to Class A airspace, and by combining or realigning the sections in part 71 in a more efficient way. These changes are discussed in further detail below.

Part 71 Heading Revised

The FAA proposes to revise the heading of part 71. The current title, ''Designation Of Class A, Class B, Class C, Class D, And Class E Airspace Areas; Airways; Routes; And Reporting Points,'' would be revised to read ''Designation of Class A, Class B, Class C, Class D, and Class E Airspace Areas: Air Traffic Service Routes; and Reporting Points.'' In the new heading, the words ''Airways; Routes'' would be replaced with the words ''Air Traffic Service Routes,'' which would cover jet routes, VOR Federal airways, Colored Federal airways, and area navigation routes. This would be consistent with ICAO's use of the term ''air traffic service routes.''

Subpart A—Class A Airspace

The FAA proposes to move the heading of subpart A so that it appears directly before § 71.31 and revise it to read, ''Class A Airspace.'' As a result, sections appearing at the beginning of part 71 would provide general information on multiple sections in part 71, and sections in the newly designated subpart A (§§ 71.31 and 71.33) would contain regulations pertinent only to Class A airspace. This would make subpart A consistent with the rest of part 71, where subpart designations correspond to the airspace classes covered. For example, subpart A would cover class A airspace; subpart B would cover class B airspace, and so forth.

Section 71.11 Air Traffic Service (ATS) Routes

The FAA proposes to add § 71.11, Air Traffic Service (ATS) routes. The text for the new section would come from the current § 71.75, Extent of Federal airways, paragraphs (a), (b)(1), and (d). This text would be revised to apply to ATS routes in general. The FAA is proposing this change to include ATS route terminology and to improve the organization of part 71.

Paragraph (a) of § 71.11 would differ from the text of § 71.75 in that the words ''navigational aid or intersection'' that are currently in § 71.75, would read, ''navigation aid, fix, or intersection'' for defining route segments. These changes would accommodate the development of ATS routes that are not linked to ground-based navigation aids.

Paragraph (b) of § 71.11 would differ from the text of § 71.75 by referencing FAA Order 8260.3, ''U.S. Standard for Terminal Instrument Procedures (TERPS),'' as the source for criteria regarding ATS route dimensions and protected airspace.

Paragraph (c) would differ from the text of § 71.75 by stating that all ATS routes exclude the airspace of prohibited areas, rather than just Federal airways. This would mean that if the route passed through a prohibited area (*i.e.*, a type of special use airspace designated under 14 CFR part 73), the FAA would write an exclusion into the legal description of the route that stated that the prohibited area airspace was excluded from the route.

Section 71.13 Classification of Air Traffic Service (ATS) Routes

The FAA proposes to use the current text of § 71.73, Classification of Federal airways, as a basis for proposed new § 71.13, Classification of Air Traffic Service (ATS) routes, and expand the scope of it to classify the Federal airway, jet route, and area navigation route components of the U.S. route structure as ATS routes. The FAA is proposing this change to improve the organization of part 71 and to facilitate the development of RNAV routes that are not linked to ground-based navigation aids.

Section 71.15 Designation of Jet Routes and VOR Federal Airways

The text of proposed § 71.15 would come from current § 71.79, with information added to ensure that the stated place name criteria apply to jet routes as well as VOR Federal airways. This change is proposed to consolidate similar information and to reorganize part 71 for clarity.

Section 71.73 Classification of Federal Airways

Section 71.73 would be removed and used as a basis for new § 71.13. This change would result in classifying the various types of ATS routes in one section for clarity and would improve the organization of part 71. *See* discussion of § 71.13 above.

Section 71.75 Extent of Federal Airways

Section 71.75 would be removed and parts of it used as a basis for new § 71.11. This change would consolidate related information, remove information that is not needed, and improve the organization of part 71. *See* discussion of § 71.11 above.

Section 71.79 Designation of VOR Federal Airways

The FAA proposes to remove § 71.79 and move the information to the proposed new § 71.15, Designation of jet routes and VOR Federal airways. This change improves the organization of part 71 by consolidating related information. *See* discussion of § 71.15 above.

Section 91.129 Operations in Class D Airspace

The FAA is proposing to revise § 91.129(e) in clearer language. Although substantive changes would be made only in paragraph (e)(2) (discussed below), the FAA is taking this opportunity to propose clearer language for the rest of (e).

Currently, § 91.129(e)(2) requires that when a pilot of a large or turbine-powered airplane is approaching to land on a runway served by an ILS and within Class D airspace, the pilot must

fly at an altitude at or above the glide slope between the outer marker (or the point of interception with the glide slope, if compliance with the applicable distance-from-cloud-criteria requires interception closer in) and the middle marker. The proposed rule would require that a person operate at or above the glide path between the precision final approach fix (or point of interception with the glide slope, if compliance with the applicable distance-from-cloud criteria requires interception closer in) and the published decision altitude or decision height. Specifically, changes to (e)(2) would be as follows—

(1) The phrase ''served by an instrument landing system (ILS)'' would read ''served by an APV or precision approach procedure.'' The reason for the change is that ILS is not the only type of approach with a glide path.

(2) The term ''glide slope'' would read ''glide path'' because the term ''glide slope'' is generally used with respect to ILS, whereas the term ''glide path'' includes both ILS and APV.

(3) The reference to ''outer marker'' would be replaced with ''precision final approach fix.'' This would facilitate determining aircraft position as appropriate (*e.g.,* DME, RNAV, or radar) and would make the paragraph consistent with proposed § 91.175(k). The term ''middle marker'' would be replaced by ''decision altitude or decision height.''

Section 91.131 Operations in Class B Airspace

The FAA is proposing to revise § 91.131(c)(1) by adding the words ''suitable RNAV system'' to provide another option for meeting the communications and navigation equipment requirement. This change would be consistent with the proposed definition of RNAV.

Section 91.175 Takeoff and Landing Under IFR

The FAA is proposing to revise § 91.175(a) by replacing the term ''instrument letdown'' with the term ''instrument approach'' because ''letdown'' is outdated terminology.

The FAA is proposing to revise paragraph (b) to change the term ''DH'' to ''DA/DH.'' *See* discussion ''II.D.1. Decision Height (DH) and Decision Altitude (DA)'' above.

Paragraph (c) would be amended to change the term ''DH'' to ''DA/DH.'' *See* discussion ''II.D.1. Decision Height (DH) and Decision Altitude (DA)'' above.

The FAA is proposing to amend the introductory text of paragraph (e) by changing the word ''pilot'' to ''person'' to make the regulation consistent with the definition of ''person'' currently in § 1.1. In addition, paragraph (e)(1)(ii) would be revised to replace the term ''DH'' with ''DA/DH.'' *See* discussion ''II.D.1. Decision Height (DH) and Decision Altitude (DA)'' above.

The FAA is proposing to revise paragraph (f) to clarify that published takeoff minimums are associated with a particular departure procedure. Takeoff minimums are determined from the analysis of a particular runway environment. Thus, the departure procedure must be followed for a particular runway to ensure adequate obstacle clearance.

Paragraph (h) would be amended by removing the RVR table from paragraph (h)(2) and replacing it with a reference to FAA Order 8260.3, ''U.S. Standard for Terminal Instrument Procedures (TERPS),'' which contains the RVR table. This would eliminate duplication, and ensure that the public has information based on on-going changes in technology. In addition to appearing in FAA Order 8260.3, the RVR table also appears in the Aeronautical Information Manual (AIM), the Instrument Flying Handbook, and in the Flight Information Publications.

Paragraph (j) would be amended by changing the word ''pilot'' to ''person'' to make the regulation consistent with the definition of ''person'' currently in § 1.1.

Paragraph (k) would be amended to allow certain locations on the ILS to be fixed by other-than-ground-based navigation aids. As technology develops, these points could be indicated by fix instead of actual markers. Finally, middle markers would be deleted from this paragraph as they are no longer a basic component of an ILS. Although some middle markers are still in use, no additional middle markers are being installed at new ILS sites.

Section 91.177 Minimum Altitudes for IFR Operations

The FAA is proposing to amend § 91.177 (a) by adding language to clarify that the section would apply when both a minimum en route IFR altitude (MEA) and a minimum obstruction clearance altitude (MOCA) are prescribed for a particular route or route segment. The sentence that currently appears as concluding text of paragraph (a)(2) would be moved to paragraph (a)(1) and amended by adding the phrase, ''using VOR for navigation.'' This proposed change would clarify that a person could travel at the MOCA for the full route segment if the person is using another navigation system that meets navigation requirements and is available, *e.g.* GPS-based RNAV. If, however, a person were using VOR for navigation then the person would have to operate at the MEA except within 22 NM of the VOR facilities. If a person were using a navigation system other than VOR or GPS, the person would have to take positive action to ensure that he or she was receiving a suitable navigation signal along the full route. This change would allow operations at the MOCA, provided the applicable navigation signals were available. Although the change would be permissive, it would not change the requirements for communication and surveillance along the route. Therefore, the FAA may require a higher altitude to meet all the requirements of communication, navigation, and surveillance.

Section 91.179 IFR Cruising Altitude or Flight Level

The FAA is proposing to amend § 91.179 by adding introductory text to read, ''Unless otherwise authorized by the ATC, the following rules apply.'' While the FAA recognizes that there will be an ATC clearance associated with an IFR operation, adding this clause would facilitate the future implementation of new technology by giving the FAA the flexibility to allow alternatives to current altitude assignment procedures.

Section 91.181 Course To Be Flown

The FAA proposes to amend § 91.181(a) by removing the words ''a Federal airway'' and adding in their place ''an ATS route,'' since the proposed changes in § 71.13 define an ATS route to include Federal airways and the new RNAV routes.

Section 91.183 IFR Communications

The FAA would amend § 91.183 by removing the word ''radio'' from the heading and from the introductory text of paragraph (a). Paragraph (a) introductory text would also be changed by adding at the beginning the phrase, ''Unless otherwise authorized by the FAA, * * *'' This phrase would facilitate the use of advanced communications by means other than voice.

Section 91.185 IFR Operations: Two-Way Communications Failure

Section 91.185 would be amended by removing the word ''radio'' from the heading and from paragraph (a). This would eliminate reliance on radio technology.

Section 91.189 Category II and III Operations: General Operating Rules

The FAA proposes to amend § 91.189 (c) by replacing the term ''DH'' and adding the term ''DA/DH.'' See discussion under ''II.D.1. Decision Height (DH) and Decision Altitude (DA)'' above.

The FAA would also amend paragraph (d) by changing the word ''pilot'' to ''person'' to make the regulation consistent with the definition of ''person'' currently in § 1.1.

Section 91.205 Powered Civil Aircraft with Standard Category U.S. Airworthiness Certificates: Instrument and Equipment Requirements

Currently, § 91.205 (d)(2) states that, for IFR flight, ''two-way radio communications system and navigation equipment appropriate to the ground facilities to be used'' are required. The FAA is proposing to amend (d)(2) by removing references to radio and ground facilities to facilitate future developments in communications. As amended, the paragraph would prescribe for IFR flight, ''two-way communication and navigation systems suitable for the route to be flown.''

Paragraph (e) would be revised to require that aircraft operating at and above 18,000 feet (flight level (FL) 180) would have to be equipped with DME. The current rule sets the limit at 24,000 feet MSL (FL 240). On October 14, 1971, the FAA completed the lowering of the base of the positive control area (now called Class A airspace) from 24,000 feet to 18,000 feet MSL over the entire 48 contiguous States. (*See* 36 FR 15743; Aug. 18, 1971.) This proposed change would make this section consistent with the current floor of Class A airspace. While this proposed rule change would extend the equipment requirements for civil aircraft to FL 180, most affected aircraft already meet these standards. The FAA specifically seeks comments on this proposed change.

In addition, paragraph (e) would be amended to include suitable RNAV system as an alternative to DME. Modern RNAV systems provide distance from the active waypoint as an integral function. This distance readout can serve any purpose that DME serves.

Section 91.219 Altitude Alerting System or Device: Turbojet-Powered Civil Airplanes

The FAA is proposing to amend § 91.219 (b)(5) by replacing the term ''DH'' with the term ''DA/DH.'' See discussion under ''II.D.1. Decision Height (DH) and Decision Altitude (DA)'' above.

Section 91.511 Communication and Navigation Equipment for Over-Water Operations

The FAA is proposing to amend § 91.511 by changing the heading from ''Radio equipment for over-water operations'' to ''Communication and navigation equipment for over-water operations.'' Paragraph (a)(1) would be amended by changing the term ''radio communication equipment'' to ''communication equipment.'' This change would facilitate future developments in technology. Also, in this paragraph the term ''surface facility'' would be changed to ''communication facility'' because, in the future, communication facilities may not be on the surface.

Section 91.711 Special Rules for Foreign Civil Aircraft

The FAA is proposing to amend § 91.711 (c)(1)(ii) by changing the term ''radio navigational equipment appropriate to the navigational facilities to be used'' to ''navigation equipment suitable for the route to be flown.'' This change would facilitate future developments in navigation technology.

Paragraph (e) would be amended by changing the specified flight level and by adding reference to ''an IFR-approved RNAV system.'' As amended, the paragraph would state that foreign aircraft operating at and above 18,000 feet (FL 180) must be equipped with DME or an IFR-approved RNAV system. The current rule sets the limit at 24,000 feet MSL (FL 240); however, the altitude defining the base of Class A airspace (formerly the positive control area) was lowered from 24,000 feet (FL 240) to 18,000 feet (FL 180) in October 1971. While this rule change would increase the requirements for foreign civil aircraft, the FAA believes that the affected aircraft already meet these standards. The FAA specifically seeks comments on this proposed change. In addition, the provision for a suitable RNAV system is being added because modern RNAV systems provide distance from the active waypoint as an integral function in lieu of DME. This distance readout from a RNAV system can serve any purpose that DME serves.

Section 95.1 Applicability

The FAA is proposing to revise § 95.1. In paragraphs (a), (b), and (d), references to ''Federal airway(s), jet route(s), area navigation low or high route(s)'' would be changed to ''ATS route(s).'' The use of the term ''ATS route'' would make the FAA's regulations consistent with ICAO.

Paragraph (d) would be further amended in the second sentence by adding the phrase, ''Unless otherwise specified,'' to the beginning, and by changing the term ''radio fixes'' to ''navigation fixes.'' These changes would increase the flexibility of the FAA to allow the use of other-than-ground-based navigation systems.)

Current paragraph (e) uses 25 miles as the distance for reception of navigation signals. The FAA proposes to revise the paragraph to allow air navigation along the entire route (subject to air traffic restrictions) at the MOCA when using suitable navigation systems (*e.g.*, GPS). Also, because nautical miles are the standard unit of measurement in air navigation, the reference to ''25 miles'' would be converted to ''22 nautical miles.''

Paragraph (f) would be revised to specify that an MRA is applicable only to intersections defined by ground-based navigation aids.

In paragraph (g), the term ''facility or way point'' would be changed to ''ground-based navigation aid.'' Current paragraph (g)(1), which addresses reception requirements, would be retained in proposed paragraph (g), and the term ''facilities'' would be changed to ''signals.'' Finally, the text of current paragraph (g)(2) would be removed. These changes would increase the flexibility of the rule to allow the use of other-than-ground-based navigation systems.

Part 97—Heading Revised

The heading for part 97, now reading ''Standard Instrument Approach Procedures'' would be revised to read ''Standard Instrument Procedures'' because the part is not limited to approach procedures.

Section 97.1 Applicability

The FAA is proposing to revise § 97.1 to provide a more accurate and complete description of the applicability of part 97. The words ''standard instrument approach procedures'' would be changed to ''standard instrument procedures'' to reflect the fact that part 97 refers to takeoffs and approaches. The proposed rules also would expand the scope of part 97 to include departure procedures, since those departure procedures are used as the basis for takeoff weather minimums. Proposed § 97.1 would clarify that published civil takeoff weather minimums are based on a specified route, and that pilots must comply with that route unless an alternative route has been assigned by ATC. The section would be further amended by deleting the words ''for instrument letdown,'' which is obsolete terminology.

Section 97.3 Symbols and Terms Used in Procedures

The FAA is proposing to revise § 97.3 by to remove the paragraph designations and to organize the terms alphabetically. In addition, the following terms would be revised:

The terms ''A'' (alternate airport weather minimum) in paragraph (a), ''C'' (circling landing minimum) in paragraph (d), and ''S'' (straight in minimum) in paragraph (s), would be removed in the proposed revision of § 97.3. These items are more appropriately spelled in full in the legend of the approach charts.

The term ''approach procedure segments'' would be modified to include specification of a path to accommodate RNAV approaches, and ''DH'' would be replaced with ''DA/DH.''

The term ''ceiling minimum'' in paragraph (e) would be changed to ''ceiling'' and clarified to refer to airport elevation rather than the current general term ''surface of the airport.''

The term ''D'' (day) in paragraph (f) would be removed, as the term is no longer used.

The term ''decision height'' that appears in the definition of ''missed approach'' in paragraph (c)(5), and in the definition of ''copter procedures'' in paragraph (d)(1), would be changed to ''decision altitude or decision height (DA/DH).'' *See* discussion ''II.D.1. Decision Height (DH) and Decision Altitude (DA)'' above.

The term ''copter procedures'' would further be revised to clarify the circumstances under which the reduction of the charted visibility is authorized. It is also important to highlight that the one-quarter mile prevailing visibility and the 1200-foot RVR mentioned in the proposed definition are minimum limits. Although both are specified to permit the application of reduced visibility minimums if either visibility or RVR is reported, no equivalency between one-quarter mile and the 1200-foot RVR is intended. For equivalency, *see* the RVR tables in Flight Information Publications.

The term ''HAA'' (height above airport) in paragraph (h) would be revised to add the words, ''expressed in feet.''

The term ''HAL'' (height above landing) in paragraph (h)(1) would be revised to read, ''height of the DA/MDA above a designated helicopter landing area elevation used for helicopter instrument approach procedures.'' This proposed definition would include references to decision altitude (see II.D.1. above) and MDA (see discussion of § 1.1 above), and would facilitate future Wide-Area Augmentation Systems (WAAS) operations.

The term ''HAS'' would be added to read, ''height of the DA/MDA above the highest terrain/surface within a 5,200-foot radius of the missed approach point used in helicopter instrument approach procedures and is expressed in feet AGL.'' This definition would support point-in-space operations and provide additional information for maneuvering in the vicinity of a heliport.

The term ''HAT'' (height above touchdown), which currently appears in paragraph (i), would be revised to read, ''height above threshold expressed in feet.'' This would be a nomenclature change to make the FAA's regulations consistent with ICAO and is not considered operationally significant. Changes to approach charts and affected FAA documents will be made during regular review process.

The term ''HCH'' would be added to read, ''helipoint crossing height and is the computed height of the vertical guidance path above the helipoint elevation at the helipoint expressed in feet.'' This is a new technical term used in the construction of helicopter instrument approach procedures. The HCH affects the size of the obstacle evaluation area for the copter instrument approach and is another means of providing a margin of safety to the operator.

This proposal would also add the term ''helipoint,'' which is normally the center point of the touchdown and lift-off area (TLOF). It is usually a designated arrival and departure point located in the center of an obstacle-free area, 150-feet square, overlying an approved landing area, where the approach may be terminated in a hover or touchdown. The helipad of intended landing may not be located at the helipoint, however.

The term ''MSA'' (minimum safe altitude) would be revised in more general wording. The proposed wording allows for any navigation aid or fix to be the reference point, which would provide greater flexibility in procedure construction. The distance is specified on the approach chart.

The term ''N'' (night) in paragraph (m) would be removed from § 97.3 because the abbreviation is no longer in use.

The term ''point in space approach'' in paragraph (o)(1) would be removed because the definition is out of date. The term is accurately defined in FAA Order 8260.3 ''U.S. Standard for Terminal Instrument Procedures (TERPS)'' (incorporated by reference in proposed § 97.20), and, therefore, would not need to be duplicated in § 97.3.

The term ''shuttle'' in current paragraph (t), would be removed because it is obsolete. It would be replaced with the term ''hold in lieu of PT,'' meaning a holding pattern established under applicable FAA criteria, and used in lieu of a procedure turn (PT) to execute a course reversal. By adding this new term, the FAA intends to codify current procedures for using a holding pattern in lieu of a procedure turn for course reversal.

The term ''SIAP'' (standard instrument approach procedure) would be added to the section because it is a commonly used acronym.

The term ''T'' (takeoff minimum) would be revised for clarity and accuracy to mean nonstandard takeoff minimums or specified departure routes/procedures, or both.

Section 97.5 Bearings, Courses, Headings, Radials, Miles

The FAA is proposing to amend § 97.5 by adding the word ''tracks'' to the heading and to paragraph (a). The word ''tracks'' is used to describe the type of information provided by GPS and RNAV systems. Also, paragraph (a) would be amended by adding the phrase ''unless otherwise designated'' to the end of the paragraph. This change would allow for future changes in technology and flexibility in route construction and assignment.

Section 97.10 General

The FAA is proposing to remove § 97.10, General. This section prescribes standard instrument procedures ''other than those based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS).'' These types of approach procedures no longer exist.

Section 97.20 General

The FAA is proposing to revise § 97.20 to incorporate FAA Order 8260.3, ''U.S. Standard for Terminal Instrument Procedures (TERPS),'' and FAA Order 8260.19, ''Flight Procedures and Airspace'' into the Code of Federal Regulations. These orders would be added to include the requirements for the developing and processing of instrument procedures. The proposed text is shown in the regulation, and the FAA would get approval from the Director of the Federal Register if it is adopted as final.

Section 121.99 Communications Facilities

The FAA is proposing to amend § 121.99(a) by changing the term ''two-

way radio communication system'' to ''two-way communication system.'' In addition, the term ''point-to-point circuits'' would be changed to ''communication links.'' These changes would make the regulation more flexible for modern means of communication and would allow for future changes in technology. In addition, the FAA is proposing to add a requirement for a communication system that would have two-way voice communication capability for use between each airplane and the appropriate dispatch office, and between each airplane and the appropriate ATC unit, for non-normal and emergency conditions. The FAA believes it would be necessary from the pilot workload and flight safety standpoints to retain two-way voice communication capability for non-normal and emergency conditions. Data link communication systems currently require a pilot to use a keyboard to communicate between the airplane and the stations described above. Reliance on data link communications alone during an emergency could cause an unsafe condition.

Additionally, with respect to communications between the airplane and the dispatch office, the FAA is proposing to add a definition of ''rapid communications'' that is based on a legal interpretation issued by the Regional Counsel of the FAA's southern region on May 26, 1977. A copy of this interpretation can be found in the public docket for this rulemaking. Generally speaking, rapid communication means that the calling party must be able to establish communication with the called party in less than 4 minutes.

Section 121.103 En Route Navigation Systems

The FAA is proposing to revise § 121.103 by changing the heading from ''En route navigational facilities'' to ''En route navigation systems.'' In addition, the term ''nonvisual ground aids'' would be changed to ''navigation aids'' in paragraphs (a) and (b). The wording would be changed to make the regulation performance-based by requiring that the navigation aids are available over the route to navigate the airplane along the route with the required accuracy, so that any suitable navigation system could be used. Demonstration of compliance to this requirement would be specific to the operator, the aircraft navigation system (*e.g.*, GPS, DME/DME, DME/DME/INS), the available navigation aids, and the route (including planned contingencies such as alternates). The required accuracy is defined by the route specifications (including route width) or as defined by ATC if not operating on a route.

Finally, the section would be revised to permit ''other operations approved by the FAA'' to be conducted without navigation aids. These revisions would allow for changes in technology.

Section 121.121 En Route Navigation Facilities

The FAA is proposing to revise § 121.121 by changing the title from ''En route navigational facilities'' to ''En route navigation systems,'' and the section would be formatted to be consistent with § 121.103. In addition, the term ''nonvisual ground aids'' would be changed to ''navigation aids'' in paragraphs (a) and (b). The wording would be changed to make the regulation performance-based by requiring that adequate navigation aids are available to navigate the airplane along the route with the required accuracy, so that any suitable navigation system could be used. ''Lighted airways'' also would be removed because it is an obsolete term. Finally, paragraph (b)(3) would be revised, consistent with the proposed change to § 121.103(b)(3), to permit ''other operations approved by the FAA.'' This revision would allow for future changes in technology.

Section 121.344 Digital Flight Data Recorders for Transport Category Airplanes

The FAA proposes to amend § 121.344 (a)(54) by replacing the term ''decision height'' with the term ''decision altitude/decision height.'' *See* discussion ''II.D.1. Decision Height (DH) and Decision Altitude (DA)'' above.

Section 121.345 Communication Equipment

Section 121.345 would be revised by replacing the word ''radio'' in the heading and in paragraphs (a) and (b), with the word ''communication.'' This would eliminate the reliance on voice technology and allow for future developments in technology.

Section 121.347 Communication and Navigation Equipment for Operations Under VFR Over Routes Navigated by Pilotage

The FAA is proposing to amend § 121.347 by changing the term ''radio equipment'' to ''communication and navigation equipment'' in the heading. In addition, the FAA would amend paragraph (a) to change ''radio equipment'' to ''communication equipment,'' remove the word ''ground'' from (a)(1), and clarify (a)(2) by removing words ''lateral boundaries of the surface areas of.''

Paragraph (b) would be revised to separate the communication and navigation equipment requirements, and the requirement for navigation equipment would be made more generic to accommodate RNAV systems. A marker beacon receiver or ILS receiver would not be required under the proposed rule since precision approaches are not appropriate to VFR operations, so the last phrase of this paragraph would be deleted.

These changes would allow for communications that are not ''voice'' communications, would make the regulation more flexible for modern means of communication, and would allow for future changes in technology.

Section 121.349 Communication and Navigation Equipment for Operations Under VFR Over Routes Not Navigated by Pilotage or for Operations Under IFR or Over the Top

The FAA is proposing to revise § 121.349 to recodify and clarify existing requirements. The proposed paragraph (a) would replace the requirement for two independent receivers with a requirement for two independent navigation systems. The two independent navigation systems must be suitable for the route to be flown, so that they both support compliance with the requirements proposed in § 121.103(a) or § 121.121(a). There would be no requirement for the two systems to be identical, so that a single VOR and a single suitable RNAV system would satisfy this requirement on a Victor airway. The intent of this rule is to ensure that there is no single point of failure or event affecting aircraft navigation systems that causes loss of the ability to navigate along the intended route or to navigate to a suitable diversion airport. The change is also intended to address the vulnerability of GPS, which uses very weak signals that are susceptible to interference. For example, two minimum GPS (or other satellite navigation) receivers may not be considered ''independent,'' since both are so vulnerable to interference. However, the proposed rule would be performance-based rather than prescriptive; thus, it is possible that two GPS receivers with an anti-jam capability could be considered independent, since they would not be so vulnerable to interference. Systems are considered independent if there is no probable failure or event that could affect both systems. In addition, the allowance for a single ILS and marker

beacon would be extended to any precision approach or APV system.

The paragraph would also be revised to broaden the exception for two independent navigation systems in paragraph (b) to allow for the use of any single navigation system consistent with the provisions in proposed § 121.349(c). In addition, for non-normal and emergency operating conditions, the FAA proposes to add a requirement for at least one of the independent communication systems to have two-way voice communication capability. The requirement to report DME failures has been removed since it is required in current § 91.187. These changes would make the regulation more flexible for modern means of communication and navigation and would allow for future changes in technology.

The proposed changes to § 121.349 are intended to be broad in scope. The proposed wording would allow for the future evolution of navigation system technology. Presently the FAA sees a need for a full DME infrastructure and a minimal VOR network to remain for the foreseeable future. However, as the NAS evolves and navigation technology improves, a satellite-based system may become the core of the aviation navigation system.

The proposed rule language is designed to provide the most flexibility for the operator rather than being prescriptive. It would be through the operations specification process that the operator would indicate the suitability of its equipage. The FAA sees a benefit to the use of a performance-based rule for both the operator and the regulator, as this would be a way to address the variety of navigation equipment installed in the various fleets. The FAA seeks comments on whether to adopt a broad, performance-based rule language or a narrow, prescriptive language requiring specific systems.

Section 121.351 Communication and Navigation Equipment for Extended Over-Water Operations and for Certain Other Operations

The FAA is proposing to amend § 121.351 by changing the words ''radio equipment'' to ''communication and navigation equipment'' in the heading, and the words ''radio communication'' to ''communication and navigation'' in paragraph (a). This would permit the use of data link communications systems for normal operating conditions. Also, paragraph (a) would be revised to require at least one of the independent communication systems to have two-way voice communication capability for non-normal and emergency operating conditions. In addition, references would be changed to be consistent with other proposed changes and requirements would be explained in full instead of referring the reader to another section of the CFR.

Also, paragraph (c)(1) would be revised to use terminology consistent with the proposed changes to §§ 121.103 and 121.121, and paragraph (c)(3) would be revised to apply to aircraft equipped with only VHF communications equipment.

Section 121.419 Pilots and Flight Engineers: Initial, Transition, and Upgrade Ground Training

The FAA proposes to amend § 121.419(a)(1)(vii) by replacing the term ''DH'' with the term ''DA/DH.'' *See* discussion ''II.D.1. Decision Height (DH) and Decision Altitude (DA)'' above.

Section 121.559 Emergencies: Supplemental Operations

The FAA is proposing to amend § 121.559(c) by replacing the term ''ground radio station'' with the term ''communication facility. The term ''communications facility'' is more accurate than the term ''ground radio station.'' *See* discussion for § 121.565 below.

Section 121.561 Reporting Potentially Hazardous Meteorological Conditions and Irregularities of Ground and Navigation Facilities

The FAA is proposing to amend § 121.561 by revising the heading to replace the words ''ground and navigation facilities'' with ''ground facilities and navigation aids.'' The same change is proposed for paragraph (a). The term ''navigation aids'' is used throughout this proposal.

Section 121.565 Engine Inoperative: Landing; Reporting

The FAA is proposing to amend § 121.565(c) by replacing the term ''ground radio station'' with the term ''communication facility'' and the term ''station'' with ''facility.'' The term ''communication facility'' is more accurate than ''ground radio station'' since the communication facility could be other than ATC. For example, if a pilot sent a report to dispatch or to the Aeronautical Radio, Inc. (ARINC) service provider, then dispatch or the ARINC service provider would forward the report to ATC.

Section 121.579 Minimum Altitudes for Use of Autopilot

The FAA is proposing to amend § 121.579(b) by replacing the term ''decision height'' with the term ''DA/DH.'' *See* discussion ''II.D.1. Decision Height (DH) and Decision Altitude (DA)'' above. In addition, the FAA is proposing to replace the term ''ILS'' with the word ''precision'' in (b)(1) and (b)(2). This would be consistent with the proposed definition of ''precision approach procedure'' in § 1.1.

Section 121.651 Takeoff and Landing Weather Minimums: IFR: All Certificate Holders

The FAA proposes to amend § 121.651 by replacing the term ''DH'' with ''DA/DH'' in paragraph (c). See discussion ''II.D.1. Decision Height (DH) and Decision Altitude (DA)'' above.

Current paragraph (d) sets forth requirements for a final approach segment of an instrument approach procedure (other than a Category II or Category III procedure) at an airport with less-than-certain visibility minimums where the ILS and an operative PAR are collocated and coincident. The FAA is proposing to amend the paragraph to expand it from only ILS to include an operative PAR and any other precision instrument approach system.

Section 121.652 Landing Weather Minimums: IFR: All Certificate Holders

The FAA proposes to amend § 121.652 by replacing the term ''DH'' with ''DA/DH'' in paragraph (a). *See* discussion ''II.D.1. Decision Height (DH) and Decision Altitude (DA)'' above.

Appendix M to Part 121

The FAA proposes to amend Appendix M to part 121 by replacing the words, ''Selected decision height'' with the words ''Selected decision altitude/decision height'' in Parameter Number 54. *See* discussion ''II.D.1. Decision Height (DH) and Decision Altitude (DA)'' above.

Section 125.51 En Route Navigational Facilities

The FAA proposes to revise the heading to read ''En route navigation aids'' and to amend paragraphs (a) and (b) of § 125.51 by replacing the words ''nonvisual ground aids'' with ''navigation aids'' to allow for navigation by other-than-ground-based navigation aids, and to change the heading from ''en route navigational facilities'' to ''en route navigation systems.''

Section 125.203 Radio and Navigational Equipment

Section 125.203 would be revised. In the heading, the words ''Radio and navigational'' would be replaced with the words ''Communication and navigation.'' Throughout the rest of the

section, proposed changes would mirror proposed §§ 121.349, 129.17 and 135.165 requirements. These are described in the discussion of proposed § 121.349. In addition, because nautical miles are the standard unit of measurement in air navigation, the words ''25 miles'' in paragraph (a) would be replaced with the words ''22 nautical miles.''

For the purposes of § 125.203, a system that provides both communication and navigation may be used in place of separate communications and navigation systems. However, existing § 125.203(d) would be removed because it does not contain a requirement and is merely guidance.

Section 125.321 Reporting Potentially Hazardous Meteorological Conditions and Irregularities of Ground and Navigation Facilities

The FAA is proposing to revise § 125.321 so that it would be identical to proposed § 121.561.

Section 125.379 Landing Weather Minimums: IFR

The FAA proposes to amend § 125.379(a) by replacing the term ''DH'' with ''DA/DH'' in paragraph (a). See discussion ''II.D.1. Decision Height (DH) and Decision Altitude (DA)'' above.

Section 125.381 Takeoff and Landing Weather Minimums: IFR

The FAA is proposing to amend § 125.381(a) and (b) by changing the word ''pilot'' to ''person'' to make the regulation consistent with the definition of ''person'' currently in § 1.1.

The FAA is also proposing to revise § 125.381(c) to update the terminology and to reorganize the paragraph to improve its clarity. As proposed, the term ''outer marker'' would be replaced with the more accurate term ''precision final approach fix'' in paragraph (c)(1). In addition, the FAA is proposing to change the term ''DH'' to ''DA/DH.'' See discussion under ''II.D.1. Decision Height (DH) and Decision Altitude (DA)'' above.

Section 129.16 Communication and Navigation Equipment for Rotorcraft Operations Under VFR Over Routes Navigated by Pilotage

The FAA is proposing to add new § 129.16 to mirror the requirements of § 121.347 for part 129 rotorcraft VFR operations. This would impose no burden on operators of those rotorcraft because they are already equipped with the communication equipment, and the communication and navigation equipment needed for night VFR operations, that would meet the proposed requirements. These changes would make the regulation more flexible for modern means of communication and navigation and would allow for future changes in technology.

Section 129.17 Radio Equipment

The FAA is proposing to revise the heading of § 129.17 to replace ''radio equipment'' with ''aircraft communication and navigation equipment for operations under IFR or over the top.'' Throughout the rest of the section, proposed changes would mirror proposed §§ 121.347, 121.349, and 135.165 requirements. These are described in the explanation of changes to § 121.349. The change would impose no burden on operators of those aircraft because they are already equipped with the communication and navigation equipment that would meet the proposed requirements. These changes would make the regulation more flexible for modern means of communication and navigation and would allow for future changes in technology.

Section 129.21 Control of Traffic

The FAA is proposing to revise § 129.21 to remove references to ''ground'' and ''voice.'' This revision would enable air carriers to take advantage of advances in technology.

Appendix A to Part 129

The FAA is proposing to revise paragraph (b), Section IV, of part 129, Appendix A, to replace the words ''Radio Facilities: Communications'' with ''Communications Facilities'' in the paragraph heading, and by replacing the words ''ground radio communication facilities'' with ''communication facilities'' in the text. This would allow those facilities to be located wherever appropriate.

Section 135.67 Reporting Potentially Hazardous Meteorological Conditions and Irregularities of Communications or Navigation Facilities

The FAA is proposing to amend § 135.67 so that the section would be identical to proposed § 121.561.

Section 135.78 Instrument Approach Procedures and IFR Landing Minimums

The FAA is proposing to add new § 135.78 to be consistent with the requirements in §§ 121.567 and 125.325. This would give the FAA a regulatory basis for authorizing in the certificate holder's operations specifications for new kinds of approaches and revising weather minimums for certain conditions.

Section 135.79 Flight Locating Requirements

The FAA is proposing to amend § 135.79(a)(3) by replacing the term ''radio or telephone communications'' with the term ''communications.'' By using less specific language, certificate holders would have greater flexibility in determining what type of communication equipment to use, and thus be able to take advantage of changes in technology.

Section 135.93 Autopilot: Minimum Altitudes for Use

The FAA is proposing to replace the words ''When using an instrument approach facility other than ILS,'' at the beginning of § 135.93(b) with the words ''For other than precision approaches, * * *'' This would eliminate the use of the word ''facility.'' Under the existing language, paragraph (b) already allows for approach and landing operations with vertical guidance (APV) by using the phrase ''other than ILS.'' The term ''facility'' is not necessary and would be removed to improve clarity.

Paragraph (c) would be amended to facilitate future technology by replacing the words ''For ILS approaches'' in the beginning of the paragraph with ''For precision approaches.''

Section 135.152 Flight Recorders

The FAA proposes to amend § 135.152 (h)(54) by replacing the words ''decision height'' with the words ''decision altitude/decision height'' in paragraph (a). *See* discussion ''II.D.1. Decision Height (DH) and Decision Altitude (DA)'' above.

Section 135.161 Communication and Navigation Equipment for Aircraft Operations Under VFR Over Routes Navigated by Pilotage

The FAA is proposing to revise § 135.161 to mirror the requirements of § 121.347 (a) and (b) for operations conducted under VFR over routes navigated by pilotage. This would not result in a substantive change to the existing requirements in the section. These changes would make the regulation more flexible for modern means of communication and would allow for future changes in technology. In addition, the FAA is proposing to remove the words ''carrying passengers'' to make the section applicable to all VFR operations, including all-cargo.

Section 135.165 Radio and Navigational Equipment: Extended Over-Water or IFR Operations

The FAA is proposing to revise the heading of § 135.165 and to amend the section by removing the words ''radio

communication and navigational equipment appropriate to the facilities to be used'' and using the words ''communication systems,'' ''navigation systems'' and ''suitable for the route to be flown.''

Throughout the rest of the section, proposed changes would mirror proposed §§ 121.349, 125.203, and 129.17 requirements. These are described in the discussion of proposed § 121.349. Also, for non-normal and emergency conditions, the FAA would add a requirement that aircraft used in extended over-water or IFR operations be equipped with at least one independent communication system having two-way voice communication capability. These changes would make the regulation more flexible for modern means of communication and navigation and would allow for future changes in technology. For the purposes of § 135.165, a system that provides both communication and navigation may be used in place of separate communications and navigation systems. However, existing § 135.165(c) would be removed because it does not contain a requirement and is merely guidance.

Section 135.225 IFR: Takeoff, Approach and Landing Minimums

The FAA is proposing to amend § 135.225 (a), (b), (e), (f), and (g) by changing the word ''pilot'' to ''person'' to make the regulation consistent with the definition of ''person'' currently in § 1.1.

The FAA is also proposing to amend paragraph (c)(1) by changing the term ''an ILS final approach'' to the term ''a precision or APV approach.'' This would broaden the term to address any precision approach and the new APV approaches, not only ILS.

In the introductory text of paragraph (c)(3), the words ''on a final approach using a VOR, NDB, or comparable approach procedure'' would be changed to ''on a nonprecision final approach.''

In paragraphs (c)(3)(ii) and (d), the term ''DH'' would be changed to ''DA/DH.'' *See* discussion ''II.D.1. Decision Height (DH) and Decision Altitude (DA)'' above.

Section 135.345 Pilots: Initial, Transition, and Upgrade Ground Training

The FAA proposes to amend § 135.345(a)(7) by replacing the term ''DH'' with ''DA/DH'' in paragraph (a). *See* discussion ''II.D.1. Decision Height (DH) and Decision Altitude (DA)'' above.

Section 135.371 Large Transport Category Airplanes: Reciprocating Engine Powered: En Route Limitations: One Engine Inoperative

The FAA is proposing to amend § 135.371(c)(2) by removing the word ''radio.'' This would eliminate the reliance on ground-based navigational aid fixes and permit the use of other means such as RNAV waypoints to identify such fixes.

Section 135.381 Large Transport Category Airplanes: Turbine Engine Powered: En Route Limitations: One Engine Inoperative

The FAA is proposing to amend § 135.381(b)(2) by removing the word ''radio.'' This would eliminate the reliance on voice technology.

Appendix F to Part 135

The FAA proposes to amend Appendix F to part 135 by replacing the words, ''Selected decision height'' with the words ''Selected decision altitude/decision height'' in Parameter Number 54. *See* discussion ''II.D.1.Decision Height (DH) and Decision Altitude (DA)'' above.

IV. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that there are no new information collection requirements associated with this proposed rule.

V. International Compatibility

In keeping with United States obligations under the Convention on International Civil Aviation, it is the FAA's policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that corresponded to these proposed regulations.

VI. Economic Evaluation

Proposed and final rule changes to federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531 through 2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Agreements Act also requires agencies to consider international standards and, where appropriate, use them as the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a federal mandate likely to result in the expenditure by state, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation).

In conducting these analyses, the FAA has determined that this NPRM: (1) Would not be ''a significant regulatory action'' as defined in the Executive Order, and would not be ''significant'' as defined in the Department of Transportation's Regulatory Policies and Procedures; (2) would not have a significant impact on a substantial number of small entities; (3) would not impose barriers to international trade; and (4) would not impose an unfunded mandate on state, local, or tribal governments, or on the private sector. These analyses are available in the docket, and are summarized below.

Benefits and Costs

The proposed rule expands the use of area navigation systems to allow for technological advances that support RNAV, such as GPS, while retaining the current ground-based systems. The proposed rule would not impose an obligation to change current navigation systems, and therefore, the proposed rule would mandate no costs on aircraft operators. The proposed rule would also add language that would codify current practice and, therefore, would not impose costs. To enhance safety, the proposed rule would revise the definition of ''night,'' which would allow the FAA to limit operations at locations where terrain might result in an earlier nightfall than published in the American Air Almanac. This could affect a very small number of airports in the United States, and, while the FAA does not expect any cost impact, the agency asks for comments.

Cost savings might result because the proposed rule would enable the use of advanced RNAV navigation routes that the FAA has been developing. These routes are typically more direct, and therefore, shorter than the current Federal Airways and jet routes and in following these advanced RNAV routes aircraft may require less fuel and time to reach their destinations. Advanced

area navigation routes have not been planned, so cost savings cannot be reliably estimated at this time. However, estimates of cost savings from flying advanced RNAV test routes that the FAA has established are in excess of $30 million annually.

In addition, the proposed rule would amend the current regulation and eliminate the middle marker as a required ILS component, as indicated in § 91.175 (k) of the proposed amendments. In 1992, the FAA completed an evaluation of the operational effectiveness and safety benefits provided by a middle marker during ILS operations. The evaluation concluded that a middle marker makes no significant difference in pilot performance while conducting an ILS approach. Elimination of the middle marker as a required ILS component would result in net cost savings to owners of middle marker facilities who choose to decommission their middle marker facilities. Owners of middle marker facilities would save a total of $2.3 million per year if all the 672 middle marker facilities are decommissioned. The total operating cost savings over 15 years would be $34 million (approximately $20 million discounted). However, there are costs to decommission the facilities and these costs range from $10,000 to $30,000 per facility. The FAA assumes that half the middle markers would be decommissioned at the end of 2003 and the other half at the end of 2004. The total cost to decommission all the middle marker facilities would range from a total of $6.7 million ($6.0 million discounted) to approximately $20.2 million ($18.2 million discounted). The net cost savings would be $27.2 million ($13.5 million discounted) over the 15 year period given the low estimate of decommissioning costs to $13.8 million ($1.3 million discounted) given the high estimate.

In addition, the proposed amendments would expand the number of acceptable substitutes for the outer marker. This would allow more flexibility in the design of future instrument approaches.

VII. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 Act provides that the head of the agency may so certify and a Regulatory Flexibility Analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This proposed rule may effect those privately owned small airports that would be allowed to decommission their middle marker facilities. There are an estimated 38 non-Federal middle marker facilities. For the purposes of this regulatory flexibility determination, the FAA assumes that all 38 middle marker facilities are at airports operated by small entities. The estimated cost to decommission a middle marker facility ranges from $10,000 to $30,000 per facility. On the other hand, the non-Federal navigation facilities would save operating costs by no longer having to maintain and operate these middle marker facilities. These savings would be about $3,400 annually per facility. Over a period of 15 years, each facility would save $51,000 in operating costs if it decommissioned its middle markers. However, the proposed rule would not mandate that the middle marker facilities be decommissioned. The private facility owners would not be required to decommission their facilities; therefore they would only do so if they believed it to be cost-beneficial. Consequently, the FAA certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities. The FAA solicits comments from the public regarding this finding.

VIII. International Trade Impact Analysis

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

This action proposes to impose requirements on foreign air carriers operating in the United States that would mirror the communication and navigation equipment requirements placed on domestic air carriers operating in the United States. This would mean that the requirements imposed on foreign air carriers operating in the United States would be consistent with those that are imposed on U.S. commercial operators and air carriers operating domestically. For example, proposed §§ 121.349, 125.203, and 135.165 would impose substantially the same communication and navigation system requirements for operations in the United States under IFR or over the top as proposed in § 129.17 for foreign air carriers that conduct IFR or over the top operations in the United States. Therefore the FAA has determined that the proposed rule would have a neutral impact on foreign trade and would create no obstacles to the foreign commerce of the United States.

IX. Unfunded Mandate Assessment

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995 is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' This proposed rule would not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

X. Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. The FAA has determined that this action would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore,

we determined that this proposal would not have federalism implications.

XI. Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this proposed rulemaking action qualifies for a categorical exclusion.

XII. Energy Impact

The energy impact of this proposed rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) (Pub. L. 94–163, as amended; 42 U.S.C. 6362) and FAA Order 1053.1. The FAA has determined that the proposed rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects

14 CFR Part 1

Air transportation.

14 CFR Part 71

Airspace, Navigation (air).

14 CFR Part 91

Agriculture, Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Canada, Freight, Mexico, Noise control, Political candidates, Reporting and recordkeeping requirements.

14 CFR Part 95

Air traffic control, Airspace, Alaska, Navigation (air), Puerto Rico.

14 CFR Part 97

Air traffic control, Airports, Navigation (air), Weather.

14 CFR Part 121

Air carriers, Aircraft, Airmen, Aviation safety, Charter flights, Drug testing, Reporting and recordkeeping requirements, Safety, Transportation.

14 CFR Part 125

Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements

14 CFR Part 129

Air carriers, Aircraft, Aviation safety, Reporting and recordkeeping requirements, Security, Smoking.

14 CFR Part 135

Air taxis, Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements.

The Proposed Amendments

In consideration of the foregoing, the Federal Administration Aviation proposes to amend chapter I of 14 CFR as follows:

PART 1—DEFINITIONS AND ABBREVIATIONS

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

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

2. Amend § 1.1 as follows:

a. Remove the definitions of Area navigation high route, Area navigation low route, Category II operations, Category III operations, Category IIIa operations, Category IIIb operations, Category IIIc operations, Decision height, Minimum descent altitude, Nonprecision approach procedure, Precision approach procedure, and RNAV way point.

b. Add definitions for Air Traffic Service (ATS) route, Approach procedure with vertical guidance (APV), Area navigation (RNAV) route, Category I (CAT I) operation, Category II (CAT II) operation, Category III (CAT III) operation, Category IIIa (CAT IIIa) operation, Category IIIb (CAT IIIb) operation, Category IIIc (CAT IIIc) operation, Decision altitude (DA), Decision height (DH), Final approach fix (FAF), Instrument approach procedure (IAP), Minimum descent altitude (MDA), Nonprecision approach procedure (NPA), Precision approach procedure (PA), and Precision final approach fix (PFAF) in alphabetical order to read as set forth below.

c. Revise the definitions of Area navigation (RNAV), Night, and Route segment to read as set forth below.

§ 1.1 General definitions.

* * * * *

Air Traffic Service (ATS) route is a specified route designated for channeling the flow of traffic as necessary for the provision of air traffic services. The term ''ATS route'' refers to a variety of airways, including jet routes, area navigation (RNAV) routes, and arrival and departure routes. An ATS route is defined by route specifications, which may include:

(1) An ATS route designator;

(2) The path to or from significant points;

(3) Distance between significant points;

(4) Reporting requirements; and

(5) The lowest safe altitude determined by the appropriate authority.

* * * * *

Approach procedure with vertical guidance (APV) is an instrument approach procedure based on lateral path and vertical glide path. These procedures may not conform to requirements for precision approaches.

* * * * *

Area navigation (RNAV) is a method of navigation that permits aircraft operations on any desired flight path.

Area navigation (RNAV) route is an ATS route based on RNAV that can be used by suitably equipped aircraft.

* * * * *

Category I (CAT I) operation is a precision instrument approach and landing with a decision altitude that is not lower than 200 feet (60 meters) above the threshold and with either a visibility of not less than ½ statute mile (800 meters), or a runway visual range of not less than 1,800 feet (550 meters).

Category II (CAT II) operation is a precision instrument approach and landing with a decision height lower than 200 feet (60 meters), but not lower than 100 feet (30 meters), and with a runway visual range of not less than 1,200 feet (350 meters).

Category III (CAT III) operation is a precision instrument approach and landing with a decision height lower than 100 feet (30 meters) or no DH, and with a runway visual range less than 1,200 feet (350 meters).

Category IIIa (CAT IIIa) operation is a precision instrument approach and landing with a decision height lower than 100 feet (30 meters), or no decision height, and with a runway visual range of not less than 700 feet (200 meters).

Category IIIb (CAT IIIb) operation is a precision instrument approach and landing with a decision height lower than 50 feet (15 meters), or no decision height, and with a runway visual range of less than 700 feet (200 meters), but not less than 150 feet (50 meters).

Category IIIc (CAT IIIc) operation is a precision instrument approach and landing with no decision height and with a runway visual range less than 150 feet (50 meters).

* * * * *

Decision altitude (DA) is a specified altitude at which a person must initiate a missed approach if the person does not see the required visual reference. Decision altitude is expressed in feet above mean sea level.

Decision height (DH) is a specified height above the ground level at which a person must initiate a missed approach during a Category II or III approach if the person does not see the required visual reference.

Final approach fix (FAF) defines the beginning of the nonprecision final

approach segment and the point where final segment descent may begin.

* * * * *

Instrument approach procedure (IAP) is a predetermined ground track and vertical profile that provides prescribed measures of obstruction clearance and assurance of navigation signal reception capability. An IAP enables a person to maneuver a properly equipped aircraft with reference to approved flight instruments from a specified position and altitude to—

(1) A position and altitude from which a landing can be completed; or

(2) A position and altitude at which holding or en route flight may begin.

* * * * *

Minimum descent altitude (MDA) is the lowest altitude to which a person may descend on a nonprecision final approach, or during a circle-to-land maneuver, until the visual reference requirements of § 91.175(c) of this chapter are met. Minimum descent altitude is expressed in feet above mean sea level.

* * * * *

Night is the time between the end of evening civil twilight and the beginning of morning civil twilight, as published in the American Air Almanac, converted to local time or such other period between sunset and sunrise, as may be prescribed by the FAA.

* * * * *

Nonprecision approach procedure (NPA) is an instrument approach procedure based on a lateral path and no vertical glide path.

* * * * *

Precision approach procedure (PA) is an instrument approach procedure based on a lateral path and a vertical glide path.

Precision final approach fix (PFAF) defines the beginning of the precision or APV final approach segment, and denotes the location where the glide path intersects the intermediate segment altitude; *i.e.*, where final segment descent on glide path may begin.

* * * * *

Route segment is a portion of a route bounded on each end by a fix or navigation aid (NAVAID).

* * * * *

3. Amend § 1.2 by adding the following abbreviations in alphabetical order to read as follows:

§ 1.2 Abbreviations and symbols.

* * * * *

APV means approach procedure with vertical guidance.

* * * * *

NM means nautical mile.

NPA means nonprecision approach procedure.

* * * * *

PA means precision approach procedure.

* * * * *

RNAV means area navigation.

* * * * *

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

4. 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.

5. Revise the heading of part 71 to read as set forth above.

Subpart A—Class A Airspace

6. Transfer the heading ''Subpart A—General; Class A Airspace'' from where it appears preceding § 71.1 to preceding § 71.31 and revise it to read as set forth above.

7. Add § 71.11 to read as follows:

§ 71.11 Air Traffic Service (ATS) routes.

Unless otherwise specified, the following apply:

(a) An Air Traffic Service (ATS) route is based on a centerline that extends from one navigation aid, fix, or intersection, to another navigation aid, fix, or intersection (or through several navigation aids, fixes, or intersections) specified for that route.

(b) ATS routes include the primary protected airspace dimensions defined in FAA Order 8260.3, ''United States Standard For Terminal Instrument Procedures (TERPS).'' Order 8260.3 is incorporated by reference in § 97.20 of this chapter.

(c) An ATS route does not include the airspace of a prohibited area.

8. Add § 71.13 to read as follows:

§ 71.13 Classification of Air Traffic Service (ATS) routes.

Unless otherwise specified, ATS routes are classified as follows:

(a) In subpart A of this part:

(1) Jet routes.

(2) Area navigation (RNAV) routes.

(b) In subpart E of this part:

(1) VOR Federal airways.

(2) Colored Federal airways.

(i) Green Federal airways.

(ii) Amber Federal airways.

(iii) Red Federal airways.

(iv) Blue Federal airways.

(3) Area navigation (RNAV) routes.

9. Add § 71.15 to read as follows:

§ 71.15 Designation of jet routes and VOR Federal airways.

Unless otherwise specified, the place names appearing in the descriptions of airspace areas designated as jet routes in subpart A of FAA Order 7400.9, and as VOR Federal airways in subpart E of FAA Order 7400.9, are the names of VOR or VORTAC navigation aids. FAA Order 7400.9 is incorporated by reference in § 71.1.

§ 71.73 [Removed]

10. Remove § 71.73.

§ 71.75 [Removed]

11. Remove § 71.75.

§ 71.77 [Removed]

12. Remove § 71.77.

§ 71.79 [Removed]

13. Remove § 71.79.

PART 91—GENERAL OPERATING AND FLIGHT RULES

14. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 stat. 1180).

15. Amend § 91.129 by revising paragraph (e) to read as follows:

§ 91.129 Operations in Class D airspace.

* * * * *

(e) *Minimum altitudes when operating to an airport in Class D airspace.* (1) Unless required by the applicable distance-from-cloud criteria, each person operating a large or turbine-powered airplane must enter the traffic pattern at an altitude of at least 1,500 feet above the elevation of the airport and maintain at least 1,500 feet until further descent is required for a safe landing.

(2) Each person operating a large or turbine-powered airplane that is performing approach and landing operations with vertical guidance (APV) or a precision approach procedure must:

(i) Operate at an altitude at or above the glide path between the published precision final approach fix and the decision altitude (DA), or decision height (DH), as applicable; or

(ii) If compliance with the applicable distance-from-cloud criteria requires interception closer in, operate at or above the glide path, between the point of interception of glide path and the DA or the DH.

(3) Each person operating an airplane approaching to land on a runway served

by a visual approach slope indicator must maintain an altitude at or above the glide path until a lower altitude is necessary for a safe landing.

(4) Paragraphs (e)(2) and (e)(3) of this section do not prohibit normal bracketing maneuvers above or below the glide slope that are conducted for the purpose of remaining on the glide path.

* * * * *

16. Amend § 91.131 by revising paragraph (c)(1) to read as follows:

§ 91.131 Operations in Class B airspace.

* * * * *

(c) * * *

(1) *For IFR operation.* An operable and suitable RNAV system, or VOR or TACAN receiver; and

* * * * *

17. Amend § 91.175 by amending paragraphs (e) introductory text and (j) by removing the word ''pilot'' and adding in its place the word ''person,'' by revising paragraphs (a), (b), (c) introductory text, (e)(1)(ii), (f) introductory text, (h), and (k) to read as follows:

§ 91.175 Takeoff and landing under IFR.

(a) *Instrument approaches to civil airports.* Unless otherwise authorized by the FAA, when it is necessary to use an instrument approach to a civil airport, each person operating an aircraft must use a standard instrument approach procedure prescribed in part 97 of this chapter for that airport. This paragraph does not apply to United States military aircraft.

(b) *Authorized DA/DH or MDA.* For the purpose of this section, when an approach procedure requires the use of DA/DH or MDA, the authorized DA/DH or MDA is the highest of the following—

(1) The DA/DH or MDA prescribed by the approach procedure.

(2) The DA/DH or MDA prescribed for the pilot in command.

(3) The DA/DH or MDA for which the aircraft is equipped.

(c) *Operation below DA/DH or MDA.* Where a DA/DH or MDA is applicable, no pilot may operate an aircraft, except a military aircraft of the United States, at any airport below the authorized MDA or continue an approach below the authorized DA/DH unless—

* * * * *

(e) * * *

(1) * * *

(ii) Upon arrival at the missed approach point, including a DA/DH where a DA/DH is specified and its use is required, and at any time after that until touchdown.

* * * * *

(f) *Civil airport takeoff minimums.* Unless otherwise authorized by the FAA, no person operating an aircraft under part 121, 125, 129, or 135 of this chapter may takeoff from a civil airport under IFR unless weather conditions are at or above the weather minimums for IFR takeoff prescribed for that airport under part 97 of this chapter. Where published civil takeoff minimums are based on a specified route, persons operating that aircraft must comply with that route unless an alternative route has been assigned by ATC. If takeoff minimums are not prescribed under part 97 of this chapter for a particular airport, the following minimums apply to takeoffs under IFR for aircraft operating under part 121, 125, 129, or 135 of this chapter:

* * * * *

(h) *Comparable values of RVR and ground visibility.* Except for Category II or Category III minimums, if RVR minimums for takeoff or landing are prescribed in an instrument approach procedure, but RVR is not reported for the runway of intended operation, the RVR minimum must be converted to ground visibility in accordance with the Comparable Values of RVR and Ground Visibility table in FAA Order 8260.3, ''United States Standard for Terminal Instrument Procedures (TERPS)'' (incorporated by reference in § 97.20 of this chapter). This visibility is the minimum for takeoff or landing on that runway.

* * * * *

(k) *ILS components.* The basic components of an ILS are the localizer, glide slope, and outer marker, and, when installed for use with Category II or Category III instrument approach procedures, an inner marker. The following means may be used to substitute for the outer marker: compass locator; precision approach radar (PAR) or airport surveillance radar (ASR); DME, VOR, or nondirectional beacon fixes authorized in the standard instrument approach procedure; and a suitable RNAV system in conjunction with a fix identified in the standard instrument approach procedure. Applicability of, and substitution for, the inner marker for a Category II or III approach is determined by the appropriate 14 CFR part 97 approach procedure, letter of authorization, or operations specification pertinent to the operation.

18. Amend § 91.177 by revising paragraph (a) to read as follows:

§ 91.177 Minimum altitudes for IFR operations.

(a) *Operation of aircraft at minimum altitudes.* Except when necessary for takeoff or landing, no person may operate an aircraft under IFR below—

(1) The applicable minimum altitudes prescribed in parts 95 and 97 of this chapter. However, if both a MEA and a MOCA are prescribed for a particular route or route segment, a person may operate an aircraft below the MEA down to, but not below, the MOCA, provided the applicable navigation signals are available. For aircraft using VOR for navigation, this applies only when the aircraft is within 22 nautical miles of that VOR (based on the reasonable estimate by the pilot operating the aircraft of that distance); or

(2) If no applicable minimum altitude is prescribed in parts 95 and 97 of this chapter, then—

(i) In the case of operations over an area designated as a mountainous area in part 95 of this chapter, an altitude of 2,000 feet above the highest obstacle within a horizontal distance of 4 nautical miles from the course to be flown; or

(ii) In any other case, an altitude of 1,000 feet above the highest obstacle within a horizontal distance of 4 nautical miles from the course to be flown.

* * * * *

19. Amend § 91.179 by adding introductory text to read as follows:

§ 91.179 IFR cruising altitude or flight level.

Unless otherwise authorized by ATC, the following rules apply—

* * * * *

§ 91.181 [Amended]

20. Amend § 91.181 by removing the words ''a Federal airway'' and adding in their place the words ''an ATS route'' in paragraph (a).

21. Amend § 91.183 by revising the heading and the introductory text to read as follows:

§ 91.183 IFR communications.

Unless otherwise authorized by the FAA, the pilot in command of each aircraft operated under IFR in controlled airspace must monitor the appropriate frequency and must report the following as soon as possible—

* * * * *

§ 91.185 [Amended]

22. Amend § 91.185 heading and paragraph (a) by removing the word ''radio.''

§ 91.189 [Amended]

23. Amend § 91.189 (c) by removing the term ''DH'' and adding in its place the term ''DA/DH'' wherever it appears, and amend paragraph (d) by removing

the word ''pilot'' and inserting the word ''person.''

24. Amend § 91.205 by revising paragraphs (d)(2) and (e) to read as follows:

§ 91.205 Powered civil aircraft with standard category U.S. airworthiness certificates: Instrument and equipment requirements.

* * * * *

(d) * * *

(2) Two-way communication and navigation equipment suitable for the route to be flown.

* * * * *

(e) *Flight at and above 18,000 feet MSL (FL 180).* If VOR navigation equipment is required under paragraph (d)(2) of this section, no person may operate a U.S.-registered civil aircraft within the 50 states and the District of Columbia at or above FL 180 unless that aircraft is equipped with approved DME or a suitable RNAV system. When the DME or RNAV system required by this paragraph fails at and above FL 180, the pilot in command of the aircraft must notify ATC immediately, and then may continue operations at and above FL 180 to the next airport of intended landing where repairs or replacement of the equipment can be made.

* * * * *

§ 91.219 [Amended]

25. Amend § 91.219(b)(5) by removing the term ''DH'' and adding in its place the term ''DA/DH.''

26. Amend § 91.511 by revising the heading and paragraph (a)(1) introductory text to read as follows:

§ 91.511 Communication and navigation equipment for over-water operations.

(a) * * *

(1) Communication equipment appropriate to the facilities to be used that can transmit to, and receive from, at least one communication facility from any place along the route:

* * * * *

27. Amend § 91.711 by revising paragraphs (c)(1)(i), (c)(1)(ii), and (e) introductory text to read as follows:

§ 91.711 Special rules for foreign civil aircraft.

* * * * *

(c) * * *

(1) * * *

(i) Communication equipment.

(ii) Navigation equipment suitable for the route to be flown.

* * * * *

(e) *Flight at and above FL 180.* If VOR navigation equipment is required under paragraph (c)(1)(ii) of this section, no person may operate a foreign civil aircraft within the 50 States and the District of Columbia at or above FL 180, unless the aircraft is equipped with DME or an IFR-approved RNAV system. When the DME or RNAV system required by this paragraph fails at and above FL 180, the pilot in command of the aircraft must notify ATC immediately and may then continue operations at and above FL 180 to the next airport of intended landing where repairs or replacement of the equipment can be made. A foreign civil aircraft may be operated within the 50 States and the District of Columbia at or above FL 180 without DME or an IFR-approved RNAV system when operated for the following purposes, and ATC is notified before each takeoff:

* * * * *

PART 95—IFR ALTITUDES

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

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

29. Revise § 95.1 to read as follows:

§ 95.1 Applicability.

(a) This part prescribes altitudes governing the operation of aircraft under IFR on ATS routes, or other direct routes for which an MEA is designated in this part. In addition, it designates mountainous areas and changeover points.

(b) The MAA is the highest altitude on an ATS route, or other direct route for which an MEA is designated, at which adequate reception of VOR signals is assured.

(c) The MCA applies to the operation of an aircraft proceeding to a higher minimum en route altitude when crossing specified fixes.

(d) The MEA is the minimum en route IFR altitude on an ATS route, ATS route segment, or other direct route. The MEA applies to the entire width of the ATS route, ATS route segment, or other direct route between fixes defining that route. Unless otherwise specified, an MEA prescribed for an off airway route or route segment applies to the airspace 4 nautical miles on each side of a direct course between the navigation fixes defining that route or route segment.

(e) The MOCA assures obstruction clearance on an ATS route, ATS route segment, or other direct route, and adequate reception of VOR navigation signals within 22 nautical miles of a VOR station used to define the route.

(f) The MRA applies to the operation of an aircraft over an intersection defined by ground-based navigation aids. The MRA is the lowest altitude at which the intersection can be determined using the ground-based navigation aids.

(g) The changeover point (COP) applies to operation of an aircraft

along a Federal airway, jet route, or other direct route; for which an MEA is designated in this part. It is the point for transfer of the airborne navigation reference from the ground-based navigation aid behind the aircraft to the next appropriate ground-based navigation aid to ensure continuous reception of signals.

PART 97—STANDARD INSTRUMENT PROCEDURES

30. The authority citation for part 97 continues to read as follows:

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

31. Revise the heading for part 97 to read as set forth above.

32. Revise § 97.1 to read as follows:

§ 97.1 Applicability.

(a) *General.* This part prescribes standard instrument procedures to airports in the United States and the weather minimums that apply to takeoffs and landings under IFR at those airports.

(b) *Departure procedures.* This part also prescribes departure procedures (DPs) developed for aircraft operating under parts 121, 125, 129, and 135 of this chapter to avoid obstacles, and establishes weather minimums that apply for takeoff under IFR at civil airports. Where published civil takeoff weather minimums are based on a specified route, persons operating that aircraft must comply with that route unless an alternative route has been assigned by ATC.

33. Revise § 97.3 to read as follows:

§ 97.3 Symbols and terms used in procedures.

As used in the standard instrument procedures prescribed in this part—

Aircraft approach category means a grouping of aircraft based on a speed of 1.3 V_{so} (at maximum certificated landing weight). V_{so} and the maximum certificated landing weight are those values established for the aircraft by the certificating authority of the country of registry. The categories are as follows—

(1) Category A: Speed less than 91 knots.

(2) Category B: Speed 91 knots or more but less than 121 knots.

(3) Category C: Speed 121 knots or more but less than 141 knots.

(4) Category D: Speed 141 knots or more but less than 166 knots.

(5) Category E: Speed 166 knots or more.

Approach procedure segments for which altitudes (minimum altitudes, unless otherwise specified) and paths are prescribed in procedures, are as follows—

(1) Initial approach is the segment between the initial approach fix and the intermediate fix or the point where the aircraft is established on the intermediate course or final approach course.

(2) Initial approach altitude is the altitude (or altitudes, in high altitude procedure) prescribed for the initial approach segment of an instrument approach.

(3) Intermediate approach is the segment between the intermediate fix or point and the final approach fix.

(4) Final approach is the segment between the final approach fix or point and the runway, airport, or missed approach point.

(5) Missed approach is the segment between the missed approach point, or point of arrival at decision altitude or decision height (DA/DH), and the missed approach fix at the prescribed altitude.

Ceiling means the minimum ceiling, expressed in feet above the airport elevation, required for takeoff or required for designating an airport as an alternate airport.

Copter procedures means helicopter procedures, with applicable minimums as prescribed in § 97.35. Helicopters may also use other procedures prescribed in subpart C of this part and may use the Category A minimum descent altitude (MDA), or decision altitude or decision height (DA/DH). For other than ''copter-only'' approaches, the required visibility minimum for Category I approaches may be reduced to one-half the published visibility minimum for Category A aircraft, but in no case may it be reduced to less than one-quarter mile prevailing visibility, or, if reported, 1,200 feet RVR. Reduction of visibility minima on Category II instrument approach procedures is prohibited.

FAF means final approach fix.

HAA means height above airport and is expressed in feet.

HAL means height above landing and is the height of the DA/MDA above a designated helicopter landing area elevation used for helicopter instrument approach procedures and is expressed in feet.

HAS means height above the surface and is the height of the DA/MDA above the highest terrain/surface within a 5,200-foot radius of the missed approach point used in helicopter instrument approach procedures and is expressed in feet AGL.

HAT means height above threshold expressed in feet.

HCH means helipoint crossing height and is the computed height of the vertical guidance path above the helipoint elevation at the helipoint expressed in feet.

Helipoint means the aiming point for the final approach course for heliports. It is normally the center point of the touchdown and lift-off area (TLOF). The helipoint elevation is the highest point on the TLOF and is the same elevation as heliport elevation.

Hold in lieu of PT means a holding pattern established under applicable FAA criteria, and used in lieu of a procedure turn to execute a course reversal.

MAP means missed approach point.

More than 65 knots means an aircraft that has a stalling speed of more than 65 knots (as established in an approved flight manual) at maximum certificated landing weight with full flaps, landing gear extended, and power off.

MSA means minimum safe altitude, expressed in feet above mean sea level, depicted on an approach chart that provides at least 1,000 feet of obstacle clearance for emergency use within a certain distance from the specified navigation facility or fix.

NA means not authorized.

NOPT means no procedure turn required. Altitude prescribed applies only if procedure turn is not executed.

Procedure turn means the maneuver prescribed when it is necessary to reverse direction to establish the aircraft on an intermediate or final approach course. The outbound course, direction of turn, distance within which the turn must be completed, and minimum altitude are specified in the procedure. However, the point at which the turn may be begun, and the type and rate of turn, is left to the discretion of the pilot.

RA means radio altimeter setting height.

RVV means runway visibility value.

SIAP means standard instrument approach procedure.

65 knots or less means an aircraft that has a stalling speed of 65 knots or less (as established in an approved flight manual) at maximum certificated landing weight with full flaps, landing gear extended, and power off.

T means nonstandard takeoff minimums or specified departure routes/procedures or both.

TDZ means touchdown zone.

Visibility minimum means the minimum visibility specified for approach, landing, or takeoff, expressed in statute miles, or in feet where RVR is reported.

34. Amend § 97.5 by revising the heading and paragraph (a) to read as follows:

§ 97.5 Bearings, courses, tracks, headings, radials, miles.

(a) All bearings, courses, tracks, headings, and radials in this part are magnetic, unless otherwise designated.

* * * * *

§ 97.10 [Removed and reserved]

35. Remove and reserve § 97.10.

36. Revise § 97.20 to read as follows:

§ 97.20 General.

(a) This subpart prescribes standard instrument procedures based on the criteria contained in FAA Order 8260.3, ''U.S. Standard for Terminal Instrument Procedures (TERPS)'' and FAA Order 8260.19, ''Flight Procedures and Airspace.'' These standard instrument procedures and FAA Orders were approved for incorporation by reference by the Director of the Federal Register pursuant to 5 U.S.C. 552(a) and 1 CFR part 51. They may be examined at the following locations:

(1) FAA Orders 8260.3 and 8260.19 may be examined at the Federal Aviation Administration, Flight Standards Service, Flight Technologies and Procedures Division (AFS–420), 6500 S. MacArthur Blvd., Oklahoma City, OK, and at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC. These Orders are available for purchase from the U.S. Government Printing Office, 710 N. Capitol Street, NW, Washington, DC 20401.

(2) Standard instrument procedures may be examined at the Federal Aviation Administration, National Flight Data Center (ATA–110), 800 Independence Avenue, S.W., Washington, DC, and at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(b) Standard instrument procedures and associated supporting data are documented on specific forms under FAA Order 8260.19 and are promulgated by the FAA through the National Flight Data Center (NFDC) as the source for aeronautical charts and avionics databases. These procedures are then portrayed on aeronautical charts and included in avionics databases prepared by the National Aeronautical Charting Office (AVN–500) and other publishers of aeronautical data for use by pilots using the NFDC source data. The terminal aeronautical charts published by the U.S. Government were approved for incorporation by reference by the Director of the Federal Register pursuant

to 5 U.S.C. 552(a) and 1 CFR part 51. They may be examined at the Federal Aviation Administration, National Flight Data Center (ATA–110), 800 Independence Avenue, SW., Washington, DC, and at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC. These charts are available for purchase from the FAA National Aeronautical Charting Office, Distribution Division AVN–530, 6303 Ivy Lane, Suite 400, Greenbelt, MD 20770.

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

37. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

38. Amend § 121.99 by revising paragraph (a) to read as follows:

§ 121.99 Communications facilities.

(a) Each certificate holder conducting domestic or flag operations must show that a two-way communication system, or other means of communication approved by the FAA, is available over the entire route under normal operating conditions. The communications may be direct links or via an approved communication link that will provide reliable and rapid communications under normal operating conditions between each airplane and the appropriate dispatch office, and between each airplane and the appropriate air traffic control unit, except as specified in § 121.351(c). For non-normal and emergency operation conditions, the communication system for use between each airplane and the appropriate dispatch office and between each airplane and the appropriate ATC unit must have two-way voice communication capability. For the purpose of communications between the airplane and the dispatch office under this section, the term ''rapid communications'' means that the caller must be able to establish communications with the called party in less than four minutes.

* * * * *

39. Revise § 121.103 to read as follows:

§ 121.103 En route navigation systems.

(a) Except as provided in paragraph (b) of this section, each certificate holder conducting domestic or flag operations must show, for each proposed route (including to any regular, provisional, refueling or alternate airports), that suitable navigation aids are available over the route to navigate the airplane along the route with the required accuracy. Navigation aids required for approval of routes outside of controlled airspace are listed in the certificate holder's operations specifications except for those aids required for routes to alternate airports.

(b) Navigation aids are not required for any of the following operations—

(1) Day VFR operations that the certificate holder shows can be conducted safely by pilotage because of the characteristics of the terrain;

(2) Night VFR operations on routes that the certificate holder shows have reliably lighted landmarks adequate for safe operation; and

(3) Other operations approved by the FAA.

40. Revise § 121.121 to read as follows:

§ 121.121 En route navigation systems.

(a) Except as provided in paragraph (b) of this section, no certificate holder conducting supplemental operations may conduct any operation over a route (including to any destination, refueling or alternate airports) unless suitable navigation aids are available over the route to navigate the airplane along the route with the required accuracy. Navigation aids required for routes outside of controlled airspace are listed in the certificate holder's operations specifications except for those aids required for routes to alternate airports.

(b) Navigation aids are not required for any of the following operations—

(1) Day VFR operations that the certificate holder shows can be conducted safely by pilotage because of the characteristics of the terrain;

(2) Night VFR operations on routes that the certificate holder shows have reliably lighted landmarks adequate for safe operation; and

(3) Other operations approved by the FAA.

§ 121.344 [Amended]

41. Amend § 121.344 by removing the words ''decision height'' and adding in their place the words ''decision altitude/decision height'' in paragraph (a)(54).

§ 121.345 [Amended]

42. Amend § 121.345 by removing the word ''radio'' in the heading and in paragraphs (a) and (b) and adding in its place the word ''communication.''

43. Amend § 121.347 by revising the heading, paragraphs (a) introductory text, (a)(1), (a)(2), and (b) to read as follows:

§ 121.347 Communication and navigation equipment for operations under VFR over routes navigated by pilotage.

(a) No person may operate an airplane under VFR over routes that can be navigated by pilotage unless the airplane is equipped with the communication equipment necessary under normal operating conditions to fulfill the following:

(1) Communicate with at least one appropriate station from any point on the route; and

(2) Communicate with appropriate air traffic control facilities from any point within Class B, Class C, or Class D airspace, or within a Class E airspace surface area designated for an airport in which flights are intended.

* * * * *

(b) No person may operate an airplane at night under VFR over routes that can be navigated by pilotage unless that airplane is equipped with—

(1) Communication equipment necessary under normal operating conditions to fulfill the functions specified in paragraph (a) of this section; and

(2) Navigation equipment suitable for the route to be flown.

44. Revise § 121.349 to read as follows:

§ 121.349 Communication and navigation equipment for operations under VFR over routes not navigated by pilotage or for operations under IFR or over the top.

(a) *Navigation equipment requirements.* Except as provided in paragraph (c) of this section, no person may conduct operations under VFR over routes that cannot be navigated by pilotage, or operations conducted under IFR or over the top, unless the airplane used in those operations is equipped with at least two approved independent navigation systems suitable for the route to be flown and authorized in the certificate holder's operations specifications. However, only one navigation system need be provided for precision approach and APV operations. Equipment used to receive signals en route also may be used to receive signals on approach, if it is capable of receiving both signals.

(b) *Communication equipment requirements.* No person may operate an airplane under VFR over routes that cannot be navigated by pilotage, and no person may operate an airplane under IFR or over the top, unless the airplane is equipped with—

(1) For normal operating conditions, at least two independent communication systems that fulfill the functions specified in § 121.347(a); and

(2) Except as required in § 121.99, for non-normal and emergency operating

conditions, at least one of the two independent communication systems that fulfills the functions specified in § 121.347(a), and has two-way voice communication capability.

(c) *Use of a single independent navigation system.* Notwithstanding the requirements in paragraph (a) of this section, the airplane may be equipped with a single independent navigation system suitable for the route to be flown if:

(1) The airplane is equipped with at least one other independent navigation system suitable, in the event of loss of the navigation capability of the single system at any point along the route, for navigating safely to a suitable airport and completing an instrument approach;

(2) Both navigation systems are authorized by the FAA in the certificate holder's operations specifications; and

(3) The airplane has sufficient fuel so that the flight may proceed safely to a suitable airport by use of the remaining navigation system, and complete an instrument approach and land.

(d) *Use of VOR navigation equipment.* If VOR navigation equipment is used to comply with paragraph (a) or (c) of this section, no person may operate an airplane unless it is equipped with at least one approved DME or suitable IFR approved RNAV system.

(e) *Additional communication system equipment requirements.* In addition to the requirements in paragraph (b) of this section, no person may operate an airplane having a passenger seat configuration of 10 to 30 seats, excluding each crewmember seat, and a maximum payload capacity of 7,500 pounds or less, under IFR, over the top, or in extended over-water operations unless it is equipped with at least—

(1) Two microphones; and

(2) Two headsets, or one headset and one speaker.

45. Amend § 121.351 by revising the heading and paragraphs (a), (c)(1), and (c)(3) to read as follows:

§ 121.351 Communication and navigation equipment for extended over-water operations and for certain other operations.

(a) Except as provided in paragraph (c) of this section, no person may conduct an extended over-water operation unless the airplane is equipped with at least two independent communication systems that meet the following requirements—

(1) The communication equipment necessary under normal operating conditions to communicate with at least one appropriate station from any point on the route;

(2) The communication equipment necessary under normal operating conditions to receive meteorological information from any point on the route by either of two independent communication systems. One of the communication systems used to comply with this paragraph may be used to comply with paragraphs (a)(1) and (a)(3) of this section;

(3) For non-normal and emergency operating conditions, one communication system having two way voice communication capability; and

(4) Two LRNSs when VOR or ADF radio navigation equipment is unusable along a portion of the route.

* * * * *

(c) * * *

(1) The ability of the flightcrew to navigate the airplane along the route with the required accuracy,

* * * * *

(3) The duration of the very high frequency communications gap, if only very high frequency communication equipment is installed.

§ 121.419 [Amended]

46. Amend § 121.419(a)(1)(vii) by removing the term ''DH'' and adding in its place the term ''DA/DH''.

§ 121.559 [Amended]

47. Amend § 121.559(c) by removing the words ''ground radio station'' and adding in their place the words ''communication facility''.

48. Amend § 121.561 by revising the heading to read as set forth below and by amending paragraph (a) by removing the words ''ground or navigational facility'' and adding in their place the words ''ground facility or navigation aid''.

§ 121.561 Reporting potentially hazardous meteorological conditions and irregularities of ground facilities or navigation aids.

* * * * *

§ 121.565 [Amended]

49. Amend § 121.565(c) by removing the words ''ground radio station'' and adding in their place the words ''communication facility'' and by removing the word ''station'' and adding in its place the word ''facility''.

§ 121.579 [Amended]

50. Amend § 121.579(b) introductory text by removing the words ''decision height'' and adding in their place the term ''DA/DH'' and amend paragraphs (b)(1) and (b)(2) by removing the term ''ILS'' and adding in its place the word ''precision''.

51. Amend § 121.651 by replacing the term ''DH'' with the term ''DA/DH'' wherever it appears in paragraph (c) and by revising paragraph (d) introductory text to read as follows:

§ 121.651 Takeoff and landing weather minimums: IFR: All certificate holders.

* * * * *

(d) A pilot may begin the final approach segment of a Category I precision approach procedure at an airport when the visibility is less than the visibility minimums prescribed for that procedure if that airport is served by an operative PAR and another operative precision instrument approach system, and both the PAR and the precision approach are used by the pilot. However, no person may continue an approach below the authorized DA, unless—

* * * * *

§ 121.652 [Amended]

52. Amend § 121.652(a) by removing the term ''DH'' wherever it appears and adding in its place the term ''DA/DH''.

Appendix M to Part 121 [Amended]

53. Amend Appendix M by removing the words ''Selected decision height'' and adding in their place the words ''Selected decision altitude/decision height'' in Parameter number 54.

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE; AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

54. The authority citation for part 125 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44710–44711, 44713, 44716–44717, 44722.

55. Amend § 125.51 by revising the heading to read as set forth below and amend paragraphs (a) and (b) by removing the words ''nonvisual ground aids'' and adding in their place the words ''navigation aids''.

§ 125.51 En route navigation aids.

* * * * *

56. Revise § 125.203 to read as follows:

§ 125.203 Communication and navigation equipment.

(a) No person may operate an airplane unless it has two-way communication equipment able, at least in flight, to transmit to, and receive from, appropriate facilities 22 nautical miles away.

(b) No person may operate an airplane over the top unless it has navigation equipment suitable for the route to be flown.

(c) No person may operate an airplane carrying passengers under IFR or in

extended over-water operations unless the airplane has at least the following equipment:

(1) Two transmitters;

(2) Two microphones;

(3) Two headsets or one headset and one speaker;

(4) Two independent communication systems, one of which must have two-way voice communication capability, capable of transmitting to, and receiving from, at least one appropriate facility from any place on the route to be flown; and

(5) Two approved independent navigation systems suitable for the route to be flown and authorized in the certificate holder's operations specifications. However, only one navigation system need be provided for precision approach and APV operations. Equipment used to receive signals en route also may be used to receive signals on approach, if it is capable of receiving both signals.

(d) *Use of a single independent navigation system.* Notwithstanding the requirements in paragraph (c) of this section, the airplane may be equipped with a single independent navigation system suitable for the route to be flown if—

(1) The airplane is equipped with at least one other independent navigation system suitable, in the event of loss of the navigation capability of the single system at any point along the route, for navigating safely to a suitable airport and completing an instrument approach;

(2) Both navigation systems are authorized by the FAA in the certificate holder's operations specifications; and

(3) The airplane has sufficient fuel so that the flight may proceed safely to a suitable airport by use of the remaining navigation system, and complete an instrument approach and land.

(e) *Use of VOR navigation equipment.* If VOR navigation equipment is required by paragraph (c) or (d) of this section, no person may operate an airplane unless it is equipped with at least one approved DME or a suitable IFR approved RNAV system.

(f) Notwithstanding the requirements of paragraph (c) of this section, installation and use of a single LRNS and a single LRCS for extended over-water operations in certain geographic areas may be authorized by the Administrator and approved in the certificate holder's operations specifications. The following are among the operational factors the Administrator may consider in granting an authorization:

(1) The ability of the flight crew to navigate the airplane along the route with the required accuracy;

(2) The length of the route being flown with a single navigation or communication system; and

(3) The duration of the very high frequency communications gap, if only very high frequency communication equipment is installed.

57. Amend § 125.321 by revising the heading to read as set forth below and by removing the words ''ground or navigational facility''and adding in their place the words ''ground facility or navigation aid''.

§ 125.321 Reporting potentially hazardous meteorological conditions and irregularities of ground facilities or navigation aids.

* * * * *

§ 125.379 [Amended]

58. Amend § 125.379(a) by removing the term ''DH'' wherever it appears and adding in its place the term ''DA/DH''.

59. Amend § 125.381 (a) and (b) by removing the word ''pilot'' and adding in its place the word ''person'', and by revising paragraph (c) to read as follows:

§ 125.381 Takeoff and landing weather minimums: IFR.

* * * * *

(c) If a pilot initiates an instrument approach procedure based on a weather report that indicates that the specified visibility minimums exist and subsequently receives another weather report that indicates that conditions have worsened to below the minimum requirements, then the pilot may continue with the approach and landing only if both of the following conditions are met—

(1) The later weather report is received when the airplane is in one of the following landing phases:

(i) The airplane is on a precision approach or APV and has passed the precision final approach fix.

(ii) The airplane is on the final approach segment using a nonprecision approach procedure.

(iii) The airplane is on a PAR final approach and has been turned over to the final approach controller.

(2) The pilot in command finds, on reaching the authorized MAP or DA/DH, that the actual weather conditions are at or above the minimums prescribed in the certificate holder's operations specifications.

PART 129—OPERATIONS: FOREIGN AIR CARRIERS AND FOREIGN OPERATORS OF U.S.-REGISTERED AIRCRAFT ENGAGED IN COMMON CARRIAGE

60. The authority citation for part 129 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40104–40105, 40113, 40119, 41706, 44701–44702, 44712, 44716–44717, 44722, 44901–44904, 44906.

61. Add § 129.16 to read as follows:

§ 129.16 Communication and navigation equipment for rotorcraft operations under VFR over routes navigated by pilotage.

(a) No person may operate a rotorcraft under VFR over routes that can be navigated by pilotage unless the rotorcraft is equipped with the communication equipment necessary under normal operating conditions to fulfill the following:

(1) Communicate with at least one appropriate station from any point on the route;

(2) Communicate with appropriate air traffic control facilities from any point within Class B, Class C, or Class D airspace, or within a Class E airspace surface area designated for an airport in which flights are intended; and

(3) Receive meteorological information from any point en route.

(b) No person may operate a rotorcraft at night under VFR over routes that can be navigated by pilotage unless that rotorcraft is equipped with—

(1) Communication equipment necessary under normal operating conditions to fulfill the functions specified in paragraph (a) of this section; and

(2) Navigation equipment suitable for the route to be flown.

62. Revise § 129.17 to read as follows:

§ 129.17 Aircraft communication and navigation equipment for operations under IFR or over the top.

(a) *Aircraft navigation equipment requirements.* No person may conduct operations under IFR or over the top unless the aircraft used in those operations is equipped with at least two approved independent navigation systems suitable for the route to be flown and authorized in the certificate holder's operations specifications. However, only one navigation system needs to be provided for precision approach and APV operations. Equipment used to receive signals en route also may be used to receive signals on approach, it if is capable of receiving both signals.

(b) *Aircraft communication equipment requirements.* No person may operate an aircraft under IFR or

over the top, unless it is equipped with—

(1) For normal operating conditions, at least two independent communication systems that fulfill the functions specified in § 121.347(a) of this chapter; and

(2) For non-normal and emergency operating conditions, at least one of the two independent communication systems that fulfills the functions specified in § 121.347(a) of this chapter must have two-way voice communication capability.

(c) *Use of a single independent navigation system.* Not withstanding the requirements in paragraph (a) of this section, the aircraft may be equipped with a single independent navigation system suitable for the route to be flown if—

(1) The aircraft is equipped with at least one other independent navigation system suitable, in the event of loss of the navigation capability of the single system at any point along the route, for navigating safely to a suitable airport and completing an instrument approach.

(2) Both navigation systems are authorized by the FAA in the certificate holder's operations specifications; and

(3) The aircraft has sufficient fuel so that the flight may proceed safely to a suitable airport by use of the remaining navigation system, and complete an instrument approach and land.

(d) *VOR navigation equipment.* If VOR navigation equipment is required by paragraph (a) or (c) of this section, no person may operate an aircraft unless it is equipped with at least one approved DME or suitable IFR approved RNAV system.

63. Revise § 129.21 to read as follows:

§ 129.21 Control of traffic.

(a) Subject to applicable immigration laws and regulations, each foreign air carrier must furnish sufficient personnel necessary to provide two-way communications between its aircraft and stations at places where the FAA finds that communication is necessary but cannot be maintained in a language with which station operators are familiar.

(b) Each person furnished by a foreign air carrier under paragraph (a) of this section must be able to speak English and the language necessary to maintain communications with its aircraft and must assist station operators in directing traffic.

64. Amend Appendix A to part 129 by revising paragraph (b), Section IV, to read as follows:

Appendix A to Part 129—Application for Operations Specifications by Foreign Air Carriers

* * * * *

(b) * * *

Sec. IV. Communications facilities. List all communication facilities to be used by the applicant in the conduct of the proposed operations within the United States and over that portion of the route between the last point of foreign departure and the United States.

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON DEMAND OPERATIONS AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

65. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 41706, 44113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

66. Amend § 135.67 by revising the heading to read as set forth below and by removing the words ''ground communications or navigational facility'' and adding in their place the words ''ground facility or navigation aid''.

§ 135.67 Reporting potentially hazardous meteorological conditions and irregularities of ground facilities or navigation aids.

* * * * *

67. Add § 135.78 to read as follows:

§ 135.78 Instrument approach procedures and IFR landing minimums.

No person may make an instrument approach at an airport except in accordance with IFR weather minimums and instrument approach procedures set forth in the certificate holder's operations specifications.

§ 135.79 [Amended]

68. Amend § 135.79(a)(3) by removing the words ''radio or telephone communications'' and adding in their place the word ''communications''.

§ 135.93 [Amended]

69. Amend § 135.93(b) by removing the words ''When using an instrument approach facility other than ILS,'' and adding in their place the words ''For other than precision approaches,'' and amend paragraph (c) by removing the words ''For ILS approaches,'' and adding in their place the words ''For precision approaches,''.

§ 135.152 [Amended]

70. Amend § 135.152(h)(54) by removing the words ''decision height'' and adding in their place the words ''decision altitude/decision height''.

71. Revise § 135.161 to read as follows:

§ 135.161 Communication and navigation equipment for aircraft operations under VFR over routes navigated by pilotage.

(a) No person may operate an aircraft under VFR over routes that can be navigated by pilotage unless the aircraft is equipped with the communication equipment necessary under normal operating conditions to fulfill the following:

(1) Communicate with at least one appropriate station from any point on the route.

(2) Communicate with appropriate air traffic control facilities from any point within Class B, Class C, or Class D airspace, or within a Class E airspace surface area designated for an airport in which flights are intended.

(3) Receive meteorological information from any point en route.

(b) No person may operate an aircraft at night under VFR over routes that can be navigated by pilotage unless that aircraft is equipped with—

(1) Communication equipment necessary under normal operating conditions to fulfill the functions specified in paragraph (a) of this section; and

(2) Navigation equipment suitable for the route to be flown.

72. Revise § 135.165 to read as follows:

§ 135.165 Communication and navigation equipment: Extended over-water or IFR operations.

(a) *Aircraft navigation equipment requirements.* No person may conduct operations under IFR or extended over-water unless the aircraft used in those operations is equipped with at least two approved independent navigation systems suitable for the route to be flown and authorized in the certificate holder's operations specifications. However, only one navigation system need be provided for precision approach and APV operations. Equipment used to receive signals en route also may be used to receive signals on approach, if it is capable of receiving both signals.

(b) *Use of a single independent navigation system.* Notwithstanding the requirements in paragraph (a) of this section, the aircraft may be equipped with a single independent navigation system suitable for the route to be flown if:

(1) The aircraft is equipped with at least one other independent navigation system suitable, in the event of loss of the navigation capability of the single system at any point along the route, for navigating safely to a suitable airport

and completing an instrument approach;

(2) Both navigation systems are authorized by the FAA in the certificate holder's operations specifications; and

(3) The aircraft has sufficient fuel so that the flight may proceed safely to a suitable airport by use of the remaining navigation system, and complete an instrument approach and land.

(c) *VOR navigation equipment.* Whenever VOR navigation equipment is required by paragraph (a) or (b) of this section, no person may operate an aircraft unless it is equipped with at least one approved DME or suitable IFR approved RNAV system.

(d) *Aircraft communication equipment requirements.* Except as permitted in paragraph (e) of this section, no person may operate a turbojet airplane having a passenger seat configuration, excluding any pilot seat, of 10 seats or more, or a multiengine airplane in a commuter operation, as defined in part 119 of this chapter, under IFR or in extended over-water operations unless it is equipped with—

(1) For normal operating conditions, at least two independent communication systems that fulfill the functions specified in § 121.347(a) of this chapter; and

(2) For non-normal and emergency operating conditions, at least one of the two independent communication systems that fulfills the functions specified in § 121.347(a) of this chapter must have two-way voice communication capability.

(e) *IFR or extended over-water communications equipment requirements.* A person may operate an aircraft other than that specified in paragraph (d) of this section under IFR or in extended over-water operations if it meets all of the requirements of this section, with the exception that only one communication system transmitter is required for operations other than extended over-water operations.

(f) *Additional aircraft communication equipment requirements.* In addition to the requirements in paragraphs (d) and (e) of this section, no person may operate an aircraft under IFR or in extended over-water operations unless it is equipped with at least:

(1) Two microphones; and

(2) Two headsets or one headset and one speaker.

(g) *Extended over-water exceptions.* Notwithstanding the requirements of paragraphs (a), (b), (d) and (e) of this section, installation and use of a single LRNS and a single LRCS for extended over-water operations in certain geographic areas may be authorized by the Administrator and approved in the certificate holder's operations specifications. The following are among the operational factors the Administrator may consider in granting an authorization:

(1) The ability of the flight crew to navigate the airplane along the route with the required accuracy,

(2) The length of the route being flown with a single navigation or communication system; and

(3) The duration of the very high frequency communications gap, if very high frequency communications equipment is installed.

73. Amend § 135.225 (a), (b), (e), (f), and (g) by removing the word ''pilot'' and adding in its place the word ''person'', and by revising paragraphs (c)(1), (c)(3) introductory text, (c)(3)(ii), and (d) to read as follows:

§ 135.225 IFR: Takeoff, approach and landing minimums.

* * * * *

(c) * * *

(1) On a precision or APV approach and has passed the precision final approach fix; or

* * * * *

(3) On a nonprecision final approach; and the aircraft—

* * * * *

(ii) Where a final approach fix is not specified, has completed the procedure turn and is established inbound toward the airport on the final approach course within the distance prescribed in the procedure. The approach may be continued, and a landing made, if the pilot finds, upon reaching the authorized MDA or DA/DH, that actual weather conditions are at or above the minimums prescribed for the procedure.

(d) For each pilot in command of a turbine-powered airplane who has not served at least 100 hours as pilot in command in that type of airplane, the MDA or DA/DH and visibility landing minimums prescribed in part 97 of this chapter or in the certificate holder's operations specifications for a particular approach must be increased by 100 feet and one half statute mile, respectively, but not to exceed the ceiling and visibility minimums for that approach when used as an alternate airport.

* * * * *

§ 135.345 [Amended]

74. Amend § 135.345(a)(7) by removing the term ''DH'' and adding in its place the term ''DA/DH''.

§ 135.371 [Amended]

75. Amend § 135.371(c)(2) by removing the word ''radio''.

§ 135.381 [Amended]

76. Amend § 135.381(b)(2) by removing the word ''radio''.

Appendix F to Part 135 [Amended]

77. Amend Appendix F by removing the words ''Selected decision height'' and adding in their place the words ''Selected DA/DH'' in Parameter number 54.

Issued in Washington, DC on December 3, 2002.

Louis C. Cusimano,

Acting Director, Flight Standards Service.

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Part III

Department of Health and Human Services

42 CFR Parts 54 and 54a

45 CFR Part 96

Charitable Choice Regulations; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Parts 54 and 54a

45 CFR Part 96

RIN 0930–AA11

Charitable Choice Regulations Applicable to States Receiving Substance Abuse Prevention and Treatment Block Grants, Projects for Assistance in Transition From Homelessness Formula Grants, and to Public and Private Providers Receiving Discretionary Grant Funding From SAMHSA for the Provision of Substance Abuse Services Providing for Equal Treatment of SAMHSA Program Participants

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement the Charitable Choice statutory provisions of section 581–584 and section 1955 of the Public Health Service Act, applicable to the Substance Abuse Prevention and Treatment (SAPT) Block Grant program, the Projects for Assistance in Transition from Homelessness (PATH) formula grant program, insofar as recipients provide substance abuse services, and to SAMHSA discretionary grants for substance abuse treatment or prevention services, which are all administered by the Substance Abuse and Mental Health Services Administration (SAMHSA) of the U.S. Department of Health and Human Services. It is SAMHSA's policy that, within the framework of constitutional church-state guidelines, faith-based organizations should be able to compete on an equal footing for SAMHSA funding, and SAMHSA supports the participation of faith-based organizations in its programs for the provision of substance abuse services.

DATES: Submit written comments on this proposal by February 18, 2003. Submit written comments on the information collection provisions by January 16, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Office of Policy, Planning and Budget, SAMHSA, Attn: Winnie Mitchell by fax (301–443–1450) or e-mail (*samhsareg@samhsa.gov*). Communications should refer to the above docket number and title. A copy of each communication submitted will be available for inspection and copying between 9 a.m. and 5 p.m. at the above address. Submit written comments on the information collection requirements to the Office of Information and Regulatory Affairs, OMB,Attn: Lauren Wittenberg by fax (202–395–6974) or e-mail (*Lauren_Wittenberg@omb.eop.gov*).

FOR FURTHER INFORMATION CONTACT: Winnie Mitchell of the Office of Policy, Planning and Budget, SAMHSA by fax (301–443–1450) or e-mail (*samhsareg@samhsa.gov*).

SUPPLEMENTARY INFORMATION:

Background

Section 1955 of the Public Health Service Act, 42 U.S.C. 300x–65, as added by the Children's Health Act of 2000 (Pub. L. 106–310), as well as sections 581–584 of the Public Health Service Act, 42 U.S.C. 290kk, *et seq.*, as added by the Consolidated Appropriations Act (Pub. L. 106–554),(hereinafter referred to as ''SAMHSA Charitable Choice provisions'') set forth certain provisions which are designed to give people in need of substance abuse services a greater choice of SAMHSA-supported substance abuse prevention and treatment programs. SAMHSA's Charitable Choice provisions ensure that religious organizations are able to compete on an equal footing for Federal substance abuse funding administered by SAMHSA, without impairing the religious character of such organizations and without diminishing the religious freedom of SAMHSA beneficiaries. These provisions apply to recipients of the Substance Abuse Prevention and Treatment (SAPT) Block Grant funds, the Projects for Assistance in Transition from Homelessness (PATH) formula grant funds, 42 U.S.C. 290cc–21, *et seq.*, and to SAMHSA discretionary grants funds for substance abuse prevention and treatment services (42 U.S.C. 290aa, *et seq.*)

President Bush has made it one of his Administration's top priorities to ensure that Federal programs are fully open to faith-based and community groups in a manner that is consistent with the Constitution. It is the Administration's view that faith-based organizations are an indispensable part of the social services network of the United States. Faith-based organizations, including places of worship, nonprofit organizations, and neighborhood groups, offer scores of social services to those in need. The SAMHSA Charitable Choice provisions are consistent with the Administration's belief that there should be an equal opportunity for all organizations—both faith-based and nonreligious—to participate as partners in Federal programs to serve Americans in need.

Purpose of Proposed Rule

The SAMHSA Charitable Choice provisions contain important protections both for religious organizations that receive SAMHSA funding for substance abuse services and for the individuals who receive services from such programs. The objective of this proposed rule is to ensure that SAMHSA substance abuse programs are open to all eligible organizations, regardless of religious character or affiliation, and to establish clearly the proper uses to which funds may be put and the conditions for receipt of funding. The proposed regulations seek to provide maximum flexibility to the States and local governments, and to religious organizations that are ''program participants'' in implementing these provisions. In that vein, SAMHSA proposes that duly-designated officials from the States and applicants for SAMHSA discretionary funding for applicable programs assure that they will comply with these provisions.

Proposed Regulations

The Department is proposing to amend the regulations to add 42 CFR part 54 and part 54a. Part 54 addresses implementation of these provisions with regard to SAMHSA's Substance Abuse Prevention and Treatment (SAPT) Block Grant, 42 U.S.C. 300x to 300x-66, and to SAMHSA's Projects for Assistance in Transition from Homelessness (PATH) Formula Grants, 42 U.S.C. 290cc–21 to 290cc–35, in which the State has most of the responsibility for implementation. Part 54a addresses implementation of these provisions with regard to SAMHSA's discretionary grant programs, 42 U.S.C. 290aa *et seq.*, in which implementation responsibility is shared among SAMHSA, and the States and local governments as recipients of those grants. Some of the main provisions of the proposed rule are as follows, along with specific questions regarding the alternative service provision on which SAMHSA is seeking input during the regulatory comment process.

Equal Treatment for Religious Organizations. Under SAMHSA's Charitable Choice provisions, organizations are eligible to participate in SAMHSA programs without regard to their religious character or affiliation, and organizations may not be excluded from the competition for Federal funds simply because they are religious. Specifically, religious organizations are eligible to compete for funding on the

same basis, and under the same eligibility requirements, as all other nonprofit organizations. The Federal government, and State and local governments administering Federal funds under SAMHSA substance abuse grant programs, are prohibited from discriminating against organizations on the basis of religion or their religious character.

Restriction on Religious Activities By Organizations That Receive Funding Directly From SAMHSA. The proposed rule describes limitations on the use of substance abuse funds provided directly from SAMHSA or the relevant State or local government to an organization, as opposed to those funds that an organization receives as the result of the genuine and independent private choice of a beneficiary.[1]

Specifically, SAMHSA funds that are provided directly to a participating organization may not be used to support inherently religious activities, such as worship, religious instruction, or proselytization. If the organization engages in such activities, the activities must be offered separately, in time or location, from the programs or services funded with direct SAMHSA assistance, and participation must be voluntary for the beneficiaries of the SAMHSA-funded programs or services. This requirement ensures that SAMHSA funds provided directly to religious organizations are not used to support inherently religious activities. Thus, SAMHSA funds provided directly to a participating organization, including formula grant funds, must not be used by a substance abuse treatment or prevention program, for example, to conduct prayer meetings, studies of sacred texts, or any other activity that is inherently religious.

This restriction does not mean a SAMHSA-funded substance abuse service organization cannot engage in inherently religious activities. It means simply that such an organization cannot fund these activities with the funds provided directly by SAMHSA or the relevant State or local government. Thus, faith-based organizations that receive direct SAMHSA funds must take steps to separate, in time or location, their inherently religious activities from the government-funded services that they offer.

In addition, any participation by a beneficiary in such religious activities must be voluntary. An invitation to participate in an organization's religious activities is not in itself inappropriate. However, participating religious organizations must be careful to reassure program beneficiaries that they will receive SAMHSA-funded help even if they do not participate in these activities, and that their decision will have no bearing on the services they receive. In short, any participation by recipients of SAMHSA-funded services in such religious activities must be voluntary and understood to be voluntary.

These restrictions on inherently religious activities do not apply where SAMHSA funds are provided to religious organizations as a result of a genuine and independent private choice of a beneficiary. A religious organization may receive SAMHSA funds as the result of a beneficiary's genuine and independent private choice if, for example, the State has established a voucher, coupon, certificate, or similar funding mechanism for a beneficiary to redeem using SAMHSA funds under a program that is designed by a State to give that individual a choice among providers. Thus, religious organizations that receive SAMHSA funds to provide services as a result of a beneficiary's genuine and independent private choice need not separate, in time or location, their inherently religious activities from the SAMHSA-funded services they provide, provided they otherwise satisfy the requirements of the program.

Religious Character and Independence of Religious Organizations. The proposed rule clarifies that a religious organization that participates in SAMHSA programs retains its independence from Federal, State, and local governments. It may continue to carry out its mission, including the definition, practice and expression of its religious beliefs, provided that it does not use direct SAMHSA funds to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use their facilities to provide SAMHSA-funded substance abuse services, without removing religious art, icons, scriptures, or other symbols. In addition, a religious organization receiving funds from SAMHSA for substance abuse services may retain religious terms in its organization's name, may select its board members on a religious basis, and may include religious references in its organization's mission statements and other governing documents.

Employment Practices. The proposed rule clarifies that the participation of a religious organization in, or its receipt of funds from, a SAMHSA substance abuse services program does not affect that organization's exemption provided under 42 U.S.C. 2000e–1 regarding employment practices.

Title VII of the Federal Civil Rights Act of 1964 provides that a religious organization may, without running afoul of Title VII, hire employees who share its religious beliefs. This provision protects the religious liberty of communities of faith. It helps enable faith-based groups to promote common values, a sense of community and unity of purpose, and shared experiences through service—all of which can contribute to a religious organization's effectiveness. The SAMHSA Charitable Choice provisions thus reflect the recognition that a religious organization may determine that, in order to define or carry out its mission, it is important that it be able to take its faith into account in making employment decisions.

To the extent that 42 U.S.C. 300x–57(a)(2) or 42 U.S.C. 290cc–33(a)(2) imposes religious nondiscrimination requirements on the employment practices of program participants, the proposed rule clarifies that such requirements do not apply to program participants that demonstrate that these requirements would substantially burden their exercise of religion. In addition to being a reasonable construction of the SAMHSA Charitable Choice provisions, including 42 U.S.C. 300x–57, 300x–65, 290cc–33, 290kk–1, and 290kk–2, the inapplicability of section 300x–57(a)(2) and 290cc–33(a)(2) to religious organizations that can demonstrate a substantial burden on their exercise of religion arises from the Religious Freedom Restoration Act, 42 U.S.C. 2000bb *et seq.* Under this statute, the government may not impose legal requirements that substantially burden a grantee's exercise of religion except in defined circumstances. 42 U.S.C. 2000bb–1(a)–(b). As applied here, where a religious entity establishes that its exercise of religion would be substantially burdened by the religious nondiscrimination requirements of sections 300x–57(a)(2) or 290cc–33(a)(2), the Religious Freedom Restoration Act supercedes those statutory requirements, thus exempting the religious entity therefrom.

This determination is based on several factors: religious entities are

[1] In the Charitable Choice context, the term ''direct'' funding is used to describe funds that are provided ''directly'' by a governmental entity or an intermediate organization with the same duties as a governmental entity, as opposed to funds that an organization receives as the result of the genuine and independent private choice of a beneficiary. In other contexts, the term ''direct'' funding may be used to refer to those funds that an organization receives directly from the Federal government (also known as ''discretionary'' funding), as opposed to funding that it receives from a State or local government (also known as ''indirect'' or ''block grant'' funding). In these proposed regulations, the term ''direct'' has the former meaning.

provided an exemption, under 42 U.S.C. 2000e–1(a), from the religious nondiscrimination requirements of the Civil Rights Act of 1964, which reflects Congress's judgment that employment decisions are an important component of religious entities' autonomy; many federal funding programs do not impose a religious nondiscrimination requirement upon the employment practices of grantees; 42 U.S.C. 300x–57(a)(2) and 290cc–33(a)(2) do not apply to the discretionary grant programs administered by the Secretary under this title; and secular entities that administer federally funded social programs generally are not precluded from considering their ideologies in making employment decisions. Congress's highly selective application of religious nondiscrimination requirements in the employment context belies the notion that there is a compelling governmental interest in applying such requirements to entities that make decisions to hire individuals of a particular religion in order to maintain their religious identity, autonomy, and/or communal religious exercise. A recipient that demonstrates a substantial burden from the application of the religious nondiscrimination requirements of sections 300x–57(a)(2) or 290cc–33(a)(2) is therefore entitled to employ individuals of a particular religion, notwithstanding the requirements of those provisions, as it would otherwise be entitled to do under 42 U.S.C. 2000e–1(a).

A religious organization that is a recipient of SAMHSA funds for the provision of substance abuse services that wishes to establish a substantial burden from the application of 42 U.S.C. 300x–57(a)(2) or 290cc–33(a)(2) to its organization, for the purpose of obtaining an exemption under 42 U.S.C. 2000bb, *et seq.,* must certify : (1) That it sincerely believes that employing individuals of a particular religion is important to the definition and maintenance of its religious identity, autonomy, and/or communal religious exercise; (2) that it makes employment decisions on a religious basis in analogous programs; (3) that the grant would materially affect its ability to provide the type of services in question; and (4) that providing the services in question is expressive of its values or mission. The organization must maintain documentation to support these determinations and must make such documentation available to SAMHSA upon request.

Finally, the proposed rule makes clear that nothing in this section shall be construed to modify or affect any State law or regulation that relates to discrimination in employment.

Nondiscrimination Against Beneficiaries. The proposed rule also clarifies provisions of SAMHSA's Charitable Choice provisions that apply to the individuals who receive SAMHSA-funded services. First, the proposed rule makes it clear that religious organizations participating in a SAMHSA-funded substance abuse program are prohibited from discriminating against beneficiaries or potential beneficiaries on the basis of religion or religious belief. Accordingly, religious organizations, in providing substance abuse services funded in whole or in part by SAMHSA, and in their outreach activities related to such services, may not discriminate against current or prospective program beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to participate actively in a religious practice.

Notice, Referral, and Provision of Alternative Services. SAMHSA invites specific comment on sections 54.8 and 54a.8 of the following regulations, regarding a program beneficiary's right to alternative services. In general, SAMHSA believes that securing alternative services for an individual at the local level may ultimately not be a function best performed by a Federal agency, but is rather best met by those who know the community best and are most informed about the availability of services. Because SAMHSA seeks to maximize State and provider flexibility in implementing these provisions, and because SAMHSA wants to ensure that the regulations rely on existing State and local practices for implementation, SAMHSA is seeking comment on the following general questions:

- How can State and local flexibility be maximized in implementing these provisions?
- How accurate are the paperwork burden estimates and how can the paperwork burden related to implementing these provisions be minimized?
- How should SAMHSA track the effectiveness of the implementation of these Charitable Choice provisions? What methods should States and program participants use and report to ensure implementation of the Charitable Choice provisions?

General Requirements. The proposed rule clarifies SAMHSA's Charitable Choice provisions stipulating that individuals who are receiving or may receive substance abuse services from a program participant funded in whole or in part by SAMHSA may object to the religious character of that participant, in which case they are entitled to receive services from an alternative provider. They have a right to receive a referral to an alternative provider within a reasonable period of time. That alternative provider must be reasonably accessible and have the capacity to provide comparable services to the individual. According to the SAMHSA Charitable Choice provisions, such services shall have a value that is not less than the value of the services that the individual would have received from the program participant to which the individual had such objection. The alternative provider need not be a secular organization. It must simply be a provider to which the program beneficiary has no religious objection.

To implement this right, the proposed rule imposes obligations on both SAMHSA-funded religious organizations and the governmental entity administering the program with respect to notice, referral, and provision of services from alternative providers. SAMHSA recognizes that a range of methods of fulfilling these responsibilities is possible, and therefore does not seek to prescribe a single, inflexible referral system that States must adopt. Rather, SAMHSA encourages State agencies, working in concert with local governments, religious providers, and other program providers, to develop systems to comply with the requirements, monitor compliance, identify compliance problems, and take necessary corrective actions. It is important that State and local agencies and religious organizations work cooperatively to develop systems to comply with these provisions, monitor compliance, identify compliance problems and take necessary corrective actions.

Notice. The SAMHSA Charitable Choice provisions require SAMHSA-funded religious organizations providing substance abuse services, public agencies that refer individuals to such SAMHSA-funded programs, and the appropriate Federal, State, or local governments that administer these SAMHSA-funded programs to ensure that notice is provided to beneficiaries and prospective beneficiaries regarding alternative services. The notice must articulate clearly the program beneficiary's right to a referral and to services that reasonably meet the timeliness, capacity, accessibility, and equivalency requirements discussed above. A model notice, which States and religious organizations are free to use, is provided at the end of this proposed rule.

Referral to Alternative Provider. If an individual objects to the religious character of the substance abuse treatment or prevention program from which they are receiving services, the religious organization must refer the individual, within a reasonable period of time, to another provider of substance abuse services. SAMHSA invites specific comment on what constitutes a ''reasonable period of time'' under various circumstances. Should States be given the flexibility to determine this, given that there are established referral and substance abuse services systems in each State? Alternatively, should SAMHSA provide a clearer idea of what is a reasonable period of time (for example, ''within 48 hours,'' ''within one week,'' *etc.*)?

In making a referral, the religious organization must consider any list that the State or local government makes available of other entities in a reasonably accessible geographic area that provide substance abuse services. For example, a religious organization could check SAMHSA's treatment facility locator at *http://findtreatment.samhsa.gov* to identify providers in the surrounding area and consult with the relevant governmental officials about referrals to programs that are reasonably accessible and of equal value. The locator includes residential treatment programs, outpatient treatment programs, and hospital inpatient programs for drug addiction and alcoholism. All information in the locator is updated each year, based on facility responses to SAMHSA's National Survey of Substance Abuse Services. Further updates are made monthly as new information is provided by facilities.

SAMHSA-funded religious organizations must take reasonable steps to ensure that the individual makes contact with the alternative provider to which the individual is referred, and they must notify ''the appropriate Federal, State, or local government'' of the referral. In the case of the SAPT and PATH programs, the appropriate government is the State. In the case of SAMHSA's substance abuse prevention and treatment discretionary grant funding, it is either SAMHSA or the recipient State or local government.

For SAPT or PATH programs, if the religious organization cannot locate an appropriate alternative provider for a referral, it should contact the State agency that administers the program. The State agency can then take steps to identify an appropriate alternative. In the event that the State agency is unable to locate an alternative provider, the State can contact SAPT block grant or PATH grant officials in SAMHSA for assistance. For SAMHSA discretionary grants made directly to religious organizations, the religious organization can work with SAMHSA to identify an appropriate referral. For SAMHSA discretionary grants to States and localities, the religious organization can work with the recipient government to identify an appropriate referral, using the referral system utilized by the State or locality as required by the rule.

The religious organization (program participant) shall take reasonable steps to ensure that the individual makes contact with the alternative provider to which the individual is referred. All referrals are to be made in a manner consistent with all applicable confidentiality laws, including, but not limited to, 42 CFR part 2. Upon referring a program beneficiary to an alternative provider, the program participant shall notify the appropriate Federal, State, or local government agency that administers the program of such referral. It is the States' responsibility to determine the nature and timing of such notification under the SAPT block grant and the PATH program. SAMHSA invites specific comment on how referring organizations can ensure that individuals make contact with alternative providers, and whether and how they should document the steps they have taken, in a manner that is consistent with all applicable confidentiality laws. For example, should the provider be required to record and call the alternative provider to notify them of the referral; to provide the name and address of the alternative provider to the program beneficiary; and to make a second follow-up call to the alternative provider? What burdens would such requirements place on providers?

Provision of Alternative Services. Under SAMHSA's Charitable Choice provisions, the responsibility for providing the alternative services rests with the ''the appropriate Federal, State, or local government'' that administers the program or is a program participant. Alternative service providers identified by the Federal, State, or local government must be reasonably accessible and have the capacity to provide comparable substance abuse services. The services provided by the alternative provider must have a value that is not less than the value of the services that the individual would have received from the referring organization.

The SAMHSA Charitable Choice provisions require States to provide and fund alternative services for SAPT-funded and PATH program beneficiaries who have objected to the religious character of a program participant. States may use SAPT block grant and PATH grant funding to provide and fund such services from a provider to which the program beneficiaries do not have a religious objection, in a manner consistent with State law and policy.

With respect to SAMHSA discretionary grant funding, when SAMHSA provides funding directly to another unit of government, such as a State or local government, that unit of government is responsible for providing the alternative services. When SAMHSA provides discretionary grant funding directly to nongovernmental organizations, SAMHSA is the responsible unit of government.

SAMHSA invites comment on the following questions related to the implementation of this provision:

- How can an alternative services system best be implemented in a system characterized by treatment gaps, shortages and waiting lists (*i.e.*, how can program beneficiaries best be assured of alternative services?)
- Similarly, what constitutes ''reasonably accessible services,'' given the differences in available services in various regions of the country?
- What is the best understanding of the phrase ''services that * * * have a value that is not less than the value of [services that would otherwise be provided]''?
- Under discretionary programs, what are the options for securing and financing alternative services? Would placing the responsibility on the grantee for securing alternative services as a condition of the grant award (including financing of such services, as necessary) be consistent with the statutory requirement that the appropriate Federal, State, or local governments ''provide'' alternative services? Or does the statute require these governmental entities to secure and finance alternative services? What sort of financial problems would be imposed by placing such responsibilities on grantees?

Fiscal Accountability. The proposed rule outlines the financial responsibility incurred through the receipt of SAMHSA funds. Religious organizations that receive SAMHSA funds for substance abuse services are subject to the same regulations as other nongovernmental organizations to account, in accordance with generally accepted auditing and accounting principles, for the use of such funds. In addition, religious organizations are required to keep any Federal funds that they receive for substance abuse services segregated in a separate account from non-Federal funds. Only the segregated Federal funds are subject to

audit by the government under the SAMHSA program.

Effect on State and Local Funds. The proposed rule, consistent with 42 U.S.C. 300x–65(d), provides that if a State or local government contributes its own funds to supplement SAMHSA-funded substance abuse activities, the State or local government has the option to separate out the Federal funds or commingle them. However, if the funds are commingled, the SAMHSA Charitable Choice provisions apply to all of the commingled funds.

Treatment of intermediate organizations. The proposed rule provides that, if a nongovernmental organization (referred to here as an ''intermediate organization''), acting under a contract or other agreement with the Federal Government or a State or local government, is given the authority under the contract or agreement to select other nongovernmental organizations to provide services under any substance abuse program, the intermediate organization has the same duties under the SAMHSA Charitable Choice provisions and the implementing regulations as the government and must ensure that there is compliance with the SAMHSA Charitable Choice provisions. The intermediate organization retains all other rights of a nongovernmental organization under SAMHSA's Charitable Choice provisions.

Educational Requirements for Personnel in Drug Treatment Programs. The proposed rule reiterates the requirement of 42 U.S.C. 290kk–3, which provides that, in determining whether personnel of a program participant that has a record of successful drug treatment for the preceding three years have satisfied State or local requirements for education and training, a State or local government shall not discriminate against education and training provided to such personnel by a religious organization, so long as such education and training is comparable to the coursework or training provided by nonreligious organizations or is comparable to education and training that the State or local government would otherwise credit for purposes of determining whether the relevant requirements have been satisfied.

Assurances and State Oversight of the Charitable Choice Requirements. In order to ensure that States receiving grant funding under the SAPT block grant and PATH formula grant programs abide by the Charitable Choice provisions and provide oversight of religious organizations that provide substance abuse services under such programs, the proposed rule requires States, as part of their applications for funding under each program, to certify that they will comply with all of the requirements of the SAMHSA Charitable Choice provisions and to submit to the Secretary a summary each year of the steps it has taken to implement this regulation. The Department is proposing changes to existing regulations for the SAPT block grant to require such assurance and summary. Similar assurances, to be signed by applicants for SAMHSA PATH funds and discretionary substance abuse treatment and prevention grants, will be added to the assurances listed in PHS Form 5161, *Public Health Service Grant Application for State and Local Government Applicants and Non-governmental Applicants for Health Services Projects*.

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when rulemaking is necessary, to select regulatory approaches that provide the greatest net benefits (including potential economic, environmental, public health, safety distributive and equity effects). We have determined that the rule is a ''significant regulatory action'' under section 3(f) of the Executive Order, and it has therefore been reviewed by the Office of Management and Budget under that order.

Regulatory Flexibility

The Regulatory Flexibility Act (5 U.S.C. chapter 6) requires that regulatory actions be analyzed to determine whether they will have a significant impact on a substantial number of small entities. We have determined that this is not a ''major'' rule under the Regulatory Flexibility Act of 1980, and that it will not have an effect on the States or on the distribution of power and responsibilities among the various levels of government.

Unfunded Mandates

The Unfunded Mandates Reform Act requires that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. We have determined that this rule will not result in an aggregate expenditure by State, local or tribal governments of $100 million or more in any given year.

Executive Order 13132: Federalism Implications

Executive Order 13132, Federalism, requires that Federal agencies consult with State and local government officials in the development of regulatory policies with federalism implications. Consistent with Executive Order 13132, we specifically solicit comment from State and local government officials on this proposed rule.

Paperwork Reduction Act of 1995

This proposed rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3507(d)). The title, description and respondent description of the information collections are shown in the following paragraphs with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Regulations to Implement SAMHSA's Charitable Choice Statutory Provisions—42 CFR Parts 54 and 54a.

Description: Section 1955 of the Public Health Service Act (42 U.S.C. 300x-65), as amended by the Children's Health Act of 2000 (Pub. L. 106–310) and sections 581–584 of the Public Health Service Act (42 U.S.C. 290kk *et seq*., as added by the Consolidated Appropriations Act (Pub. L. 106–554)), set forth various provisions which aim to ensure that religious organizations are able to compete on an equal footing for Federal funds to provide substance abuse services. These provisions allow religious organizations to offer substance abuse services to individuals without impairing the religious character of the organizations or the religious freedom of the individuals who receive the services. The provisions apply to the Substance Abuse Prevention and Treatment Block Grant (SAPT BG), to the Projects for Assistance in Transition from Homelessness (PATH) formula grant program, and to certain Substance Abuse and Mental Health Services Administration (SAMHSA) discretionary grant programs (programs that pay for substance abuse treatment and prevention services, not for certain infrastructure and technical assistance activities). Every effort has been made to assure that the reporting, recordkeeping and disclosure requirements of the proposed regulations allow maximum

flexibility in implementation and impose minimum burden.

Description of Respondents: Not-for-profit institutions; State, Local or Tribal Government.

Response burden estimate: This proposed rule includes requirements for disclosure by program participants to program beneficiaries of their rights to receipt of services from an alternative service provider, for notification by program participants to the applicable level of government of referrals made to alternative service providers, and requirements for reporting of activities to comply with these regulations. The rule also requires that a program participant under the Substance Abuse Prevention and Treatment Block Grant (SAPT BG) and the Projects for Assistance in Transition from Homelessness (PATH) programs that believes it would be substantially burdened by application of the requirements of 42 U.S.C. 300x-57(a)(2) or 42 U.S.C. 290cc-33(a)(2) must sign a certification to that effect and must maintain documentation to support the certification.

ANNUAL BURDEN ESTIMATES

42 CFR citation and purpose	Number of responses	Responses per respondent	Hours per response	Total hours
Part 54—States Receiving SAPT Block Grants and/or Projects for Assistance in Transition from Homelessness Grants				
Reporting				
54.8(c)(4) Program 40 4 0.33 53 participant notification to responsible unit of government regarding referrals to alternative service providers	40	4	0.33	53
54.8(e) Annual report 56 1 2.00 112 by PATH grantees on activities undertaken to comply with 42 CFR Part 54	56	1	2.00	112
Disclosure				
54.8(b) Program participant notice to program beneficiaries of rights to referral to an alternative service provider.				
SAPT BG	1,000	275	.05	13,750
PATH	100	170	.05	850
Recordkeeping				
54.6(b) Documentation must be maintained to demonstrate significant burden for program participants under 42 U.S.C. 300x-57 or 42 U.S.C. 290cc-33(a)(2)	50	1	1.00	50
Part 54—Subtotal	1,156		14,815	
Part 54a—States, local governments and religious organizations receiving funding under Title V of the PHS Act for substance abuse prevention and treatment services				
Reporting				
54a.8(c)(1)(iv) Program participant notification to State or local government of a referral to an alternative provider	25	4	.083	8
54a(8)(d) Program participant notification to SAMHSA of referrals	20	2	.25	10
Disclosure				
54a.8(b) Program participant notice to program beneficiaries of rights to referral to an alternative service provider	100	275	.05	1,375
Part 54a—Subtotal	100			1,393
Total	1,256			16,208

In addition, the regulations for the Substance Abuse Prevention andTreatment Block Grant (45 CFR part 96) will be amended to include at 45 CFR 92.122(f)(5) a requirement to include as part of the annual report a description of the activities the State has undertaken to comply with 42CFR part 54. This reporting burden is estimated as follows:

45 CFR citation and purpose	Number of respondents	Responses per respondent	Hours per response	Total hours
96.122(f)(5) Annual report of activities the State undertook to comply with 42 CFR Part 54	60	1	2	120

As required by section 3507(d) of the PRA the Secretary has submitted a copy of this proposed rule to OMB for its review. Comments on the information collection requirements are specifically solicited in order to: (1) Evaluate

whether the proposed collection of information is necessary for the proper performance of DHHS's functions, including whether the information will have practical utility; (2) evaluate the accuracy of DHHS'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.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to DHHS on the proposed regulations.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB. (address above).

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (65 FR 67249, November 6, 2000) requires us to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' Although it is not clear that the proposed rule will have tribal implications, we specifically solicit comment on this proposed rule from tribal officials.

Dated: December 12, 2002.

Tommy G. Thompson,

Secretary of Health and Human Services.

List of Subjects

42 CFR Parts 54 and 54a

Grant programs—social programs, Public assistance programs, Substance abuse treatment.

45 CFR Part 96

Grant programs—social programs

The Department of Health and Human Services proposes to amend 42 CFR chapter I and 45 CFR subtitle A as follows:

1. Add a new part 54 to title 42 of the Code of Federal Regulations to read as follows:

42 CFR—CHAPTER I

PART 54—CHARITABLE CHOICE REGULATIONS APPLICABLE TO STATES RECEIVING SUBSTANCE ABUSE PREVENTION AND TREATMENT BLOCK GRANTS AND/OR PROJECTS FOR ASSISTANCE IN TRANSITION FROM HOMELESSNESS GRANTS

Sec.

54.1 Scope.
54.2 Definitions.
54.3 Nondiscrimination against religious organizations.
54.4 Religious activities.
54.5 Religious character and independence.
54.6 Employment practices.
54.7 Nondiscrimination requirement.
54.8 Right to services from an alternative provider.
54.9 Assurances and State oversight of the Charitable Choice requirements.
54.10 Fiscal accountability.
54.11 Effect on State and local funds.
54.12 Treatment of intermediate organizations.
54.13 Educational requirements for personnel in drug treatment programs.

Authority: 42 U.S.C. 300x–65 *et seq.*, 42 U.S.C. 290kk *et seq.*, 42 U.S.C. 300x–21, *et seq.*, 42 U.S.C. 290cc–21, *et seq.*, and 42 U.S.C. 2000bb, *et seq.*

§ 54.1 Scope.

These provisions apply only to awards that pay for substance abuse prevention and treatment services under 42 U.S.C. 300x–21 *et seq.*, and 42 U.S.C. 290cc–21 to 290cc–35. This part does not apply to awards under any such authorities for activities that do not involve the direct provision of substance abuse services, such as for infrastructure activities authorized under section 1971 of the PHS Act, 42 U.S.C. 300y, and for technical assistance activities. This part implements the SAMHSA Charitable Choice provisions, 42 U.S.C. 300x–65 and 42 U.S.C. 290kk, *et seq.*

§ 54.2 Definitions.

(a) *Applicable program* means the programs authorized under:

(1) The Substance Abuse Prevention and Treatment (SAPT) Block Grant, 42 U.S.C. 300x to 300x–66, and

(2) The Projects for Assistance in Transition from Homelessness (PATH) Formula Grants, 42 U.S.C. 290cc–21 to 290cc–35 insofar as they fund substance abuse prevention and/or treatment services.

(b) *Religious organization* means a nonprofit religious organization.

(c) *Program beneficiary* means an individual who receives substance abuse services under a program funded in whole or in part by applicable programs.

(d) *Program participant* means a public or private entity that has received financial assistance, under an applicable program.

(e) *SAMHSA* means the Substance Abuse and Mental Health Services Administration.

(f) *SAMHSA Charitable Choice provisions* means the provisions of 42 U.S.C. 300x–65 and 42 U.S.C. 290kk.

(g) *Direct funding or Funds provided directly* means funding that is provided to an organization directly by a governmental entity or intermediate organization that has the same duties as a governmental entity, as opposed to funding that an organization receives as the result of the genuine and independent private choice of a beneficiary through a voucher, certificate, coupon, or other similar mechanism.

§ 54.3 Nondiscrimination against religious organizations.

(a) Religious organizations are eligible, on the same basis as any other organization, to participate in applicable programs, as long as their services are provided consistent with the Establishment Clause and the Free Exercise Clause of the First Amendment to the United States Constitution. Except as provided herein or in the SAMHSA Charitable Choice provisions, nothing in these regulations shall restrict the ability of the Federal government, or a State or local government, from applying to religious organizations the same eligibility conditions in applicable programs as are applied to any other nonprofit private organization.

(b) Neither the Federal government nor a State or local government receiving funds under these programs shall discriminate against an organization that is, or applies to be, a program participant on the basis of the organization's religious character or affiliation.

§ 54.4 Religious activities.

No funds provided directly from SAMHSA or the relevant State or local government to organizations participating in applicable programs may be expended for inherently religious activities, such as worship, religious instruction, or proselytization. If an organization conducts such activities, it must offer them separately, in time or location, from the programs or services for which it receives funds directly from SAMHSA or the relevant State or local government under any

applicable program, and participation must be voluntary for the program beneficiaries.

§ 54.5 Religious character and independence.

A religious organization that participates in an applicable program will retain its independence from Federal, State, and local governments and may continue to carry out its mission, including the definition, practice and expression of its religious beliefs. The organization may not expend funds that it receives directly from SAMHSA or the relevant State or local government, to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide services supported by applicable programs, without removing religious art, icons, scriptures, or other symbols. In addition, a SAMHSA-funded religious organization retains the authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

§ 54.6 Employment practices.

(a) The participation of a religious organization in, or its receipt of funds from, an applicable program does not affect that organization's exemption provided under 42 U.S.C. 2000e–1 regarding employment practices.

(b) To the extent that 42 U.S.C. 300x–57(a)(2) or 42 U.S.C. 290cc–33(a)(2) precludes a program participant from employing individuals of a particular religion to perform work connected with the carrying on its activities, those provisions do not apply if such program participant is a religious corporation, association, educational institution, or society and can demonstrate that its religious exercise would be substantially burdened by application of these religious nondiscrimination requirements to its employment practices in the program or activity at issue.

(1) In order to make this demonstration, the program participant must certify:

(i) That it sincerely believes that employing individuals of a particular religion is important to the definition and maintenance of its religious identity, autonomy, and/or communal religious exercise;

(ii) That it makes employment decisions on a religious basis in analogous programs;

(iii) That the grant would materially affect its ability to provide the type of services in question; and

(iv) That providing the services in question is expressive of its values or mission.

(2) The organization must maintain documentation to support the determinations in paragraph (b)(1) of this section and must make such documentation available to SAMHSA upon request.

(c) Nothing in this section shall be construed to modify or affect any State law or regulation that relates to discrimination in employment.

(d) The phrases ''with respect to the employment,'' ''individuals of a particular religion,'' and ''religious corporation, association, educational institution, or society'' shall have the same meaning as those terms have under section 702 of the Civil Rights Act of 1964, 42 U.S.C. 2000e–1(a).

§ 54.7 Nondiscrimination requirement.

A religious organization that is a program participant shall not, in providing program services or engaging in outreach activities under applicable programs, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to actively participate in a religious practice.

§ 54.8 Right to services from an alternative provider.

(a) *General requirements.* If an otherwise eligible program beneficiary or prospective program beneficiary objects to the religious character of a program participant, within a reasonable period of time after the date of such objection, such program beneficiary shall have rights to notice, referral, and alternative services, as outlined in paragraphs (b) through (d) of this section.

(b) *Notice.* Program participants that refer an individual to alternative service providers, and the State government that administers the applicable programs, shall ensure that notice of the individual's right to services from an alternative provider is provided to program beneficiaries or prospective beneficiaries. The notice must clearly articulate the program beneficiary's right to a referral and to services that reasonably meet the requirements of timeliness, capacity, accessibility, and equivalency as discussed in this section.

(c) *Referral to an alternative provider.* If a program beneficiary or prospective program beneficiary objects to the religious character of a program participant that is a religious organization, that participating religious organization shall, within a reasonable time after the date of such objection, refer such individual to an alternative provider. The State shall have a system in place to ensure that referrals are made to an alternative provider. That system shall ensure that the following occurs:

(1) The religious organization that is a program participant shall, within a reasonable time after the date of such objection, refer the beneficiary to an alternative provider.

(2) In making such referral, the program participant shall consider any list that the State or local government makes available to entities in the geographic area that provide program services, which may include utilizing any treatment locator system developed by SAMHSA;

(3) All referrals shall be made in a manner consistent with all applicable confidentiality laws, including, but not limited to, 42 CFR part 2 (''Confidentiality of Alcohol and Drug Abuse Patient Records'');

(4) Upon referring a program beneficiary to an alternative provider, the program participant shall notify the State of such referral; and

(5) The program participant shall ensure that the program beneficiary makes contact with the alternative provider to which he or she is referred.

(d) *Provision and Funding of Alternative Services.* The State, in administering the SAPT block grant and PATH programs, shall provide to an otherwise eligible program beneficiary or prospective program beneficiary who objects to the religious character of a program participant and fund services from an alternative provider that is reasonably accessible and has the capacity to provide comparable services to the individual. Such services shall have a value that is not less than the value of the services that the individual would have received from the program participant to which the individual had such objection. The alternative provider need not be a secular organization. It must simply be a provider to which the program beneficiary has no religious objection.

(e) *PATH Annual Report.* As part of the annual report to SAMHSA, PATH grantees shall include a description of the activities the grantee has taken to comply with 42 CFR part 54.

§ 54.9 Assurances and State oversight of the charitable choice requirements.

In order to ensure that States receiving grant funding under the SAPT block grant and PATH formula grant programs comply with the SAMHSA Charitable Choice provisions and provide oversight of religious organizations that provide substance abuse services under such programs, States are required as part of their applications for funding to certify that they will comply with all of the requirements of such provisions and the implementing regulations under this part, and that they will provide such oversight of religious organizations.

§ 54.10 Fiscal accountability.

(a) Religious organizations that receive applicable program funds for substance abuse services are subject to the same regulations as other nongovernmental organizations to account, in accordance with generally accepted auditing and accounting principles, for the use of such funds.

Religious organizations shall segregate Federal funds they receive under an applicable program into a separate account from non-Federal funds. Only the Federal funds shall be subject to audit by government under the SAMHSA program.

§ 54.11 Effect on State and local funds.

If a State or local government contributes its own funds to supplement activities carried out under the applicable programs, the State or local government has the option to separate out the Federal funds or commingle them. If the funds are commingled, the provisions of this part shall apply to all of the commingled funds in the same manner, and to the same extent, as the provisions apply to the Federal funds.

§ 54.12 Treatment of intermediate organizations.

If a nongovernmental organization (referred to here as an ''intermediate organization''), acting under a contract or other agreement with the Federal Government or a State or local government, is given the authority under the contract or agreement to select nongovernmental organizations to provide services under any applicable program, the intermediate organization shall have the same duties under this part as the government. The intermediate organization retains all other rights of a nongovernmental organization under this part and the SAMHSA Charitable Choice provisions.

§ 54.13 Educational requirements for personnel in drug treatment programs.

In determining whether personnel of a program participant that has a record of successful drug treatment for the preceding three years have satisfied State or local requirements for education and training, a State or local government shall not discriminate against education and training provided to such personnel by a religious organization, so long as such education and training is comparable to that provided by nonreligious organizations, or is comparable to education and training that the State or local government would otherwise credit for purposes of determining whether the relevant requirements have been satisfied.

2. Add a new part 54a to title 42 of the Code of Federal Regulations to read as follows:

PART 54a—CHARITABLE CHOICE REGULATIONS APPLICABLE TO STATES, LOCAL GOVERNMENTS AND RELIGIOUS ORGANIZATIONS RECEIVING FUNDING UNDER TITLE V OF THE PUBLIC HEALTH SERVICE ACT, 42 U.S.C. 290aa, ET SEQ., FOR SUBSTANCE ABUSE PREVENTION AND TREATMENT SERVICES

Sec.

54a.1 Scope.
54a.2 Definitions.
54a.3 Nondiscrimination against religious organizations.
54a.4 Religious activities.
54a.5 Religious character and independence.
54a.6 Employment practices.
54a.7 Nondiscrimination requirement.
54a.8 Right to services from an alternative provider.
54a.9 Oversight of the Charitable Choice requirements.
54a.10 Fiscal accountability.
54a.11 Effect on State and local funds.
54a.12 Treatment of intermediate organizations.
54a.13 Educational requirements for personnel in drug treatment programs.
54a.14 Determination of nonprofit status.

Authority: 42 U.S.C. 300x-65, and 42 U.S.C. 290kk, *et seq.*, 42 U.S.C. 290aa, *et seq.*

§ 54a.1 Scope.

These provisions apply only to awards that pay for substance abuse prevention and treatment services under Title V of the Public Health Service Act, 42 U.S.C. 290aa, *et seq.*, which are administered by the Substance Abuse and Mental Health Services Administration. This part does not apply to awards under any such authorities for only mental health services or for certain infrastructure and technical assistance activities, such as cooperative agreements for technical assistance centers, that do not provide direct services to clients. This part implements the provisions of 42 U.S.C. 300x-65 and 42 U.S.C. 290kk, *et seq.*

§ 54a.2 Definitions.

(a) *Applicable program* means the programs authorized under Title V of the PHS ct, 42 U.S.C. 290aa, *et seq.*, for the provision of substance abuse prevention and or treatment services.

(b) *Religious organization* means a nonprofit religious organization.

(c) *Program beneficiary* means an individual who receives substance abuse services under a program funded in whole or in part by applicable programs.

(d) *Program participant* means a public or private entity that has received financial assistance under an applicable program.

(e) *SAMHSA* means the Substance Abuse and Mental Health Services Administration.

(f) *SAMHSA Charitable Choice provisions* means the provisions of 42 U.S.C. 300x-65 and 42 U.S.C. 290kk *et seq*.

(g) *Direct funding or Funds provided directly* means funding that is provided to an organization directly by a governmental entity or intermediate organization that has the same duties as a governmental entity, as opposed to funding that an organization receives as the result of the genuine and independent private choice of a beneficiary through a voucher, certificate, coupon, or other similar mechanism.

§ 54a.3 Nondiscrimination against religious organizations.

(a) Religious organizations are eligible, on the same basis as any other organization, to participate in applicable programs as long as their services are provided consistent with the Establishment Clause and the Free Exercise Clause of the First Amendment to the United States Constitution. Except as provided herein or in the SAMHSA Charitable Choice provisions, nothing in these regulations shall restrict the ability of the Federal government, or a State or local government, from applying to religious organizations the same eligibility conditions in applicable programs as are applied to any other nonprofit private organization.

(b) Neither the Federal government nor a State or local government receiving funds under these programs shall discriminate against an organization that is, or applies to be, a program participant on the basis of the

organization's religious character or affiliation.

§ 54a.4 Religious activities.

No funds provided directly from SAMHSA or the relevant State or local government to organizations participating in applicable programs may be expended for inherently religious activities, such as worship, religious instruction, or proselytization. If an organization conducts such activities, it must offer them separately, in time or location, from the programs or services for which it receives funds directly from SAMHSA or the relevant State or local government under any applicable program, and participation must be voluntary for the program beneficiaries.

§ 54a.5 Religious character and independence.

A religious organization that participates in an applicable program will retain its independence from Federal, State, and local governments and may continue to carry out its mission, including the definition, practice and expression of its religious beliefs. The organization may not expend funds that it receives directly from SAMHSA or the relevant State or local government to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide services supported by applicable programs, without removing religious art, icons, scriptures, or other symbols. In addition, a SAMHSA-funded religious organization retains the authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

§ 54a.6 Employment practices.

(a) The participation of a religious organization in or its receipt of funds from an applicable program does not affect that organization's exemption provided under 42 U.S.C. 2000e-1 regarding employment practices.

(b) Nothing in this section shall be construed to modify or affect any State law or regulation that relates to discrimination in employment.

§ 54a.7 Nondiscrimination requirement.

A religious organization that is a program participant shall not, in providing program services or engaging in outreach activities under applicable programs, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to actively participate in a religious practice.

§ 54a.8 Right to services from an alternative provider.

(a) *General requirements.* If an otherwise eligible program beneficiary or prospective program beneficiary objects to the religious character of a program participant, within a reasonable period of time after the date of such objection, such program beneficiary shall have rights to notice, referral, and alternative services, as outlined in subsections 54.8a(b)–(d) of this section. With respect to SAMHSA discretionary programs, for purposes of determining what is the appropriate Federal, State, or local government, the following principle shall apply: When SAMHSA provides funding directly to another unit of government, such as a State or local government, that unit of government is responsible for providing the alternative services. When SAMHSA provides discretionary grant funding directly to a nongovernmental organization, SAMHSA is the responsible unit of government.

(a) *Notice.* Program participants that refer an individual to alternative providers, and the appropriate Federal, State, or local governments that administer the applicable programs, shall ensure that notice of the individual's rights to services from an alternative provider is provided to program beneficiaries or prospective beneficiaries. The notice must clearly articulate the program beneficiary's right to a referral and to services that reasonably meet the requirements of timeliness, capacity, accessibility, and equivalency as discussed in this section.

(c) *Referral to services from an alternative provider.* If a program beneficiary or a prospective program beneficiary objects to the religious character of a program participant that is a religious organization, that participating religious organization shall, within a reasonable time after the date of such objection, refer such individual to an alternative provider.

(1) When the State or local government is the responsible unit of government , the State shall have a system in place to ensure that such referrals are made. That system shall ensure that the following occurs:

(i) The religious organization that is a program participant shall, within a reasonable time after the date of such objection, refer the beneficiary to an alternative provider.

(ii) In making such referral, the program participant shall consider any list that the State or local government makes available to entities in the geographic area that provide program services, which may include utilizing any treatment locator system developed by SAMHSA;

(iii) All referrals are to be made in a manner consistent with all applicable confidentiality laws, including, but not limited to, 42 CFR part 2 (''Confidentiality of Alcohol and Drug Abuse Patient Records'');

(iv) Upon referring a program beneficiary to an alternative provider, the program participant shall notify the responsible unit of government of such referral;

(2) When SAMHSA is the responsible unit of government, the referral process is as follows:

(i) When a program beneficiary requests alternative services, the program participant will seek to make such a referral.

(ii) If the religious organization cannot locate an appropriate provider of alternative services, the program participant will contact SAMHSA. They will work together to identify additional alternative providers, utilizing the SAMHSA Treatment Locator system, if appropriate.

(iii) The program participant will contact these alternative providers and seek to make the referral, in a manner consistent with all applicable confidentiality laws, including, but not limited to, 42 CFR part 2 (''Confidentiality of Alcohol and Drug Abuse Patient Records'')

(iv) In the event the program participant is still unable to locate an alternative provider, it may again contact SAMHSA for assistance.

(d) *Referral Reporting Procedures.* The program participant shall notify the appropriate Federal, state or local government agency that administers the program of such referral. If a State or local government is the responsible unit of government, they may determine their own reporting procedures. When SAMHSA is the responsible unit of government, this notification will occur during the course of the regular reports that may be required under the terms of the funding award.

(e) *Provision and Funding of Alternative Services.* The responsible unit of government, as defined in subsection (a), shall provide to an otherwise eligible program beneficiary or prospective program beneficiary who objects to the religious character of a program participant, services and fund services from an alternative provider that is reasonably accessible to, and has

the capacity to provide such services to the individual. Such services shall have a value that is not less than the value of the services that the individual would have received from the program participant to which the individual had such objection. The alternative provider need not be a secular organization. It must simply be a provider to which the program beneficiary has no religious objection.

§ 54a.9 Oversight of the Charitable Choice requirements.

In order to ensure that program funds are used in compliance with the SAMHSA Charitable Choice provisions, applicants for funds under applicable programs are required, as part of their applications for funding, to certify that they will comply with all of the requirements of the SAMHSA Charitable Choice provisions and the implementing regulations under this part.

§ 54a.10 Fiscal accountability.

(a) Religious organizations that receive applicable program funds for substance abuse services are subject to the same regulations as other nongovernmental organizations to account, in accordance with generally accepted auditing and accounting principles, for the use of such funds.

(b) Religious organizations shall segregate Federal funds they receive under applicable programs into a separate account from non-Federal funds Only the Federal funds shall be subject to audit by the government under the SAMHSA program.

§ 54a.11 Effect on State and local funds.

If a State or local government contributes its own funds to supplement activities carried out under the applicable programs, the State or local government has the option to separate out the Federal funds or commingle them. If the funds are commingled, the provisions of this part shall apply to all of the commingled funds, in the same manner, and to the same extent, as the provisions apply to the Federal funds.

§ 54a.12 Treatment of intermediate organizations.

If a nongovernmental organization (referred to here as an '' intermediate organization''), acting under a contract or other agreement with the Federal Government or a State or local government, is given the authority under the contract or agreement to select nongovernmental organizations to provide services under any applicable program, the intermediate organization shall have the same duties under this part as the government. The intermediate organization retains all other rights of a nongovernmental organization under this part and the SAMHSA Charitable Choice provisions.

§ 54a.13 Educational requirements for personnel in drug treatment programs.

In determining whether personnel of a program participant that has a record of successful drug treatment for the preceding three years have satisfied State or local requirements for education and training, a State or local government shall not discriminate against education and training provided to such personnel by a religious organization, so long as such education and training is comparable to that provided by nonreligious organizations, or is comparable to education and training that the State or local government would otherwise credit for purposes of determining whether the relevant requirements have been satisfied.

§ 54a.14 Determination of nonprofit status.

The nonprofit status of any SAMHSA applicant can be determined by any of the following:

(a) Reference to the organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in section 501(c)(3) of the IRS code.

(b) A copy of a currently valid IRS Tax exemption certificate.

(c) A statement from a State taxing body, State Attorney General, or other appropriate State official certifying that the applicant organization has a nonprofit status and that none of the net earnings accrue to any private shareholder or individuals.

(d) A certified copy of the organization's certificate of incorporation or similar document if it clearly establishes the nonprofit status of the organization.

(e) Any of the above proof for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local nonprofit affiliate.

45 CFR Subtitle A

PART 96—[AMENDED]

3. In 45 CFR subtitle A, amend part 96 as follows:

a. In § 96.122, add paragraph (f)(5)(v) to read as follows:

§ 96.122 Application content and procedures

* * * * *

(f) * * *

(5) * * *

(v) A description of the activities the State has undertaken to comply with 42 CFR part 54.

* * * * *

b. In § 96.123, add paragraph (a)(18) to read as follows:

§ 96.123 Assurances

(a) * * *

(18) The State will comply with the requirements of 42 CFR part 54.

[FR Doc. 02–31673 Filed 12–12–02; 4:32 pm]

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December 17, 2002

Part IV

Department of Health and Human Services

Administration for Children and Families

45 CFR Part 260

Charitable Choice Provisions Applicable to the Temporary Assistance for Needy Families Program; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 260

RIN 0970–AC12

Charitable Choice Provisions Applicable to the Temporary Assistance for Needy Families Program

AGENCY: Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement the Charitable Choice statutory provisions at section 104 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) as amended. These provisions apply to the Temporary Assistance for Needy Families (TANF) program administered by the Administration for Children and Families (ACF). The proposed rule applies to State and local governments that administer or provide TANF services and benefits through contracts with organizations or with certificates, vouchers, or other forms of disbursement, as well as to faith-based organizations that receive, or apply to receive such funding. It is ACF's policy that, within constitutional church-state guidelines, faith-based organizations should be able to compete on an equal footing for TANF funding, and ACF supports the participation of faith-based organizations in the TANF program.

DATES: Consideration will be given to comments received by February 18, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to April Kaplan, Administration for Children and Families, Office of Family Assistance, 370 L'Enfant Promenade, SW., 5th floor, Washington, DC 20447. Comments will be available for public inspection Monday through Friday 8:30 a.m. to 5 p.m. at the above address. You may also transmit comments electronically via the Internet at: *http://www.acf.dhhs.gov/hypernews/topics21.htm*. To download an electronic version of the rule, you should access *http://www.acf.dhhs.gov/budget.html*.

FOR FURTHER INFORMATION CONTACT: April Kaplan, (202) 401–5138.

SUPPLEMENTARY INFORMATION:

I. Statutory Authority

This proposed regulation is issued under the authority granted to the Secretary of Health and Human Services (the Secretary) by 42 U.S.C. 1302, and 42 U.S.C. 604a. Section 1302 of 42 U.S.C. authorizes the Secretary to publish regulations that may be necessary for the efficient administration of the functions for which he is responsible under the Social Security Act (the Act). Section 604a of Title 42 of the United States Code sets forth provisions authorizing States to use faith-based groups, as well as other nongovernmental charities, community groups and private organizations, to provide benefits and services under the TANF program that help families achieve self-sufficiency and includes certain conditions related to such authority.

Section 417 of the Social Security Act provides that the Federal government may not regulate or enforce State conduct under the TANF provisions authorized in Title IV-A, except to the extent expressly provided by law. Section 417 applies only to Federal regulation or enforcement of provisions in Title IV-A of the Act. Because this proposed rule implements provisions in PRWORA, rather than the TANF provisions in Title IV-A, the limitations set forth in section 417 do not apply. These proposed regulations are drafted in a manner that provides States with maximum flexibility, while complying with the Charitable Choice statutory provisions.

II. Background

Title I of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) (Pub. L. 104–193) sets forth certain ''Charitable Choice'' provisions clarifying State authority to use religious organizations to provide benefits and services that help families achieve self-sufficiency under the TANF program (hereinafter referred to as ''TANF Charitable Choice provisions.'') In addition to giving families a greater choice of TANF-funded providers, these provisions set forth certain requirements to ensure that religious organizations are able to compete on an equal footing for funds under the TANF program, without impairing the religious character of such organizations and without diminishing the religious freedom of TANF beneficiaries.

President Bush has made it one of his Administration's top priorities to ensure that Federal programs are fully open to faith-based and community groups in a manner that is consistent with the Constitution. It is the Administration's view that faith-based organizations are an indispensable part of the social services network of the United States. Faith-based organizations, including places of worship, nonprofit organizations, and neighborhood groups, offer scores of social services to those in need. The TANF Charitable Choice provisions are consistent with the Administration's belief that there should be an equal opportunity for all organizations—both faith-based and nonreligious—to participate as partners in Federal programs to serve Americans in need.

III. Regulatory Provisions

The TANF Charitable Choice provisions contain important protections both for religious organizations that receive funding and for the individuals who receive their services. This proposed rule would implement the Charitable Choice provisions applicable to State and local governments, and to religious organizations in their use of TANF funding. The objective of this proposed rule is to ensure that the TANF program is open to all eligible organizations, regardless of their religious affiliation or character, and to establish clearly the proper uses to which funds may be put and the conditions for receipt of funding.

Under the proposed rule a new section 260.34, ''What conditions apply to the Charitable Choice provisions of TANF?'' would be added to existing TANF rules. Introductory language would address the applicability of the Charitable Choice provisions of TANF. Specifically, the rules would provide that Charitable Choice applies whenever a State or local government uses Federal TANF funds or expends State or local funds claimed to meet the maintenance-of-effort (MOE) requirements of TANF to procure services and benefits from nongovernmental organizations, or redeems certificates, vouchers, or other forms of disbursement from them in connection with the TANF program. When State or local funds are used to meet the TANF maintenance-of-effort requirements, the provisions apply irrespective of whether the State or local funds are co-mingled with Federal funds, segregated, or expended in separate State programs. The proposed rules also clarify that, pursuant to section 104(k) of PRWORA, nothing in the Charitable Choice requirements shall be construed to preempt any provision of a State constitution or State statute that prohibits or restricts the

expenditure of State funds in or by religious organizations.

When the term ''assistance'' is used in the Charitable Choice provisions, it broadly refers to all kinds of help, services and benefits and is broader than the definition of ''assistance'' found under section 260.31 of this part. Thus, the Charitable Choice provisions apply to any and all of the services and benefits available to clients through contracts, certificates, vouchers, or other forms of disbursement of TANF funds. However, because the Charitable Choice provisions refer only to State and local governments, they do not apply to Tribal governments operating TANF programs under section 412 of the Social Security Act.

The proposed rule also would make the following specific additions to the TANF rules:

• *Equal Treatment for Religious Organizations.* Under the TANF Charitable Choice provisions, organizations are eligible to participate in the TANF program without regard to their religious character or affiliation, and organizations may not be excluded from the competition for TANF funds simply because they are religious. Specifically, religious organizations are eligible to compete for funding on the same basis, and under the same eligibility requirements, as all other nonprofit organizations. The Federal government, and State and local governments administering funds under the TANF program, are prohibited from discriminating against organizations on the basis of religion or their religious character.

• *Restriction on Religious Activities by Organizations that Receive Direct TANF Funding.* Paragraph (b) of section 260.34 of the proposed rule describes limitations on the use of TANF funding provided directly to an organization by a governmental entity or an intermediate organization that has the same duties as a governmental entity, as opposed to those funds that an organization receives as the result of the genuine and independent private choice of a beneficiary.[1] Specifically, TANF and MOE funds that are provided directly to a participating organization may not be used to support inherently religious activities, such as worship, religious instruction, or proselytization. If an organization engages in such activities, the activities must be offered separately, in time or location, from the programs or services for which it receives direct TANF or MOE funds, and participation must be voluntary for the beneficiaries. This requirement ensures that such funds are not used to support inherently religious activities. Thus, direct TANF and MOE funds may not be used, for example, to conduct prayer meetings, studies of sacred texts, or any other activity that is inherently religious.

This restriction does not mean that an organization that receives direct TANF or MOE funds cannot engage in inherently religious activities. It simply means that such an organization cannot fund these activities with direct TANF funds. Additionally, an organization cannot fund these activities with funds that are used to meet the MOE requirements, since those funds must be spent consistent with the Charitable Choice requirements. Thus, faith-based organizations that receive direct TANF or MOE funds must take steps to separate, in time or location, their inherently religious activities from the TANF or MOE-funded services that they offer.

In addition, any participation by a program beneficiary in such religious activities must be voluntary. An invitation to participate in an organization's religious activities is not in itself inappropriate. However, directly-funded religious organizations must be careful to reassure program beneficiaries that they will receive help even if they do not participate in these activities, and that their decision will have no bearing on the services they receive. In short, any participation by recipients of services in such religious activities must be voluntary and understood to be voluntary.

These restrictions on inherently religious activities do not apply where TANF or MOE funds are provided to religious organizations as a result of a genuine and independent private choice of a beneficiary. A religious organization may receive such funds as the result of a beneficiary's genuine and independent private choice if, for example, a beneficiary redeems a voucher, coupon, certificate, or similar funding mechanism that was provided to that individual using TANF or MOE funds under a program that is designed to give that individual a choice among providers. Thus, religious organizations that receive TANF funds to provide services as a result of a beneficiary's genuine and independent private choice need not separate, in time or location, their inherently religious activities from the TANF funded services they provide, provided they otherwise satisfy the requirements of the program.

• *Religious Character and Independence of Religious Organizations.* Paragraph (c) of the proposed rule clarifies that a religious organization that participates in the TANF program retains its independence from Federal, State, and local governments, provided that it does not use direct TANF or MOE funds to support inherently religious activities. It may continue to carry out its mission, including the definition, practice and expression of its religious beliefs. Among other things, religious organizations may use their facilities to provide TANF-funded services, without removing religious art, icons, scriptures, or other symbols. In addition, a TANF-funded religious organization may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

• *Employment Practices.* Under paragraph (d), the proposed rule clarifies that the receipt of TANF or MOE funds does not affect a participating religious organization's exemption provided under 42 U.S.C. 2000-e regarding employment practices. Title VII of the Federal Civil Rights Act of 1964 provides that a religious organization may, without running afoul of Title VII, hire employees who share its religious beliefs. This provision helps enable faith-based groups to promote common values, a sense of community and unity of purpose, and shared experiences through service—all of which can contribute to a religious organization's effectiveness. It thus helps protect the religious liberty of communities of faith. The TANF Charitable Choice provisions thus reflects the recognition that a religious organization may determine that, in order to define or carry out its mission, it is important that it be able to take its faith into account in making employment decisions.

• *Nondiscrimination Against Beneficiaries.* The proposed rule also contains provisions that apply to the individuals who receive TANF- or MOE-funded services. The first of these is found under paragraph (e) of the proposed rule, which clarifies that religious organizations are prohibited from discriminating against beneficiaries or potential beneficiaries

[1] In the Charitable Choice context, the term ''direct'' funding is used to describe funds that are provided ''directly'' by a governmental entity or an intermediate organization with the same duties as a governmental entity, as opposed to funds that an organization receives as the result of the genuine and independent private choice of a beneficiary. In other contexts, the term ''direct'' funding may be used to refer to those funds that an organization receives directly from the Federal government (also known as ''discretionary'' funding), as opposed to funding that it receives from a State or local government (also known as ''indirect'' or ''block grant'' funding). In these proposed regulations, the term ''direct'' has the former meaning.

on the basis of religion or religious belief. Accordingly, religious organizations, in providing services funded in whole or in part by TANF or MOE, may not discriminate against current or prospective program beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to actively participate in a religious practice.

• *Notice, Referral, and Provision of Services from Alternative Providers.* Paragraph (f) of section 260.34 of the proposed rule clarifies that individuals who are receiving or may receive TANF or MOE-funded services may object to the religious character of that provider, in which case they are entitled to receive services from an alternative provider. In such cases, the State or local agency must refer the individual to an alternative provider of services within a reasonable period of time, as defined by the State. That alternative provider must be reasonably accessible and have the capacity to provide comparable services to the individual. Such services shall have a value that is not less than the value of the services that the individual would have received from the program participant to which the individual had such objection. The alternative provider need not be a secular organization. It must simply be a provider to which the program beneficiary has no religious objection. Because of the comprehensive nature and range of services provided under TANF, we are explicitly leaving it to the States' discretion how best to define and achieve these statutory objectives.

A client's right to alternative services is best implemented when he or she is informed and referral procedures for alternative services are in place. Therefore, the proposed rule outlines the responsibilities of religious organizations, and State or local governments, with respect to notice, referral, and provision of services from alternative providers.

Notice. Under the proposed rule, States and local governments shall ensure that notice is provided to beneficiaries and prospective beneficiaries regarding alternative services. The notice should clearly articulate the program beneficiary's right to a referral, within a reasonable period of time, as defined by the State, to an alternative service provider. That alternative provider must be reasonably accessible and have the capacity to provide comparable services to the individual. Such services shall have a value that is not less than the value of the services that the individual would have received from the provider to which the individual had such objection, as reasonably determined by the State agency. While the responsibility for providing the alternative service rests with the State or local agency, each participating organization has a responsibility to help clients know and understand their rights.

Referral. If an individual objects to the religious character of the organization providing services they are receiving, the State or provider must refer the individual, within a reasonable period of time, as defined by the State, to an alternative provider of services. That alternative provider must be reasonably accessible and have the capacity to provide comparable services to the individual. Such services shall have a value that is not less than the value of the services that the individual would have received from the program participant to which the individual had such objection, as determined by the State. In making a referral, the State or local government, and religious organization, in consultation with the recipient, should consider alternative providers reasonably available in the geographic area.

We encourage State and local governments and contracting organizations to develop and implement reasonable procedures for tracking referred clients to make sure that the individual makes or has an opportunity to make contact with the alternative provider to which the individual is referred.

Provision of Alternative Services. The responsibility for providing the alternative services rests with the ''the appropriate Federal, State, or local government'' that administers the program. As discussed above, the State or local agency must refer the individual to an alternative provider of services within a reasonable period of time, as defined by the State. That alternative provider must be reasonably accessible and have the capacity to provide comparable services to the individual. Such services shall have a value that is not less than the value of the services that the individual would have received from the program participant to which the individual had such objection, as determined by the State.

ACF recognizes that a range of methods may fulfill these responsibilities, and therefore does not seek to prescribe a single, inflexible referral system that States must adopt. Rather, we encourage State agencies, working in concert with local governments and program providers, to develop systems to comply with the requirements, monitor compliance, identify compliance problems, and take necessary corrective actions. It is important that the State agency and religious organizations work cooperatively to develop systems to comply with this provision, monitor compliance, identify compliance problems and take necessary corrective actions.

• *Fiscal Accountability.* Under paragraph (g) of the proposed rule, we outline the financial responsibility incurred through the receipt of TANF funds. Religious organizations that contract to provide TANF services or benefits are subject to the same requirements as other nongovernmental organizations to account, in accordance with generally accepted auditing and accounting principles, for the use of such funds. Religious organizations may segregate their TANF accounts from nongovernmental funds for other activities. If religious organizations choose to segregate their funds in this manner, only the segregated funds are subject to audit by the government under the TANF program.

• *Effect on State and Local Funds.* The TANF Charitable Choice requirements apply to ''a State program funded under part A of title IV of the Social Security Act,'' or under the TANF program. Section 104 of PRWORA also applies to ''any other program established or modified under title I or title II of this Act that permits contracts with organizations; or permits certificates, vouchers, or other forms of disbursement to be provided to beneficiaries as a means of providing assistance.'' Title I of PRWORA encompasses all the TANF provisions, including the requirement at section 409(a)(7) that States expend State or local funds on eligible families for activities that serve TANF purposes. These State contributions are known as maintenance-of-effort, or MOE, contributions. Therefore, under the proposed rules at paragraph (h), the Charitable Choice provisions apply whenever a State or local government uses Federal TANF funds or expends State or local funds claimed to meet the ''maintenance-of-effort'' (MOE) requirements of the TANF program to procure services and benefits from nongovernmental organizations, or redeems certificates, vouchers, or other forms of disbursement. In other words, when State or local funds are used to meet the TANF MOE requirements, the Charitable Choice provisions apply irrespective of whether the State or local funds are co-mingled with Federal funds, segregated, or expended in separate State programs. The proposed rules also clarify that, pursuant to section 104(k) of PRWORA, nothing in

the Charitable Choice requirements shall be construed to preempt any provision of a State constitution or State statute that prohibits or restricts the expenditure of State funds in or by religious organizations.

• *Treatment of Intermediate Organizations.* Finally, paragraph (i) of the proposed rule provides that, if a nongovernmental organization (referred to here as an ''intermediate organization''), acting under a contract or other agreement with the Federal government or a State or local government, is given the authority under the contract or agreement to select other nongovernmental organizations to provide services under the program, the intermediate organization must ensure that there is compliance with the Charitable Choice provisions. The intermediate organization retains all other rights of a nongovernmental organization under the Charitable Choice provisions.

IV. Paperwork Reduction Act of 1995

No new information collection requirements are imposed by these regulations, nor are any existing requirements changed as a result of their promulgation. Therefore, the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), regarding reporting and record keeping, do not apply.

V. Regulatory Flexibility Analysis

The Secretary certifies, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this rule will not result in a significant impact on a substantial number of small entities. The primary impact is on State governments. State governments are not considered small entities under the Regulatory Flexibility Act.

VI. Regulatory Impact Analysis

Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles. This rule is considered a ''significant regulatory action'' under the Executive Order, and therefore has been reviewed by the Office of Management and Budget.

VII. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

The Department has determined that this rule would not impose a mandate that will result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year.

VIII. Congressional Review

This regulation is not a major rule as defined in 5 U.S.C. chapter 8.

IX. Assessment of Federal Regulation and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires Federal agencies to determine whether a proposed policy or regulation may affect family well being. If the agency's determination is affirmative, then the agency must prepare an impact assessment addressing seven criteria specified in the law. These regulations will not have an impact on family well being as defined in the legislation.

X. Executive Order 13132

Executive Order 13132, Federalism, requires that Federal agencies consult with State and local government officials in the development of regulatory policies with federalism implications. Consistent with Executive Order 13132, we specifically solicit comment from State and local government officials on this proposed rule.

List of Subjects in 45 CFR Part 260

Grant programs—social programs, Loan programs—social programs, Public assistance programs.

Dated: December 12, 2002.

Tommy G. Thompson,

Secretary of Health and Human Services.

For the reasons discussed above, title 45 CFR chapter II is proposed to be amended as follows:

PART 260—[AMENDED]

1. The authority citation for 45 CFR part 260 continues to read as follows:

Authority: 42 U.S.C. 601, 601 note, 603, 604, 606, 607, 608, 609, 610, 611, 619, and 1308.

2. Section 260.30 is amended to add the following two definitions in alphabetical order to read as follows:

§ 260.30 What definitions apply under the TANF regulations?

* * * * *

Direct funding or funds provided directly means funding that is provided to an organization directly by a governmental entity or an intermediary organization that has the same duties as a governmental entity, as opposed to funding that an organization receives as the result of the genuine and independent private choice of a beneficiary.

* * * * *

Religious organization means a nonprofit religious organization.

* * * * *

3. A new § 260.34 is added to read as follows:

§ 260.34 What conditions apply to the Charitable Choice provisions of TANF?

These Charitable Choice provisions apply whenever a State or local government uses Federal TANF funds or expends State and local funds used to meet maintenance-of-effort requirements of the TANF program to procure services and benefits from nongovernmental organizations, or provides TANF beneficiaries with certificates, vouchers, or other forms of disbursement redeemable from such organizations. However, nothing in this section shall be construed to preempt any provision of a State constitution or State statute that prohibits or restricts the expenditure of State funds in or by religious organizations.

(a) (1) Religious organizations are eligible, on the same basis as any other organization, to participate in TANF programs as long as their TANF or MOE-funded services are provided consistent with the Establishment Clause and the Free Exercise Clause of the First Amendment to the United States Constitution.

(2) Neither the Federal government nor a State or local government in its use of TANF or MOE funds shall discriminate against an organization that applies to provide, or provides, TANF services or benefits on the basis of the organization's religious character or affiliation.

(b) No TANF or MOE funds provided directly to participating organizations may be expended for inherently religious activities, such as worship, religious instruction, or proselytization. If an organization conducts such activities, it must offer them separately, in time or location, from the programs or services for which it receives direct TANF funds under this part, and participation must be voluntary for the beneficiaries of those programs or services.

(c) A religious organization that participates in the TANF program will retain its independence from Federal, State, and local governments and may continue to carry out its mission,

including the definition, practice and expression of its religious beliefs, provided that it does not expend TANF or MOE funds that it receives directly to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide TANF-funded services without removing religious art, icons, scriptures, or other symbols. In addition, a TANF-funded religious organization retains the authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

(d) The participation of a religious organization in, or its receipt of funds from, a TANF program does not affect that organization's exemption provided under 42 U.S.C. 2000e-1 regarding employment practices.

(e) A religious organization that receives TANF or MOE funds shall not, in providing program services or benefits, discriminate against a TANF applicant or recipient on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to actively participate in a religious practice.

(f) If an otherwise eligible TANF applicant or recipient objects to the religious character of a TANF service provider, the recipient is entitled to receive services from an alternative provider. In such cases, the State or local agency must refer the individual to an alternative provider of services within a reasonable period of time, as defined by the State agency. That alternative provider must be reasonably accessible and have the capacity to provide comparable services to the individual. Such services shall have a value that is not less than the value of the services that the individual would have received from the program participant to which the individual had such objection, as defined by the State agency. The alternative provider need not be a secular organization. It must simply be a provider to which the recipient has no religious objection. States may define and apply the terms ''reasonably accessible,'' ''a reasonable period of time,'' ''comparable,'' ''capacity,'' and '' value that is not less than.'' The appropriate State or local governments that administer TANF-funded programs shall ensure that notice of their right to alternative services is provided to applicants or recipients. The notice must clearly articulate the recipient's right to a referral and to services that reasonably meet the timeliness, capacity, accessibility, and equivalency requirements discussed above.

(g) Religious organizations that receive TANF funds are subject to the same regulations as other nongovernmental organizations to account, in accordance with generally accepted auditing/accounting principles, for the use of such funds. Religious organizations may keep any TANF funds they receive for services segregated in a separate account from nongovernmental funds. If religious organizations choose to segregate their funds in this manner, only the TANF funds are subject to audit by the government under the program.

(h) This section applies whenever a State or local organization uses TANF funds to procure services and benefits from nongovernmental organizations, or redeems certificates, vouchers, or other forms of disbursement from them whether with Federal funds, or State and local funds claimed to meet the maintenance-of-effort requirements of section 409(a)(7) of the Social Security Act. When State or local funds are used to meet the TANF MOE requirements, the provisions apply irrespective of whether the State or local funds are co-mingled with Federal funds, segregated, or expended in separate State programs.

(i) *Preemption.* Nothing in this section shall be construed to preempt any provision of a State constitution or State statute that prohibits or restricts the expenditure of State funds in or by religious organizations.

(j) If a nongovernmental intermediate organization, acting under a contract or other agreement with a State or local government, is given the authority under the contract or agreement to select nongovernmental organizations to provide TANF or MOE-funded services, the intermediate organization must ensure that there is compliance with the Charitable Choice provisions. The intermediate organization retains all other rights of a nongovernmental organization under the Charitable Choice provisions.

[FR Doc. 02–31674 Filed 12–12–02; 4:32 pm]

BILLING CODE 4184–01–P

Federal Register

Tuesday,

December 17, 2002

Part V

Department of Health and Human Services

Administration for Children and Families

45 CFR Part 1050

Charitable Choice Provisions Applicable to Programs Authorized Under the Community Services Block Grant Act; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 1050

RIN 0970–AC13

Charitable Choice Provisions Applicable to Programs Authorized Under the Community Services Block Grant Act

AGENCY: Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement the Charitable Choice statutory provisions at section 679 of the Community Services Block Grant Act (''CSBG Act''). These provisions apply to programs authorized under the Act, including the Community Services Block grant program, Training, Technical Assistance and Capacity Building program, Community Food and Nutrition Program, National Youth Sports program, and discretionary grants for economic development, rural community development, and neighborhood innovation, which are all administered by the Administration for Children and Families (ACF). It is ACF's policy that, within the framework of constitutional church-state guidelines, faith-based organizations should be able to compete on an equal footing for funding, and ACF supports the participation of faith-based organizations in these programs.

DATES: Consideration will be given to comments received by February 18, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to Administration for Children and Families, Office of Community Services, 370 L'Enfant Promenade, SW., 5th floor, Washington, DC 20447. Attention: Clarence Carter. Comments will be available for public inspection Monday through Friday 8:30 a.m. to 5 p.m. on the 5th floor of the Department's offices at the above address. You may also transmit comments electronically via the Internet at: *http://www.acf.dhhs.gov/hypernews/*. To download an electronic version of the rule, you should access ACF's regulation page at: *http://www.acf.dhhs.gov/budget/html.*

FOR FURTHER INFORMATION CONTACT: Clarence Carter, (202) 401–9333.

SUPPLEMENTARY INFORMATION:

I. Statutory Authority

This proposed regulation is issued under the authority granted to the Secretary of Health and Human Services (the Secretary) by 42 U.S.C. 9901. Section 9901 sets forth provisions authorizing States to provide an opportunity for active participation by faith based groups, as well as charitable, private, and neighborhood based organizations, in programs directed to eliminate poverty.

II. Background

Title II of the Community Opportunities, Accountability, and Training and Education Services Act of 1998 (COATS) (Pub. L. 105–285) set forth certain ''Charitable Choice'' provisions clarifying Federal, State, and local authority to use religious organizations to provide benefits and services that help families achieve self-sufficiency in programs authorized under the CSBG Act. In addition to giving families a greater choice of providers, these provisions set forth certain requirements to ensure that religious organizations are able to compete on an equal footing for funds without impairing the religious character of such organizations and without diminishing the religious freedom of the CSBG Act recipients.

President Bush has made it one of his Administration's top priorities to ensure that Federal programs are fully open to faith-based and community groups in a manner that is consistent with the Constitution. It is the Administration's view that faith-based organizations are an indispensable part of the social services network of the United States. Faith-based organizations, including places of worship, nonprofit organizations, and neighborhood groups, offer scores of social services to those in need. The Charitable Choice provisions in the CSBG Act are consistent with the Administration's belief that there should be an equal opportunity for all organizations—both faith-based and nonreligious—to participate as partners in Federal programs to serve Americans in need.

III. Regulatory Provisions

The Charitable Choice provisions in the CSBG Act contain important protections both for religious organizations that receive funding and for the individuals who receive their services. This proposed rule would implement the Charitable Choice provisions applicable to Federal, State, and local governments when funding public and private organizations—including religious organizations. The objective of this proposed rule is to ensure that the CSBG Act programs are open to all eligible organizations, regardless of their religious affiliation or character, and to establish clearly the proper uses of CSBG Act funds and the conditions for receipt of funding.

Under the proposed rule a new Part 1050, ''Charitable Choice Under the Community Services Block Grant Programs,'' would be added to Title 45 of the Code of Federal Regulations. We propose to add three sections under this part.

First, section 1050.1, ''Scope,'' would provide that this part applies to all programs authorized in the Community Services Block Grant Act.

Second, section 1050.2, ''Definitions,'' would provide the following definitions applicable to this proposed new part:

Applicable Program means any program authorized under Title II of the Community Opportunities, Accountability, and Training and Education Act of 1998, 42 U.S.C. 9901, et. seq.

Direct funding, directly funded, or funding provided directly means funding that is provided to an organization directly from a governmental entity or an intermediate organization, as opposed to funding that an organization receives as a result of the genuine and independent private choice of a beneficiary.

Intermediate Organization means a non-governmental organization that is authorized by the terms of a contract, grant or other agreement with the Federal Government, or a State or local government, to select other non-governmental organizations to provide assistance under an applicable program. For example, when a State uses CSBG funds to pay for technical assistance services provided by a private entity and also authorizes that entity to subcontract for a portion of the technical assistance effort, the private entity is an intermediate organization.

Program Beneficiary or Recipient means an individual who receives services under a program funded in whole or part by an applicable program.

Program Participant means a public or private entity that has received financial assistance under an applicable program.

Religious organization means a nonprofit religious organization.

The third and final section of the proposed new part, ''What Conditions Apply to the Charitable Choice Provisions of the CSBG Act?'' would be found at section 1050.3. Introductory language would speak to the applicability of the Charitable Choice provisions of the CSBG Act. Specifically, the rules would provide that the Charitable Choice provisions apply whenever the Federal government, or State or local governments, provide awards, contracts, or other assistance under any program authorized in the Community Services

Block Grant Act, 42 U.S.C. 9901, *et seq.* Additionally, these provisions apply whenever an intermediate organization acting under a contract, grant, or other agreement with a Federal, State, or local government entity selects another nongovernmental organizations to provide assistance under any of the programs authorized in the CSBG Act.

However, because the Charitable Choice provisions refer only to Federal, State and local governments, these provisions do not apply to Tribal governments operating CSBG programs under section 677 of the Community Services Block Grant Act.

The CSBG Charitable Choice rules apply to programs carried out under the CSBG statute. When a program is funded by CSBG as well as by other Federal sources, the CSBG Charitable Choice rules apply to the use of those funds except to the extent that the Charitable Choice provisions are inconsistent with provisions applicable to the other funding sources.

Section 1050.3 of the proposed rule would contain the following elements:

• *Equal Treatment for Religious Organizations.* The Charitable Choice provision in the CSBG Act clarifies the rights of faith-based organizations that receive funding. The proposed rule would make clear under paragraph (a) of section 1050.3 that organizations are eligible to participate in assistance programs without regard to their religious character or affiliation, and that organizations may not be excluded from the competition for program funds simply because they are religious. Specifically, religious organizations are eligible to compete for funding on the same basis, and under the same eligibility requirements, as all other nonprofit organizations. The Federal government, and State and local governments and intermediate organizations administering programs under the CSBG Act, are prohibited from discriminating against organizations on the basis of religion or their religious character.

The Charitable Choice provisions must be implemented within the context of the authorizing legislation. The Community Services Block Grant program under the CSBG Act contains specific requirements concerning CSBG eligible entities. The law requires that all eligible entities in that program administer CSBG funds ''through a tripartite board * * * that fully participates in the development, planning, implementation, and evaluation of the program to serve low-income communities.'' (42 U.S.C. 9910). Section 9910 further requires that the tripartite board include equal representation from elected public officials, representatives of low-income families in the neighborhoods served, and officials or members of business, industry, labor, religious, law enforcement, education or other major groups interested in the community served.

• *Restriction on Religious Activities by Organizations that Receive Direct CSBG Funding.* Paragraph (b) of section 1050.3 of the proposed rule describes limitations on the use of funds provided under the CSBG Act directly to an organization by a governmental entity or by an intermediate organization that has the same duties as a governmental entity, as opposed to those funds that an organization receives as the result of the genuine and independent private choice of a beneficiary.[1] Specifically, program funds that are provided directly to a participating organization may not be used to support inherently religious activities, such as worship, religious instruction, or proselytization. If the organization engages in such activities, the activities must be offered separately, in time or location, from the programs or services for which it receives direct funding under the CSBG Act, and participation must be voluntary for the program participants. This requirement ensures that program funds provided directly to religious organizations are not used to support inherently religious activities. Thus, funds provided directly under the CSBG Act to a participating organization may not be used, for example, to conduct prayer meetings, studies of sacred texts, or any other activity that is inherently religious. Additionally, organizations may not fund these activities with cost sharing or matching funds, which must be used in a manner consistent with the federal funds.

This restriction does not mean that an organization that receives direct funding under the CSBG Act cannot engage in inherently religious activities. It simply means such an organization cannot fund these activities with such funds provided directly from a government source or an intermediate organization that has the same duties as a governmental entity. Thus, faith-based organizations that receive direct funding must take steps to separate, in time or location, their inherently religious activities from the government- or intermediate organization-funded services that they offer.

In addition, any participation by a beneficiary in such religious activities must be voluntary. An invitation to participate in an organization's religious activities is not in itself inappropriate. However, participating religious organizations must be careful to reassure program beneficiaries that they will receive services even if they do not participate in these activities, and that their decision will have no bearing on the services they receive. In short, any participation by recipients of services in such religious activities must be voluntary and understood to be voluntary.

These restrictions on inherently religious activities do not apply where CSBG funds are provided to religious organizations as a result of a genuine and independent private choice of a program beneficiary. A religious organization may receive funds as the result of a beneficiary's genuine and independent private choice if, for example, a beneficiary redeems a voucher, coupon, certificate, or similar funding mechanism that was provided to that individual under a program that is designed to give that individual a choice among providers. Thus, religious organizations that receive funds under the CSBG Act as a result of a beneficiary's genuine and independent private choice need not separate, in time or location, their inherently religious activities from the CSBG-funded services they provide, provided that they otherwise satisfy the requirements of the program.

• *Religious Character and Independence of Religious Organizations.* Paragraph (c) of the proposed rule clarifies that a religious organization that participates in the CSBG Act programs retains its independence from Federal, State, and local governments, provided that it does not use direct program funds to support inherently religious activities. It may continue to carry out its mission, including the definition, practice and expression of its religious beliefs. Among other things, religious organizations may use their facilities to provide government-funded services, without removing religious art, icons, scriptures, or other symbols. In addition, a government-funded religious organization may retain religious terms in its organization's name, select its

[1] In the Charitable Choice context, the term ''direct'' funding is used to describe funds that are provided ''directly'' by a governmental entity or an intermediate organization with the same duties as a governmental entity, as opposed to funds that an organization receives as the result of the genuine and independent private choice of a beneficiary. In other contexts, the term ''direct'' funding may be used to refer to those funds that an organization receives directly from the Federal government (also known as ''discretionary'' funding), as opposed to funding that it receives from a State or local government (also known as ''indirect'' or ''block grant'' funding). In these proposed regulations, the term ''direct'' has the former meaning.

board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

• *Employment Practices.* Under paragraph (d), the proposed rule clarifies that the receipt of funds from programs authorized in the CSBG Act does not affect a participating religion organization's exemption provided under 42 U.S.C. 2000-e regarding employment practices. Title VII of the Federal Civil Rights Act of 1964 provides that a religious organization may, without running afoul of Title VII, employ individuals who share its religious beliefs. This provision helps enable faith-based groups to promote common values, a sense of community and unity of purpose, and shared experiences through service—all of which can contribute to a religious organization's effectiveness. It thus helps protect the religious liberties of communities of faith. The CSBG Act's Charitable Choice provisions thus reflect the recognition that a religious organization may determine that, in order to define or carry out its mission, it is important that it be able to take its faith into account in making employment decisions.

• *Nondiscrimination Against Beneficiaries.* The proposed rule also contains provisions that apply to the individuals who receive funded services. The first of these is found under paragraph (e) of the proposed rule. This section clarifies that religious organizations are prohibited from discriminating against beneficiaries or potential beneficiaries on the basis of religion or religious belief. Accordingly, religious organizations, in providing services funded in whole or in part under any program authorized in the CSBG Act, may not discriminate against current or prospective program beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to actively participate in a religious practice.

• *Fiscal Accountability.* Under paragraph (f) of the proposed rule, we outline the financial responsibility incurred through the receipt of funds from programs authorized under the CSBG Act. Religious organizations that receive such funding to provide services or benefits are subject to the same requirements as other nongovernmental organizations to account, in accordance with generally accepted auditing and accounting principles, for use of such funds. Religious organizations are also required to account for the expenditure of all governmental funds and are subject to audit by the government. Religious organizations must segregate their government funds provided under any of the programs in the CSBG Act from their other funds so that only the use of their government funds would be subject to audit under the applicable CSBG Act program.

• *Effect on State and Local Funds.* The proposed rule at paragraph (g) provides that if a State or local government contributes its own funds to supplement federal CSBG funded activities, the State or local government has the option to separate out the Federal funds or commingle them. However, if the funds are commingled, the Charitable Choice provisions apply to all of the commingled funds.

• *Treatment of Intermediate Organizations.* Finally, paragraph (h) of the proposed rule provides that, if a nongovernmental organization (referred to here as an ''intermediate organization''), acting under a contract, grant, or other agreement with the Federal Government or a State or local government, is given the authority under the contract or agreement to select other nongovernmental organizations to provide services under the program, the intermediate organization must ensure that there is compliance with the Charitable Choice provisions. The intermediate organization retains all other rights of a nongovernmental organization under the Charitable Choice provisions.

IV. Paperwork Reduction Act of 1995

No new information collection requirements are imposed by these regulations, nor are any existing requirements changed as a result of their promulgation. Therefore, the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), regarding reporting and record keeping, do not apply.

V. Regulatory Flexibility Analysis

The Secretary certifies, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this rule will not result in a significant impact on a substantial number of small entities.

VI. Regulatory Impact Analysis

Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles. This rule is considered a ''significant regulatory action'' under 3(f) of the Executive Order, and therefore has been reviewed by the Office of Management and Budget.

VII. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

The Department has determined that this rule would not impose a mandate that will result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year.

VIII. Congressional Review

This regulation is not a major rule as defined in 5 U.S.C. chapter 8.

IX. Assessment of Federal Regulation and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires Federal agencies to determine whether a proposed policy or regulation may affect family well being. If the agency's determination is affirmative, then the agency must prepare an impact assessment addressing seven criteria specified in the law. These regulations will not have an impact on family well being as defined in the legislation.

X. Executive Order 13132

Executive Order 13132, Federalism, requires that Federal agencies consult with State and local government officials in the development of regulatory policies with federalism implications. Consistent with Executive Order 13132, we specifically solicit comment from State and local government officials on this proposed rule.

Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

Executive Order 13175 (65 FR 67249, November 6, 2000) requires us to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' Although it is not clear that the proposed rule will have tribal implications, we specifically solicit comment on this proposed rule from tribal officials.

List of Subjects in 45 CFR Part 1050

Grant programs-social programs.

(Catalog of Federal Domestic Assistance Programs No. 93569 Community Services Block Grant)

Dated: December 12, 2002.

Tommy G. Thompson,

Secretary of Health and Human Services.

For the reasons discussed above, we are proposing to add to 45 CFR chapter X a new part 1050 to read as follows:

PART 1050—CHARITABLE CHOICE UNDER THE COMMUNITY SERVICES BLOCK GRANT PROGRAM

Sec.

1050.1 Scope.
1050.2 Definitions.
1050.3 What conditions apply to the Charitable Choice provisions of the CSBG Act?

Authority: 42 U.S.C. 9901 *et seq.*

§ 1050.1 Scope.

This part applies to programs authorized under the Community Services Block Grant Act (CSBG Act). (42 U.S.C. 9901, 9913, 9920, 9921, 9922, 9923)

§ 1050.2 Definitions.

Applicable program means any program authorized under Title II of the Community Opportunities, Accountability, and Training and Education Act of 1998, 42 U.S.C. 9901, *et seq.*

Direct funding, directly funded or funding provided directly means funding that is provided to an organization directly by a governmental entity or an intermediate organization that has the same duties as a governmental entity, as opposed to funding that an organization receives as a result of the genuine and independent private choice of a beneficiary.

Intermediate organization means an organization that is authorized by the terms of a contract, grant or other agreement with the Federal Government, or a State or local government, to select other non-governmental organizations to provide assistance under an applicable program. For example, when a State uses CSBG funds to pay for technical assistance services provided by a private entity and also authorizes that entity to subcontract for a portion of the technical assistance effort, the private entity is an intermediate organization.

Program beneficiary or recipient means an individual who receives services under a program funded in whole or part by an applicable program.

Program participant means a public or private entity that has received financial assistance under an applicable program.

Religious organization means a nonprofit religious organization.

§ 1050.3 What conditions apply to the Charitable Choice provisions of the CSBG Act?

These Charitable Choice provisions apply whenever the Federal government, or a State or local government, uses-CSBG provided awards, contracts, or other assistance under any program authorized in the Community Services Block Grant, 42 U.S.C. 9901, *et seq.* Additionally, these provisions apply whenever an intermediate organization acting under a contract, grant, or other agreement with a Federal, State, or local government entity selects nongovernmental organizations to provide assistance under any of the programs authorized under the Community Services Block Grant Act.

(a)(1) Religious organizations are eligible, on the same basis as any other organization, to participate in the applicable programs as long as they use program funds consistent with the Establishment Clause and the Free Exercise Clause of the First Amendment to the United States Constitution.

(2) Neither the Federal government nor a State or local government receiving funds under an applicable program shall discriminate against an organization that applies to provide, or provides, services or benefits on the basis of the organization's religious character or affiliation.

(b) No program participant that receives direct funding under an applicable program may expend the program funds, for inherently religious activities, such as worship, religious instruction, or proselytization. If an organization conducts such activities, it must offer them separately, in time or location, from the programs or services directly funded under any applicable program, and participation must be voluntary for program beneficiaries.

(c) A religious organization that participates in an applicable program will retain its independence from Federal, State, and local governments and may continue to carry out its mission, including the definition, practice and expression of its religious beliefs, provided that it does not expend any direct funding under the applicable program to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide services funded under an applicable program without removing religious art, icons, scriptures, or other symbols. In addition, such a religious organization retains the authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

(d) The participation of a religious organization in, or its receipt of funds from, an applicable program does not affect that organization's exemption provided under 42 U.S.C. 2000e–1 regarding employment practices.

(e) A religious organization that receives funds under an applicable program, shall not, in providing program services or benefits, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to actively participate in a religious practice.

(f) Religious organizations that receive funds under an applicable program are subject to the same regulations as other nongovernmental organizations to account, in accordance with generally accepted auditing and accounting principles, for the use of such funds. In addition, religious organizations are required to keep any Federal funds they receive for services segregated in a separate account from non-Federal funds. Only the segregated government funds are subject to audit by the government under the applicable program.

(g) If a State or local government contributes its own funds to supplement CSBG funded activities, the State or local government has the option to segregate the Federal funds or commingle them. However, if the funds are commingled, the Charitable Choice provisions apply to all of the commingled funds.

(h) If a nongovernmental intermediate organization, acting under a grant, contract, or other agreement with the Federal, State or local government, is given the authority to select nongovernmental organizations to provide services under an applicable program, then the intermediate organization must ensure that there is compliance with these Charitable Choice provisions. The intermediate organization retains all other rights of a nongovernmental organization under the Charitable Choice provisions.

[FR Doc. 02–31675 Filed 12–12–02; 4:32 pm]

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Federal Register

Tuesday,

December 17, 2002

Part VI

Federal Communications Commission

47 CFR Parts 73 and 76

Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies; Proposed Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR PartS 73 and 76

[MM Docket No. 98–204; FCC 02–303]

RIN 4223

Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document the Commission solicits comment on how to apply Equal Employment Opportunity (''EEO'') rules to part-time employees. The Commission also seeks comment on how many and what types of positions in the broadcast and multichannel video programming distributors (MVPD) industry would fall into the part-time classification. The intended effect is to invite comments on all aspects of the Commission's proposal.

DATES: Comments are due on or before December 20, 2002; reply comments are due on or before January 6, 2003.

FOR FURTHER INFORMATION CONTACT: Estella Salvatierra, Media Bureau, (202) 418–1789 or via e-mail at *Esalvatierra@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Media Bureau's *Third Notice of Proposed Rulemaking (''3rd NPRM'')* MM 98–204; FCC 02–303, adopted November 7, 2002, and released November 20, 2002. The complete text of this *3rd NPRM* is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC and may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B–402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via email *qualexint@aol.com.* Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419 comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings* (63 FR 24121, May 1, 1998). This document is available in alternative formats (computer diskette, large print, audio record, and Braille). Persons with disabilities who need documents in these formats may contact Brian Millin at (202) 418–7426 (voice), (202) 418–7365 (TTY), or via e mail at *bmillin@fcc.gov.* Parties may submit their comments using the Commission's Electronic Comment Filing System (''ECFS'') or by filing paper copies. Comments may be filed as an electronic file via the Internet at *http://www.fcc.gov/e-file/ecfs.html.* Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To obtain filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message: ''get form <your e-mail address>.'' A sample form and directions will be sent in reply. Additional information on ECFS is available at *http://www.fcc.gov/e-file/ecfs.html.*

Filings may also be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

Synopsis of Third Notice of Proposed Rulemaking

1. The EEO rules apply to all ''full-time employees,'' defined as those whose regular work schedule is 30 hours or more a week. We have previously applied a ''substantial compliance'' policy to positions involving less than 30 hours a week, although we did not require reporting of this effort and did not focus on part-time hires in our review of EEO programs. As discussed, we do not have sufficient evidence in the current record to make an informed decision about whether and how to apply the new EEO rules and policies to part-time positions, defined as less than 30 hours per week. We are thus seeking comment on this issue. In particular, we seek comment on how many and what types of positions in the broadcast and MVPD industries fall into this category, what is the significance of these positions in terms of entry into broadcasting, how burdensome compliance with the recruitment, record-keeping, and reporting requirements for all or some part-time positions would be for broadcasters and MVPDs, and whether the requirements applicable to part-time positions should be the same as or different from those applicable to full-time positions. We also seek comment on whether we should set a minimum number of hours for a part-time position to be covered by the rules and, if so, what that minimum should be.

Procedural Matters

2. *Ex Parte Rules.* With respect to the *3rd NPRM,* this is a permit-but-disclose notice and comment proceeding. Ex parte presentations are permitted except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's Rules. *See:* 47 CFR 1.1202, 1.1203, and 1.1206(a).

7. *Initial Regulatory Flexibility Analysis.* With respect to the *3rd NPRM,* an IRFA is contained. As required by section 603 of the Regulatory Flexibility Act, the Commission has prepared an IRFA of the possible significant economic impact on small entities of the proposals contained in this *3rd NPRM.* Written public comments are requested on the IRFA. Comments on the IRFA must be filed in accordance with the same filing deadlines as comments on the *3rd NPRM,* but they must have a distinct heading designating them as responses to the IRFA.

Paperwork Reduction Act

3. *Initial Paperwork Reduction Act of 1995 Analysis.* This *3rd NPRM* contains either a proposed or modified

information collection in that part-time hires could potentially be subject to information collection requirements. As part of our continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this *3rd NPRM,* as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this *3rd NPRM;* OMB comments are due 60 days from the date of publication of this *3rd NPRM* in the **Federal Register**. Comments should address: (a) Whether the potential 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 estimates; (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. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 Twelfth Street, SW., Washington, DC 20554, or via the Internet to *jboley@fcc.gov* and to Edward Springer, OMB Desk Officer, 10236 NEOB, 725 17th Street, NW., Washington, DC 20503, or via the Internet to *Edward.Springer@omb.eop.gov.*

Initial Regulatory Flexibility Analysis

4. As required by the RFA, the Commission has prepared this present IRFA of the possible significant economic impact on small entities by the policies and rules proposed in this *3rd NPRM.* Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *3rd NPRM* provided. The Commission will send a copy of the *3rd NPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the *3rd NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rule Changes

5. This *3rd NPRM* requests comments concerning the applicability of new equal employment opportunity (''EEO'') rules and policies with respect to part-time employees of broadcast and multichannel video programming distributors (''MVPDs''). The EEO rules apply to full-time employees, defined as those whose regular work schedule is 30 hours or more a week. The current record is insufficient to allow the Commission to determine whether and how to apply the rules to part-time positions, defined as fewer than 30 hours per week. The *3rd NPRM* seeks comment on this issue. In particular, the *3rd NPRM* seeks comment on how many and what types of positions in the broadcast and MVPD industries fall into this category; the significance of these positions in terms of entry into broadcasting; how burdensome compliance with the recruitment, record-keeping, and reporting requirements for all or some part-time positions would be for broadcasters and MVPDs; and whether the requirements applicable to part-time positions should be the same as or different from those applicable to full-time positions. We also seek comment on whether we should set a minimum number of hours for a part-time position to be covered by the rules and, if so, what that minimum should be.

B. Legal Basis

6. Authority for the actions proposed in this *3rd NPRM* may be found in sections 1, 4(i), 4(k), 257, 301, 303(r), 307, 308(b), 309, 334, 403, and 634 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(k), 257, 301, 303(r), 307, 308(b), 309, 334, 403, and 554.

C. Recording, Recordkeeping, and Other Compliance Requirements

7. As noted, the purpose of this rulemaking is to determine whether and how to apply the Commission's EEO rules to employment positions involving fewer than 30 hours per week. Hence, this *3rd NPRM* anticipates that any recording, recordkeeping and compliance requirements proposed for part-time employees will not exceed those already provided for full-time employees.

D. Description and Estimate of the Number of Small Entities to Which the Rule Would Apply

1. Definition of a ''Small Business''

8. The proposed rules would apply to broadcast stations and MVPDs. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein. Under the RFA, small entities may include small organizations, small businesses, and small governmental jurisdictions. The RFA, 5 U.S.C. 601(3), generally defines the term ''small business'' as having the same meaning as the term ''small business concern'' under the Small Business Act, 15 U.S.C. 632. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. 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 [SBA] 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(s) in the **Federal Register**.''

9. A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 1992, there were approximately 275,801 small organizations. Finally, ''small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.'' As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. The United States Bureau of the Census (Census Bureau) estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities.

2. Issues in Applying the Definition of a ''Small Business''

10. As discussed, we could not precisely apply the foregoing definition of ''small business'' in developing our estimates of the number of small entities to which the rules will apply. Our estimates reflect our best judgments based on the data available to us. An element of the definition of ''small business'' is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific radio or television station is dominant in its field of operation. Accordingly, the following estimates of small businesses to which the new rules will apply do not exclude any radio or television station from the definition of a small business on this

basis and are therefore overinclusive to that extent. An additional element of the definition of ''small business'' is that the entity must be independently owned and operated. As discussed further below, we could not fully apply this criterion, and our estimates of small businesses to which the rules may apply may be overinclusive to this extent. The SBA's general size standards are developed taking into account these two statutory criteria. This does not preclude us from taking these factors into account in making our estimates of the numbers of small entities.

11. With respect to applying the revenue cap, the SBA has defined ''annual receipts'' specifically in 13 CFR 121.104, and its calculations include an averaging process. We do not currently require submission of financial data from licensees that we could use in applying the SBA's definition of a small business. Thus, for purposes of estimating the number of small entities to which the rules apply, we are limited to considering the revenue data that are publicly available, and the revenue data on which we rely may not correspond completely with the SBA definition of annual receipts.

12. Under SBA criteria for determining annual receipts, if a concern has acquired an affiliate or been acquired as an affiliate during the applicable averaging period for determining annual receipts, the annual receipts in determining size status include the receipts of both firms. The SBA defines affiliation in 13 CFR 121.103. In this context, the SBA's definition of affiliate is analogous to our attribution rules. Generally, under the SBA's definition, concerns are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both. The SBA considers factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships, in determining whether affiliation exists. Instead of making an independent determination of whether television stations were affiliated based on SBA's definitions, we relied on the databases available to us to provide us with that information.

3. Estimates Based on Census Data

13. The proposed rules will apply to broadcast television and radio stations. The SBA defines a television broadcasting station that has no more than $12.0 million in annual receipts as a small business. Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational, and other television stations. Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials. Separate establishments primarily engaged in producing taped television program materials are classified under other North American Industry Classification (NAICS) numbers.

14. There were 1,695 full-service television stations operating in the as of December 2001. According to Census Bureau data for 1997, there were 906 Television Broadcasting firms, total, that operated for the entire year. Of this total, 734 firms had annual receipts of $9,999,999.00 or less and an additional 71 had receipts of $10 million to $24,999,999.00. Under this standard, the majority of firms can be considered small.

15. The SBA defines a radio broadcasting station that has no more than $6 million in annual receipts as a small business. A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public. Included in this industry are commercial, religious, educational, and other radio stations. Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included. Radio stations which are separate establishments and are primarily engaged in producing radio program material are classified under another NAICS number. According to Census Bureau data for 1997, there were 4,476 Radio Stations (firms), total, that operated for the entire year. Of this total 4,265 had annual receipts of $4,999,999.00 or less, and an additional 103 firms had receipts of $5 million to $9,999,999.00. Under this standard, the great majority of firms can be considered small.

16. The proposed rules would also apply to MVPDs. SBA has developed a definition of a small entity for cable and other program distribution, which includes all such companies generating $12.5 million or less in annual receipts. This definition includes direct broadcast satellite services (DBS), multipoint distribution systems (MDS), and local multipoint distribution service (LMDS). According to Census Bureau data for 1997, there were 1,311 firms within the industry category Cable and Other Program Distribution, total, that operated for the entire year. Of this total, 1,180 firms had annual receipts of $9,999,999.00 or less, and an additional 52 firms had receipts of $10 million to $24,999,999.00. Under this standard, the majority of firms can be considered small.

17. *Cable Systems:* The Commission has developed, with SBA's approval, its own definition of small cable system operators. Under the Commission's rules, a ''small cable company'' is one serving fewer than 400,000 subscribers nationwide. Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable companies at the end of 1995. Since then, some of those companies may have grown to serve more than 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators that may be affected by the rules proposed herein.

18. The Communications Act also contains a definition of a small cable system operator, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate less than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenue in the aggregate exceeds $250,000,000.'' The Commission has determined that there are 67,700,000 subscribers in the United States. We found that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that the number of cable operators serving 677,000 subscribers or less totals approximately 1,450. Since we do not request nor collect information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

19. *MDS:* MDS involves a variety of transmitters, which are used to relay programming to the home or office. The Commission has defined ''small entity'' for purposes of the 1996 auction of MDS as an entity that, together with its affiliates, has average gross annual revenues that are not more than $40 million for the preceding three calendar years. This definition of a small entity

in the context of MDS auctions has been approved by the SBA. These stations were licensed prior to implementation of section 309(j) of the Communications Act of 1934, as amended. Licenses for new MDS facilities are now awarded to auction winners in Basic Trading Areas (BTAs) and BTA-like areas. The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 BTAs. Of the 67 auction winners, 61 met the definition of a small business.

20. *LMDS:* The auction of the 1,030 LMDS licenses began on February 18, 1998, and closed on March 25, 1998. The Commission defined ''small entity'' for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years. An additional classification for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These regulations defining ''small entity'' in the context of LMDS auctions have been approved by the SBA. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission reauctioned 161 licenses; there were 40 winning bidders. Based on this information, we conclude that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the reauction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission's auction rules.

21. *DBS:* Because DBS provides subscription services, it falls within the SBA-recognized definition of ''Cable and Other Program Distribution.'' This definition provides that a small entity is one with $12.5 million or less in annual receipts. Currently, there are nine DBS authorizations, though there are only two DBS companies in operation at this time. We neither request nor collect annual revenue information for DBS services, and are unable to determine the number of DBS operators that would be considered a small business under the SBA definition.

22. An alternative way to classify small entities is by the number of employees. Based on available data, we estimate that in 1997 the total number of full-service broadcast stations with four or fewer employees was 5186, of which 340 were television stations. Similarly, we estimate that in 1997, 1900 cable employment units employed fewer than six full-time employees. Also, in 1997, 296 ''MVPD'' employment units employed fewer than six full-time employees. We also estimate that in 1997, the total number of full-service broadcast stations with five to ten employees was 2145, of which 200 were television stations. Similarly, we estimate that in 1997, 322 cable employment units employed six to ten full-time employees. Also, in 1997, approximately 65 MVPD employment units employed six to ten full-time employees.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

23. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

24. This *3rd NPRM* seeks comments on the applicability of the EEO rules to part-time employees, and would not change the status of small broadcasters or MVPDs.

25. We note that the issue at hand affects the compliance burdens of entities that, by definition, are not within our EEO small business size standards. We have nonetheless created this present initial analysis to encourage comments by small entities and create a fuller record.

26. Currently, broadcasters with station employment units of five to ten full-time employees are provided some relief from EEO program requirements, and station employment units of fewer than five full-time employees are not required to demonstrate compliance with the EEO program requirements. In addition, MVPD employment units employing six to ten full-time employees are provided some relief from the EEO program requirements, and MVPD employment units with fewer than six full-time employees are not required to demonstrate compliance with the EEO program requirements.

F. Federal Rules That Overlap, Duplicate, or Conflict With the Proposed Rules

27. We note that certain commenters have indicated that federal, state and local EEO requirements serve much the same purpose as our EEO Rule. We have addressed these arguments in *3rd NPRM.*

Ordering Clause

28. *Authority.* This *3 NPRM* is issued pursuant to authority contained in sections 1, 4(i), 4(k), 257, 301, 303(r), 307, 308(b), 309, 334, 403, and 634 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(k), 257, 301, 303(r), 307, 308(b), 309, 334, 403, and 554.

29. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *3rd NPRM* including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

30. MM Docket No. 98–204 will remain open for the limited purpose of considering the issues raised in this *3rd NPRM,* and to facilitate any additional proceedings upon further order of the Commission.

List of Subjects in 47 CFR Parts 73 and 76

Cable television, Equal employment opportunity.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 73 and 76 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 73.2080 is revised to read as follows:

§ 73.2080 Equal employment opportunities (EEO).

(a) *General EEO policy.* Equal opportunity in employment shall be afforded by all licensees or permittees of commercially or noncommercially operated AM, FM, TV, Class A TV or international broadcast stations (as defined in this part) to all qualified persons, and no person shall be discriminated against in employment by such stations because of race, color,

religion, national origin, or sex. Religious radio broadcasters may establish religious belief or affiliation as a job qualification for all station employees. However, they cannot discriminate on the basis of race, color, national origin or gender from among those who share their religious affiliation or belief. For purposes of this rule, a religious broadcaster is a licensee which is, or is closely affiliated with, a church, synagogue, or other religious entity, including a subsidiary of such an entity.

(b) *General EEO program requirements.* Each broadcast station shall establish, maintain, and carry out a positive continuing program of specific practices designed to ensure equal opportunity and nondiscrimination in every aspect of station employment policy and practice. Under the terms of its program, a station shall:

(1) Define the responsibility of each level of management to ensure vigorous enforcement of its policy of equal opportunity, and establish a procedure to review and control managerial and supervisory performance;

(2) Inform its employees and recognized employee organizations of the equal employment opportunity policy and program and enlist their cooperation;

(3) Communicate its equal employment opportunity policy and program and its employment needs to sources of qualified applicants without regard to race, color, religion, national origin, or sex, and solicit their recruitment assistance on a continuing basis;

(4) Conduct a continuing program to exclude all unlawful forms of prejudice or discrimination based upon race, color, religion, national origin, or sex from its personnel policies and practices and working conditions; and

(5) Conduct a continuing review of job structure and employment practices and adopt positive recruitment, job design, and other measures needed to ensure genuine equality of opportunity to participate fully in all organizational units, occupations, and levels of responsibility.

(c) *Specific EEO program requirements.* Under the terms of its program, a station employment unit must:

(1) Recruit for every full-time job vacancy in its operation. A job filled by an internal promotion is not considered a vacancy for which recruitment is necessary. Religious radio broadcasters who establish religious affiliation as a qualification for a job position are not required to comply with these recruitment requirements with respect to that job position or positions, but will be expected to make reasonable, good faith efforts to recruit applicants who are qualified based on their religious affiliation. Nothing in this section shall be interpreted to require a broadcaster to grant preferential treatment to any individual or group based on race, color, national origin, religion, or gender.

(i) A station employment unit shall use recruitment sources for each vacancy sufficient in its reasonable, good faith judgment to widely disseminate information concerning the vacancy.

(ii) In addition to such recruitment sources, a station employment unit shall provide notification of each full-time vacancy to any organization that distributes information about employment opportunities to job seekers or refers job seekers to employers, upon request by such organization. To be entitled to notice of vacancies, the requesting organization must provide the station employment unit with its name, mailing address, e-mail address (if applicable), telephone number, and contact person, and identify the category or categories of vacancies of which it requests notice. (An organization may request notice of all vacancies).

(2) Engage in at least four (if the station employment unit has more than ten full-time employees and is not located in a smaller market) or two (if it has five to ten full-time employees and/or is located entirely in a smaller market) of the following initiatives during each two-year period beginning with the date stations in the station employment unit are required to file renewal applications, or the second, fourth or sixth anniversaries of that date.

(i) Participation in at least four job fairs by station personnel who have substantial responsibility in the making of hiring decisions;

(ii) Hosting of at least one job fair;

(iii) Co-sponsoring at least one job fair with organizations in the business and professional community whose membership includes substantial participation of women and minorities;

(iv) Participation in at least four events sponsored by organizations representing groups present in the community interested in broadcast employment issues, including conventions, career days, workshops, and similar activities;

(v) Establishment of an internship program designed to assist members of the community to acquire skills needed for broadcast employment;

(vi) Participation in job banks, Internet programs, and other programs designed to promote outreach generally (*i.e.*, that are not primarily directed to providing notification of specific job vacancies);

(vii) Participation in scholarship programs designed to assist students interested in pursuing a career in broadcasting;

(viii) Establishment of training programs designed to enable station personnel to acquire skills that could qualify them for higher level positions;

(ix) Establishment of a mentoring program for station personnel;

(x) Participation in at least four events or programs sponsored by educational institutions relating to career opportunities in broadcasting;

(xi) Sponsorship of at least two events in the community designed to inform and educate members of the public as to employment opportunities in broadcasting;

(xii) Listing of each upper-level category opening in a job bank or newsletter of media trade groups whose membership includes substantial participation of women and minorities;

(xiii) Provision of assistance to unaffiliated non-profit entities in the maintenance of web sites that provide counseling on the process of searching for broadcast employment and/or other career development assistance pertinent to broadcasting;

(xiv) Provision of training to management level personnel as to methods of ensuring equal employment opportunity and preventing discrimination;

(xv) Provision of training to personnel of unaffiliated non-profit organizations interested in broadcast employment opportunities that would enable them to better refer job candidates for broadcast positions;

(xvi) Participation in other activities designed by the station employment unit reasonably calculated to further the goal of disseminating information as to employment opportunities in broadcasting to job candidates who might otherwise be unaware of such opportunities.

(3) Analyze its recruitment program on an ongoing basis to ensure that it is effective in achieving broad outreach to potential applicants, and address any problems found as a result of its analysis.

(4) Periodically analyze measures taken to:

(i) Disseminate the station's equal employment opportunity program to job applicants and employees;

(ii) Review seniority practices to ensure that such practices are nondiscriminatory;

(iii) Examine rates of pay and fringe benefits for employees having the same duties, and eliminate any inequities based upon race, national origin, color, religion, or sex discrimination;

(iv) Utilize media for recruitment purposes in a manner that will contain no indication, either explicit or implicit, of a preference for one race, national origin, color, religion or sex over another;

(v) Ensure that promotions to positions of greater responsibility are made in a nondiscriminatory manner;

(vi) Where union agreements exist, cooperate with the union or unions in the development of programs to ensure all persons of equal opportunity for employment, irrespective of race, national origin, color, religion, or sex, and include an effective nondiscrimination clause in new or renegotiated union agreements; and

(vii) Avoid the use of selection techniques or tests that have the effect of discriminating against any person based on race, national origin, color, religion, or sex.

(5) Retain records to document that it has satisfied the requirements of paragraphs (c)(1) and (2) of this section. Such records, which may be maintained in an electronic format, shall be retained until after grant of the renewal application for the term during which the vacancy was filled or the initiative occurred. Such records need not be submitted to the FCC unless specifically requested. The following records shall be maintained:

(i) Listings of all full-time job vacancies filled by the station employment unit, identified by job title;

(ii) For each such vacancy, the recruitment sources utilized to fill the vacancy (including, if applicable, organizations entitled to notification pursuant to paragraph (c)(1)(ii) of this section, which should be separately identified), identified by name, address, contact person and telephone number;

(iii) Dated copies of all advertisements, bulletins, letters, faxes, e-mails, or other communications announcing vacancies;

(iv) Documentation necessary to demonstrate performance of the initiatives required by paragraph (c)(2) of this section, including sufficient information to fully disclose the nature of the initiative and the scope of the station's participation, including the station personnel involved;

(v) The total number of interviewees for each vacancy and the referral source for each interviewee; and

(vi) The date each vacancy was filled and the recruitment source that referred the hiree.

(6) Annually, on the anniversary of the date a station is due to file its renewal application, the station shall place in its public file, maintained pursuant to § 73.3526 or § 73.3527, and on its web site, if it has one, an EEO public file report containing the following information (although if any broadcast licensee acquires a station pursuant to FCC Form 314 or FCC Form 315 during the twelve months covered by the EEO public file report, its EEO public file report shall cover the period starting with the date it acquired the station):

(i) A list of all full-time vacancies filled by the station's employment unit during the preceding year, identified by job title;

(ii) For each such vacancy, the recruitment source(s) utilized to fill the vacancy (including, if applicable, organizations entitled to notification pursuant to paragraph (c)(1)(ii) of this section, which should be separately identified), identified by name, address, contact person and telephone number;

(iii) The recruitment source that referred the hiree for each full-time vacancy during the preceding year;

(iv) Data reflecting the total number of persons interviewed for full-time vacancies during the preceding year and the total number of interviewees referred by each recruitment source utilized in connection with such vacancies; and

(v) A list and brief description of initiatives undertaken pursuant to paragraph (c)(2) of this section during the preceding year.

(d) *Small Station Exemption.* The provisions of paragraphs (b) and (c) of this section shall not apply to station employment units that have fewer than five full-time employees.

(e) *Definitions.* For the purposes of this rule:

(1) A full-time employee is a permanent employee whose regular work schedule is 30 hours per week or more.

(2) A station employment unit is a station or a group of commonly owned stations in the same market that share at least one employee.

(3) A smaller market includes metropolitan areas as defined by the Office of Management and Budget with a population of fewer than 250,000 persons and areas outside of all metropolitan areas as defined by the Office of Management and Budget.

(f) *Enforcement.* The following provisions apply to employment activity concerning full-time positions at each broadcast station employment unit (defined in this part) employing five or more persons in full-time positions, except where noted.

(1) All broadcast stations, including those that are part of an employment unit with fewer than five full-time employees, shall file a Broadcast Equal Employment Opportunity Program Report (Form 396) with their renewal application. Form 396 is filed on the date the station is due to file its application for renewal of license. If a broadcast licensee acquires a station pursuant to FCC Form 314 or FCC Form 315 during the period that is to form the basis for the Form 396, information provided on its Form 396 should cover the licensee's EEO recruitment activity during the period starting with the date it acquired the station. Stations are required to maintain a copy of their Form 396 in the station's public file in accordance with the provisions of §§ 73.3526 and 73.3527.

(2) The Commission will conduct a mid-term review of the employment practices of each broadcast television station and each radio station that is part of an employment unit of more than ten full-time employees four years following the station's most recent license expiration date as specified in § 73.1020. Each such licensee is required to file with the Commission the Broadcast Mid-Term Report (FCC Form 397) four months prior to that date. If a broadcast licensee acquires a station pursuant to FCC Form 314 or FCC Form 315 during the period that is to form the basis for the Form 397, its Report should cover the licensee's EEO recruitment activity during the period starting with the date it acquired the station.

(3) If a station is subject to a time brokerage agreement, the licensee shall file Forms 396, Forms 397, and EEO public file reports concerning only its own recruitment activity. If a licensee is a broker of another station or stations, the licensee-broker shall include its recruitment activity for the brokered station(s) in determining the bases of Forms 396, Forms 397 and the EEO public file reports for its own station. If a licensee-broker owns more than one station, it shall include its recruitment activity for the brokered station in the Forms 396, Forms 397, and EEO public file reports filed for its own station that is most closely affiliated with, and in the same market as, the brokered station. If a licensee-broker does not own a station in the same market as the brokered station, then it shall include its recruitment activity for the brokered station in the Forms 396, Forms 397, and EEO public file reports filed for its

own station that is geographically closest to the brokered station.

(4) Broadcast stations subject to this section shall maintain records of their recruitment activity necessary to demonstrate that they are in compliance with the EEO rule. Stations shall ensure that they maintain records sufficient to verify the accuracy of information provided in Forms 396, Forms 397, and EEO public file reports. To determine compliance with the EEO Rule, the Commission may conduct inquiries of licensees at random or if it has evidence of a possible violation of the EEO Rule. In addition, the Commission will conduct random audits. Specifically, each year approximately five percent of all licensees in the television and radio services will be randomly selected for audit, ensuring that, even though the number of radio licensees is significantly larger than television licensees, both services are represented in the audit process. Upon request, stations shall make records available to the Commission for its review.

(5) The public may file complaints throughout the license term based on a station's Form 397 or the contents of a station's public file. Provisions concerning filing, withdrawing, or non-filing of informal objections or petitions to deny license renewal, assignment, or transfer applications are delineated in §§ 73.3584 and 73.3587–3589 of the Commission's rules.

(g) *Sanctions and Remedies.* The Commission may issue appropriate sanctions and remedies for any violation of this rule.

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

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

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

4. Section 76.75 is amended by revising paragraphs (b), (f), (g), (h), (i), and (j); and removing paragraph (k), to read as follows:

§ 76.75 Specific EEO program requirements.

* * * * *

(b) Establish, maintain and carry out a positive continuing program of outreach activities designed to ensure equal opportunity and nondiscrimination in employment. The following activities shall be undertaken by each employment unit:

(1) Recruit for every full-time job vacancy in its operation. A job filled by an internal promotion is not considered a vacancy for which recruitment is necessary. Nothing in this section shall be interpreted to require a multichannel video programming distributor to grant preferential treatment to any individual or group based on race, national origin, color, religion, age, or gender.

(i) An employment unit shall use recruitment sources for each vacancy sufficient in its reasonable, good faith judgment to widely disseminate information concerning the vacancy.

(ii) In addition to using such recruitment sources, a multichannel video programming distributor employment unit shall provide notification of each full-time vacancy to any organization that distributes information about employment opportunities to job seekers or refers job seekers to employers, upon request by such organization. To be entitled to notice of vacancies, the requesting organization must provide the multichannel video programming distributor employment unit with its name, mailing address, e-mail address (if applicable), telephone number, and contact person, and identify the category or categories of vacancies of which it requests notice. (An organization may request notice of all vacancies).

(2) Engage in at least two (if the unit has more than ten full-time employees and is not located in a smaller market) or one (if the unit has six to ten full-time employees and/or is located, in whole or in part, in a smaller market) of the following initiatives during each twelve-month period preceding the filing of an EEO program annual report:

(i) Participation in at least two job fairs by unit personnel who have substantial responsibility in the making of hiring decisions;

(ii) Hosting of at least one job fair;

(iii) Co-sponsoring at least one job fair with organizations in the business and professional community whose membership includes substantial participation of women and minorities;

(iv) Participation in at least two events sponsored by organizations representing groups present in the community interested in multichannel video programming distributor employment issues, including conventions, career days, workshops, and similar activities;

(v) Establishment of an internship program designed to assist members of the community in acquiring skills needed for multichannel video programming distributor employment;

(vi) Participation in job banks, Internet programs, and other programs designed to promote outreach generally (*i.e.*, that are not primarily directed to providing notification of specific job vacancies);

(vii) Participation in a scholarship program designed to assist students interested in pursuing a career in multichannel video programming communications;

(viii) Establishment of training programs designed to enable unit personnel to acquire skills that could qualify them for higher level positions;

(ix) Establishment of a mentoring program for unit personnel;

(x) Participation in at least two events or programs sponsored by educational institutions relating to career opportunities in multichannel video programming communications;

(xi) Sponsorship of at least one event in the community designed to inform and educate members of the public as to employment opportunities in multichannel video programming communications;

(xii) Listing of each upper-level category opening in a job bank or newsletter of media trade groups whose membership includes substantial participation of women and minorities;

(xiii) Provision of assistance to unaffiliated non-profit entities in the maintenance of web sites that provide counseling on the process of searching for multichannel video programming employment and/or other career development assistance pertinent to multichannel video programming communications;

(xiv) Provision of training to management level personnel as to methods of ensuring equal employment opportunity and preventing discrimination;

(xv) Provision of training to personnel of unaffiliated non-profit organizations interested in multichannel video programming employment opportunities that would enable them to better refer job candidates for multichannel video programming positions;

(xvi) Participation in other activities reasonably calculated by the unit to further the goal of disseminating information as to employment opportunities in multichannel video programming to job candidates who might otherwise be unaware of such opportunities.

* * * * *

(f) A multichannel video programming distributor shall analyze its recruitment program on an ongoing basis to ensure that it is effective in achieving broad outreach, and address any problems found as a result of its analysis.

(g) Analyze on an ongoing basis its efforts to recruit, hire, promote and use services without discrimination on the basis of race, national origin, color, religion, age, or sex and explain any difficulties encountered in implementing its equal employment opportunity program. For example, this requirement may be met by:

(1) Where union agreements exist, cooperating with the union or unions in the development of programs to ensure all persons equal opportunity for employment, and including an effective nondiscrimination clause in new or renegotiated union agreements;

(2) Reviewing seniority practices to ensure that such practices are nondiscriminatory;

(3) Examining rates of pay and fringe benefits for employees having the same duties, and eliminating any inequities based upon race, national origin, color, religion, age, or sex discrimination;

(4) Evaluating the recruitment program to ensure that it is effective in achieving a broad outreach to potential applicants.

(5) Utilizing media for recruitment purposes in a manner that will contain no indication, either explicit or implicit, of a preference for one race, national origin, color, religion, age, or sex over another; and

(6) Avoiding the use of selection techniques or tests that have the effect of discriminating against qualified minority groups or women.

(h) A full-time employee is a permanent employee whose regular work schedule is 30 hours per week or more.

(i) The provisions of paragraphs (b)(1)(ii), (b)(2), (c), and (f) of this section shall not apply to multichannel video programming distributor employment units that have fewer than six full-time employees.

(j) For the purposes of this rule, a smaller market includes metropolitan areas as defined by the Office of Management and Budget with a population of fewer than 250,000 persons and areas outside of all metropolitan areas as defined by the Office of Management and Budget.

5. Section 76.77 is revised to read as follows:

§ 76.77 Reporting requirements and enforcement.

(a) *EEO program annual reports.* Information concerning a unit's compliance with the EEO recruitment requirements shall be filed by each employment unit with six or more full-time employees on FCC Form 396–C on or before September 30 of each year. If a multichannel video programming distributor acquires a unit during the twelve months covered by the EEO program annual report, the recruitment activity in the report shall cover the period starting with the date the entity acquired the unit.

(b) *Certification of Compliance.* The Commission will use the recruitment information submitted on a unit's EEO program annual report to determine whether the unit is in compliance with the provisions of this subpart. Units found to be in compliance with these rules will receive a Certificate of Compliance. Units found not to be in compliance will receive notice that they are not certified for a given year.

(c) *Investigations.* The Commission will investigate each unit at least once every five years. Employment units are required to submit supplemental investigation information with their regular EEO program annual reports in the years they are investigated. If an entity acquires a unit during the period covered by the supplemental investigation, the information submitted by the unit as part of the investigation shall cover the period starting with the date the operator acquired the unit. The supplemental investigation information shall include a copy of the unit's EEO public file report for the preceding year.

(d) *Records and inquiries.* Employment units subject to this subpart shall maintain records of their recruitment activity in accordance with § 76.75 to demonstrate whether they are in compliance with the EEO rules. Units shall ensure that they maintain records sufficient to verify the accuracy of information provided in their EEO program annual reports and the supplemental investigation responses required by § 76.1702 to be kept in a unit's public file. To determine compliance with the EEO rules, the Commission may conduct inquiries of employment units at random or if the Commission has evidence of a possible violation of the EEO rules. Upon request, employment units shall make records available to the Commission for its review.

(e) *Public complaints.* The public may file complaints based on EEO program annual reports, supplemental investigation information, or the contents of a unit's public file.

(f) *Sanctions and remedies.* The Commission may issue appropriate sanctions and remedies for any violation of the EEO rules.

6. Section 76.1702 is revised to read as follows:

§ 76.1702 Equal employment opportunity.

(a) Every employment unit with six or more full-time employees shall maintain for public inspection a file containing copies of all EEO program annual reports filed with the Commission pursuant to § 76.77 and the equal employment opportunity program information described in paragraph (b) of this section. These materials shall be placed in the unit's public inspection file annually by the date that the unit's EEO program annual report is due to be filed and shall be retained for a period of five years. The file shall be maintained at the central office and at every location with six or more full-time employees. A headquarters employment unit file and a file containing a consolidated set of all documents pertaining to the other employment units of a multichannel video programming distributor that operates multiple units shall be maintained at the central office of the headquarters employment unit. The multichannel video programming distributor shall provide reasonable accommodation at these locations for undisturbed inspection of its equal employment opportunity records by members of the public during regular business hours.

(b) The following equal employment opportunity program information shall be included annually in the unit's public file, and on the unit's web site, if it has one, at the time of the filing of its FCC Form 396–C:

(1) A list of all full-time vacancies filled by the multichannel video programming distributor employment unit during the preceding year, identified by job title;

(2) For each such vacancy, the recruitment source(s) utilized to fill the vacancy (including, if applicable, organizations entitled to notification pursuant to § 76.75(b)(1)(ii) of this section, which should be separately identified), identified by name, address, contact person and telephone number;

(3) The recruitment source that referred the hiree for each full-time vacancy during the preceding year;

(4) Data reflecting the total number of persons interviewed for full-time vacancies during the preceding year and the total number of interviewees referred by each recruitment source utilized in connection with such vacancies; and

(5) A list and brief description of the initiatives undertaken pursuant to § 76.75(b)(2) during the preceding year, if applicable.

Note: The following appendix will not appear in the Code of Federal Regulations.

BILLING CODE 6712–01–P

Appendix—FCC Forms

Federal Communications Commission
Washington, D. C. 20554

NOT Approved by OMB
3060-0120

BROADCAST EQUAL EMPLOYMENT OPPORTUNITY
MODEL PROGRAM REPORT

Legal Name of the Applicant		
Mailing Address		
City	State or Country (if foreign address)	ZIP Code
Telephone Number (include area code)	E-Mail Address (if available)	
[redacted]	Facility ID Number	Call Sign

☐ Application for Construction Permit for New Station ☐ Application for Assignment of License

☐ Application for Transfer of Control

a. Service Type: ☐ AM ☐ FM ☐ TV ☐ Other (specify)

b. Community of License:

City	State

INSTRUCTIONS

Applicants seeking authority to construct a new commercial, noncommercial or international broadcast station, applicants seeking authority to obtain assignment of the construction permit or license of such a station, and applicants seeking authority to acquire control of an entity holding such construction permit or license are required to afford equal employment opportunity to all qualified persons and to refrain from discrimination in employment and related benefits on the basis of race, color, religion, national origin or sex. See 47 C.F.R. Section 73.2080. Pursuant to these requirements, an applicant who proposes to employ five or more full-time employees must establish a program designed to ensure equal employment opportunity. This is submitted to the Commission as the Model EEO Program. For purposes of this form, a station employment unit is a station or a group of commonly owned stations in the same market that share at least one employee.

Guidelines for a Model EEO Program and a Model EEO Program are attached.

NOTE: Check appropriate box, sign the certification below and return to FCC:

Station employment unit will employ fewer than 5 full-time employees; therefore no written program is being submitted.

Station employment unit will employ 5 or more full-time employees. Our Model EEO Program is attached. (You must complete all sections of this form.)

I certify that the statements made herein are true, complete, and correct to the best of my knowledge and belief, and are made in good faith.

Signed	Name of Respondent
Title	Date

WILLFUL FALSE STATEMENTS ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT
(U.S. CODE, TITLE 18, SECTION 1001), AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT
(U.S. CODE, TITLE 47, SECTION 312(a)(1)), AND/OR FORFEITURE (U.S. CODE, TITLE 47, SECTION 503).

FCC 396-A
October 2002

GUIDELINES TO THE MODEL EEO PROGRAM

The model EEO program adopted by the Commission for construction permit applicants, assignees, and transferees contains five sections designed to assist the applicant in establishing an effective EEO program for its station. The specific elements which should be addressed are as follows:

I. GENERAL POLICY

The first section of the program should contain a statement by the applicant that it will afford equal employment opportunity in all personnel actions without regard to race, color, religion, national origin or sex, and that it has adopted an EEO program which is designed to fully utilize the skills of qualified persons.

II. RESPONSIBILITY FOR IMPLEMENTATION

This section calls for the name (if known) and title of the official who will be designated by the applicant to have responsibility for implementing the station's program.

III. POLICY DISSEMINATION

The purpose of this section is to disclose the manner in which the station's EEO policy will be communicated to employees and prospective employees. The applicant's program should indicate whether it: (a) intends to utilize an employment application form which contains a notice informing job applicants that discrimination is prohibited and that persons who believe that they have been discriminated against may notify appropriate governmental agencies; (b) will post a notice which informs job applicants and employees that the applicant is an equal opportunity employer and that they may notify appropriate governmental authorities if they believe that they have been discriminated against; and (c) will seek the cooperation of labor unions, if represented at the station, in the implementation of its EEO program and in the inclusion of nondiscrimination provisions in union contracts. The applicant should also set forth any other methods it proposes to utilize in conveying its EEO policy (e.g., orientation materials, on-air announcements, station newsletter) to employees and prospective employees.

V. RECRUITMENT

The applicant should specify the recruitment sources and other techniques it proposes to use to attract qualified job applicants. The purpose of the listing is to assist the applicant in developing specialized referral sources to ensure wide dissemination of vacancy information as job opportunities occur. Sources which subsequently prove to be nonproductive should not be relied on and new sources should be sought.

MODEL EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

I. GENERAL POLICY

It will be our policy to provide equal employment opportunity to all qualified individuals without regard to race, color, religion, national origin or sex in all personnel actions including recruitment, evaluation, selection, promotion, compensation, training and termination.

It will also be our policy to promote the realization of equal employment opportunity through a positive, continuing program of specific practices designed to ensure the full realization of equal employment opportunity without regard to race, color, religion, national origin or sex.

To make this policy effective, and to ensure conformance with the Rules and Regulations of the Federal Communications Commission, we have adopted an Equal Employment Opportunity Program which includes the following elements:

II. RESPONSIBILITY FOR IMPLEMENTATION

Name/Title

will be responsible for the administration and implementation of our Equal Employment Opportunity Program. It will also be the responsibility of all persons making employment decisions with respect to the recruitment, evaluation, selection, promotion, compensation, training and termination of employees to ensure that our policy and program is adhered to and that no person is discriminated against in employment because of race, color, religion, national origin or sex.

III. POLICY DISSEMINATION

To ensure that all members of the staff are cognizant of our equal employment opportunity policy and their individual responsibilities in carrying out this policy, the following communication efforts will be made:

☐ The station's employment application forms will contain a notice informing prospective employees that discrimination because of race, color, religion, national origin or sex is prohibited and that they may notify the appropriate local, State or Federal agency if they believe they have been the victims of discrimination.

☐ Appropriate notices will be posted informing applicants and employees that the station is an Equal Opportunity Employer and of their right to notify an appropriate local, State or Federal agency if they believe they have been the victims of discrimination.

☐ We will seek the cooperation of unions, if represented at the station, to help implement our EEO program and all union contracts will contain a nondiscrimination clause.

☐ Other (specify)

IV. RECRUITMENT

To ensure that information concerning each full-time vacancy is widely disseminated, we propose to use the following list of recruitment sources consistent with the requirements of 47 C.F.R. Section 73.2080:

FCC NOTICE TO INDIVIDUALS REQUIRED BY THE PRIVACY ACT AND THE PAPERWORK REDUCTION ACT

The FCC is authorized under the Communications Act of 1934, as amended, to collect the personal information we request in this report. We will use the information you provide to determine if the benefit requested is consistent with the public interest. If we believe there may be a violation or potential violation of a FCC statute, regulation, rule or order, your request may be referred to the Federal, state or local agency responsible for investigating, prosecuting, enforcing or implementing the statute, rule, regulation or order. In certain cases, the information in your request may be disclosed to the Department of Justice or a court or adjudicative body when (a) the FCC; or (b) any employee of the FCC; or (c) the United States Government, is a party to a proceeding before the body or has an interest in the proceeding. In addition, all information provided in this form will be available for public inspection. If you owe a past due debt to the federal government, any information you provide may also be disclosed to the Department of Treasury Financial Management Service, other federal agencies and/or your employer to offset your salary, IRS tax refund or other payments to collect that debt. The FCC may also provide this information to these agencies through the matching of computer records when authorized. If you do not provide the information requested on this report, the report may be returned without action having been taken upon it or its processing may be delayed while a request is made to provide the missing information. Your response is required to obtain the requested authority. We have estimated that each response to this collection of information will average 1 hour. Our estimate includes the time to read the instructions, look through existing records, gather and maintain required data, and actually complete and review the form or response. If you have any comments on this estimate, or on how we can improve the collection and reduce the burden it causes you, please write the Federal Communications Commission, AMD-PERM, Paperwork Reduction Project (3060-0120), Washington, D. C. 20554. We will also accept your comments via the Internet if you send them to jboley@fcc.gov. Remember - you are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a currently valid OMB control number or if we fail to provide you with this notice. This collection has been assigned an OMB control number of 3060-0120.

THE FOREGOING NOTICE IS REQUIRED BY THE PRIVACY ACT OF 1974, P.L. 93-579, DECEMBER 31, 1974, 5 U.S.C. 552a(e)(3), AND THE PAPERWORK REDUCTION ACT OF 1995, P.L. 104-13, OCTOBER 1, 1995, 44 U.S.C. 3507.

Federal Communications Commission
Washington, D. C. 20554

Approved by OMB
3060-0113

BROADCAST EQUAL EMPLOYMENT OPPORTUNITY PROGRAM REPORT

(To be filed with broadcast license renewal application)

(For FCC Use Only)
Code No.

Legal Name of the Licensee		
Mailing Address		
City	State or Country (if foreign address)	ZIP Code
Telephone Number (include area code)	E-Mail Address (if available)	
	Facility ID Number	Call Sign

TYPE OF BROADCAST STATION :

Commercial Broadcast Station

☐ Radio ☐ TV

Low Power TV

International

Noncommercial Broadcast Station

☐ Educational Radio

☐ Educational TV

List call sign and location of all stations included on this report. List commonly owned stations that share one or more employees. Also list stations operated by the licensee pursuant to a time brokerage agreement. Indicate on the table below which stations are operated pursuant to a time brokerage agreement. To the extent that licensees include stations operated pursuant to a time brokerage agreement on this report, responses or information provided in Sections I through IV should take into consideration the licensee's EEO compliance efforts at brokered stations, as well as any other stations, included on this form. For purposes of this form, a station employment unit is a station or a group of commonly owned stations in the same market that share at least one employee.

Call Sign	Facility ID Number	Type (check applicable box)	Location (city, state)	Time Brokerage Agreement (check applicable box)
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No

FCC 396
October 2002

CONTACT PERSON IF OTHER THAN LICENSEE

Name			Street Address
City	State	Zip Code	Telephone No. ( )

FILING INSTRUCTIONS

Broadcast station licensees are required to afford equal employment opportunity to all qualified persons and to refrain from discriminating in employment and related benefits on the basis of race, color, national origin, religion, and sex. See 47 C.F.R. Section 73.2080. Pursuant to these requirements, a license renewal applicant whose station employment unit employs five or more full-time station employees must file a report of its activities to ensure equal employment opportunity. If a station employment unit employs fewer than five full-time employees, no equal employment opportunity program information need be filed. If a station employment unit is filing a combined report, a copy of the report must be filed with each station's renewal application.

A copy of this report must be kept in the station's public file. These actions are required to obtain license renewal. Failure to meet these requirements may result in sanctions or license renewal being delayed or denied. These requirements are contained in 47 C.F.R. Section 73.2080 and are authorized by the Communications Act of 1934, as amended.

DISCRIMINATION COMPLAINTS. Have any pending or resolved complaints been filed during this license term before any body having competent jurisdiction under federal, state, territorial or local law, alleging unlawful discrimination in the employment practices of the station(s)? ☐ Yes ☐ No

If so, provide a brief description of the complaint(s), including the persons involved, the date of the filing, the court or agency, the file number (if any), and the disposition or current status of the matter.

Does your station employment unit employ fewer than five full-time employees? ☐ Yes ☐ No
Consider as "full-time" employees all those permanently working 30 or more hours a week.

If your station employment unit employs fewer than five full-time employees, complete the certification below, return the form to the FCC, and place a copy in your station(s) public file. You do not have to complete the rest of this form. If your station employment unit employs five or more full-time employees, you must complete all of this form and follow all instructions.

CERTIFICATION

This report must be certified, as follows:
A. By licensee, if an individual;
B. By a partner, if a partnership (general partner, if a limited partnership);
C. By an officer, if a corporation or an association; or
D. By an attorney of the licensee, in case of physical disability or absence from the United States of the licensee.

WILLFUL FALSE STATEMENTS ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001), AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. CODE, TITLE 47, SECTION 312(a)(1)), AND/OR FORFEITURE (U.S. CODE, TITLE 47, SECTION 503).

I certify to the best of my knowledge, information and belief, all statements contained in this report are true and correct.

Signed	Name of Respondent
Title	Telephone No. (include area code)
Date	

The purpose of this document is to provide broadcast licensees, the FCC, and the public with information about whether the station is meeting equal employment opportunity requirements.

GENERAL POLICY

A broadcast station must provide equal employment opportunity to all qualified individuals without regard to their race, color, national origin, religion or sex in all personnel actions including recruitment, evaluation, selection, promotion, compensation, training and termination.

RESPONSIBILITY FOR IMPLEMENTATION

A broadcast station must assign a particular official overall responsibility for equal employment opportunity at the station. That official's name and title are:

NAME	TITLE

It is also the responsibility of all persons at a broadcast station making employment decisions with respect to recruitment, evaluation, selection, promotion, compensation, training and termination of employees to ensure that no person is discriminated against in employment because of race, color, religion, national origin or sex.

I. EEO PUBLIC FILE REPORT

Attach as an exhibit one copy of each of the EEO public file reports from the previous two years. Stations are required to place annually such information as is required by 47 C.F.R. Section 73.2080 in their public files.

Exhibit No.

II. NARRATIVE STATEMENT

Provide a statement in an exhibit which demonstrates how the station achieved broad and inclusive outreach during the two-year period prior to filing this application. Stations that have experienced difficulties in their outreach efforts should explain.

Exhibit No.

FCC NOTICE TO INDIVIDUALS REQUIRED BY THE PRIVACY ACT AND THE PAPERWORK REDUCTION ACT

The FCC is authorized under the Communications Act of 1934, as amended, to collect the personal information we request in this report. We will use the information you provide to determine if the benefit requested is consistent with the public interest. If we believe there may be a violation or potential violation of a FCC statute, regulation, rule or order, your request may be referred to the Federal, state or local agency responsible for investigating, prosecuting, enforcing or implementing the statute, rule, regulation or order. In certain cases, the information in your request may be disclosed to the Department of Justice or a court or adjudicative body when (a) the FCC; or (b) any employee of the FCC; or (c) the United States Government, is a party to a proceeding before the body or has an interest in the proceeding. In addition, all information provided in this form will be available for public inspection. If you owe a past due debt to the federal government, any information you provide may also be disclosed to the Department of Treasury Financial Management Service, other federal agencies and/or your employer to offset your salary, IRS tax refund or other payments to collect that debt. The FCC may also provide this information to these agencies through the matching of computer records when authorized. If you do not provide the information requested on this report, the report may be returned without action having been taken upon it or its processing may be delayed while a request is made to provide the missing information. Your response is required to obtain the requested authority. We have estimated that each response to this collection of information will average 1 hour, 30 minutes. Our estimate includes the time to read the instructions, look through existing records, gather and maintain required data, and actually complete and review the form or response. If you have any comments on this estimate, or on how we can improve the collection and reduce the burden it causes you, please write the Federal Communications Commission, AMD-PERM, Paperwork Reduction Project (3060-0113), Washington, D. C. 20554. We will also accept your comments via the Internet if you send them to jboley@fcc.gov. Remember - you are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a currently valid OMB control number or if we fail to provide you with this notice. This collection has been assigned an OMB control number of 3060-0113.

THE FOREGOING NOTICE IS REQUIRED BY THE PRIVACY ACT OF 1974, P.L. 93-579, DECEMBER 31, 1974, 5 U.S.C. 552a(e)(3), AND THE PAPERWORK REDUCTION ACT OF 1995, P.L. 104-13, OCTOBER 1, 1995, 44 U.S.C. 3507.

NOTICE

SHOULD YOU NO LONGER OPERATE THIS EMPLOYMENT UNIT, PLEASE FURNISH THE CURRENT OPERATOR'S NAME, ADDRESS, DATE OF TRANSFER AND RETURN THE FORM 396-C IMMEDIATELY. CALL (202) 418-1450 TO OBTAIN FORMS FOR NEWLY ACQUIRED UNITS OR IF YOU HAVE ANY EEO QUESTIONS

RETURN THE COMPLETED FORM IN DUPLICATE INCLUDING ANSWERS TO THE SUPPLEMENTAL INVESTIGATION SHEET (SIS) IF APPLICABLE AS SOON AS POSSIBLE. FOR YOUR INFORMATION, THE UPPER RIGHT HAND CORNER OF THE FORM 396-C WILL BE MARKED WITH AN "X" FOR THOSE UNITS THAT MUST FILL OUT AN SIS. PURSUANT TO SECTION 76.1802 OF THE COMMISSION'S RULES, THE DUE DATE FOR FILING FORM 396-C IS SEPTEMBER 30TH OF EACH YEAR.

Federal Communications Commission
Washington, D.C. 20554

Approved by OMB
3060-0095/0574

INSTRUCTIONS FOR COMPLETING
FCC FORM 396-C

YOU ARE STRONGLY URGED TO CONSULT THE COMMISSION'S CABLE EEO RULES BEFORE COMPLETING THIS FORM
47 C.F.R. Section 76.71 et seq.

General Instructions

Supply the requested information for the unit. If the unit is to submit a Supplemental Investigation Sheet (SIS), one will be attached to the form and an "x" will appear in the brackets before "Supplemental Investigation Sheet Attached" located in the box "For FCC Use Only" on page 1 of the form. If the unit no longer exists due to consolidation with another unit, or is no longer under your control, attach as Exhibit A an explanation and proceed to Section V.

Section 1

A. In addition to the unit operator's legal name, supply, if applicable, the name of the MSO owning or controlling the operator.

B. Supply the address to which you want the correspondence sent.

C. Supply the county and state of the unit's principal employment office.

D. A full-time employee is one who permanently works 30 or more hours per week.

E. Insert the payroll period in July, August or September used for this year's report.

F. Place an X in the appropriate brackets for each possible exhibit.

Section II

Submit as Exhibit A, a list of communities added or deleted from the unit using the format provided. To obtain this information, review the prior year's form for the unit, noting the communities then comprising the unit, and comparing that list with the names of the communities now comprising the unit.
(NOT APPLICABLE TO MVPD UNITS)

Section III

Carefully answer each of the nine (9) questions by checking either Yes or No. If the answer is No, attach as Exhibit B an explanation. The focus of question three is on whether cable units have engaged in broad and inclusive outreach. The Commission does not require the targeting of certain kinds of sources or organizations. With regard to question five, we clarify that efforts to seek out entrepreneurs should be broad enough to cover all segments of the community, and that no entity should be excluded on the basis of race, color, religion, national origin, age or gender. See 47 C.F.R. Section 76.75.

Section IV

You may attach as Exhibit C any additional information you believe useful in the FCC's evaluation of your EEO efforts. There is no requirement to provide such information.

Section V

Sign and date the form in the spaces provided. Also, print the name of the official signing as well as the title of that person. Return the original and one copy to the Commission by September 30th. Retain a copy for your files.

Supplemental Investigation Sheet (SIS)

If required, attach as Exhibits D, E, and F the job descriptions requested in Part I, the responses to the questions checked in Part II, and the EEO public file report requested in Part III.

FCC NOTICE TO INDIVIDUALS REQUIRED BY THE PRIVACY ACT AND THE PAPER REDUCTION ACT

The FCC is authorized under the Communications Act of 1934, as amended, to collect the personal information we request in this report. We will use the information you provide to determine if the benefit requested is consistent with the public interest. If we believe there may be a violation or potential violation of a FCC statute, regulation, rule or order, your request may be referred to the Federal, state, or local agency responsible for investigating, prosecuting, enforcing or implementing the statute, rule, regulation or order. In certain cases, the information in your request may be disclosed to the Department of Justice or a court or adjudicative body when (a) the FCC; or (b) any employee of the FCC; or (c) the United States Government is a party to a proceeding before the body or has an interest in the proceeding. In addition, all information provided in this form will be available for public inspection. If you owe a past due debt to the federal government, any information you provide may also be disclosed to the Department of Treasury Financial Management Service, other federal agencies and/or your employer to offset your salary, IRS tax refund or other payments to collect that debt. The FCC may also provide this information to these agencies through the matching of computer records when authorized. If you do not provide the information requested in this report, the report may be returned without action having been taken upon it or its processing may be delayed while a request is made to provide the missing information. Your response is required to obtain the requested authority. We have estimated that each response to this collection of information will vary from 10 minutes to 1 hour, 15 minutes. Our estimate includes the time to read the instructions, look through existing records, gather and maintain required data, and actually complete and review the form or response. If you have any comments on this estimate, or on how we can improve the collection and reduce the burden it causes you, please write the Federal Communications Commission, AMD-PERM, Paperwork Reduction Project (3060-0095/0574), Washington D.C. 20554. We will also accept your comments via the Internet if you send them to jboley@fcc.gov. Remember – you are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a currently valid OMB control number or if we fail to provide you with this notice. This collection has been assigned an OMB control number of 3060-0095/0574.

THE FOREGOING NOTICE IS REQUIRED BY THE PRIVACY ACT OF 1974, P.L. 93-579, DECEMBER 31, 1974, 5 U.S.C. 552(e)(3), AND THE PAPERWORK REDUCTION ACT OF 1980, P.L. 95-511, DECEMBER 11, 1980, 44 U.S.C. 3507.

FCC FORM 396-C

Approved by OMB
3060-0095

Submit the original and one copy by September 30:

Federal Communications Commission
Policy Division, Media Bureau
Washington, D. C. 20554

For FCC Use Only

Emp. Unit ID # _____

( ) Supplemental Investigation Sheet (SIS) Attached

SECTION I IDENTIFYING INFORMATION

A. Name of Operator:		
MSO Name:		
B. Employment Unit's Mailing Address		
City	State	Zip Code
C. County and State in which unit's employment office is located		

E. Pay Period Covered by this Report (inclusive dates)

D. Category of Respondent (check applicable box)

( ) Fewer than six (6) full-time employees during the selected payroll period: Complete Sections I, II and VIII

( ) Six (6) or more full-time employees during the selected payroll period: Complete ALL sections of the Form 395-A and the Supplemental Investigation Sheet, if attached

F. Attachments: (Check applicable boxes)

Not Applicable	Attached	Exhibit - For:
( )	( )	A-Section II
	( )	B-Section III
( )	( )	C-Section IV
( )	( )	D-SIS-Job Descriptions
	( )	E-SIS Narrative Responses
( )	( )	F-SIS EEO Public File Report

SECTION II COMMUNITY INFORMATION

System Communities Comprising Local Employment Unit			
Ident No.	Name of Community	Location (State)	Type

Review the list of communities served on the previous year's submission and attach as Exhibit A any additions or deletions using the format noted above. NOTE: APPLICABLE ONLY TO CABLE OPERATORS AND NOT TO OTHER MVPD UNITS.

Exhibit No. A

SECTION III EEO POLICY AND PROGRAM REQUIREMENTS

Check YES or NO to each of the following questions. If answer to any question below is NO, attach as EXHIBIT B an explanation.

Exhibit No. B

YES	NO		
( )	( )	1.	Have you complied with the outreach provisions of the FCC's Cable Equal Employment Opportunity Rule, 47 C.F.R. Section 76.75(b) during the twelve month period prior to filing this form?
( )	( )	2.	Do you disseminate widely your EEO Program to job applicants, employees, and those with whom you regularly do business?
( )	( )	3.	Do you contact organizations, media, educational institutions, and other potential sources of applicants for referrals whenever job vacancies are available in your organization?
( )	( )	4.	Do you undertake to offer promotions to positions of greater responsibility in a nondiscriminatory manner?
( )	( )	5.	To the extent possible, do you seek out entrepreneurs in a nondiscriminatory manner and encourage them to conduct business with all parts of your organization?
( )	( )	6.	Do you analyze the results of your efforts to recruit, hire, promote, and use services in a nondiscriminatory manner and use these results to evaluate and improve your EEO program?
( )	( )	7.	Do you define the responsibility of each level of management to ensure a positive application and vigorous enforcement of your policy of equal employment opportunity and maintain a procedure to review and control managerial and supervisory performance?
( )	( )	8.	Do you conduct a continuing program to exclude every form of prejudice or discrimination based upon race, color, religion, national origin, age, or sex from your personnel policies and practices and working conditions?
( )	( )	9.	Do you conduct a continuing review of job structure and employment practices and maintain positive recruitment training, job design, and other measures needed to ensure genuine equality of opportunity to participate fully in all organizational units, occupations, and levels of responsibility?

SECTION IV ADDITIONAL INFORMATION

You may provide as Exhibit C any additional information that you believe might be useful in evaluating your efforts to comply with the Commission's EEO provisions. There is no requirement to provide additional data or information.

Exhibit No. C

This report must be certified as follows:

A By the individual owning the reporting system if individually owned;

B By a partner, if a partnership; or

C. By an officer, if a corporation or association.

I certify that to the best of my knowledge, information and belief, all statements contained in this report are true and correct

Signed	Title
Date	Name of Respondent
Telephone No. (include area code)	

9.

WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001), AND/OR REVOCATION OF ANY STATION LICENSE (U.S. CODE, TITLE 47, SECTION 312(a)(1), AND/OR FORFEITURE (U.S. CODE, TITLE 47, SECTION 503).

Give brief job descriptions for employees in the job categories specified below. The number specified in the box indicates the number of different job descriptions that are to be submitted for each category. Job descriptions should include the position title and a brief description of the major duties and responsibilities of the individual(s) in the position.

1. ☐ Officials and Managers	4. ☐ Sales Workers	7. ☐ Operatives (semi-skilled)
2. ☐ Professionals	5. ☐ Office and Clerical	8. ☐ Laborers (unskilled)
3. ☐ Technicians	6. ☐ Craft Workers (skilled)	9. ☐ Service Workers

Part II Inquiries Concerning EEO Program and Practices

Submit responses to the inquiries indicated by an "X." Responses should be brief, but must provide sufficient information to describe the employment unit's activity and efforts in the area of inquiry.

1. ☐ Describe the employment unit's efforts to comply with the outreach provisions of 47 C.F.R. Section 76.75(b) or (f).
2. ☐ Describe the employment unit's efforts to disseminate widely its equal employment opportunity program to job applicants, employees, and those with whom it regularly does business.
3. ☐ Name the organizations, media, educational institutions, and other recruitment sources used to attract applicants whenever job vacancies become available.
4. ☐ Explain the employment unit's efforts to promote in a nondiscriminatory manner to positions of greater responsibility.
5. ☐ Describe the employment unit's efforts to encourage entrepreneurs to conduct business in a nondiscriminatory manner with all parts of its operation and provide an analysis of the results of those efforts.
6. ☐ Report the findings of the employment unit's analysis of its efforts to recruit, hire and promote in a nondiscriminatory manner and explain any difficulties encountered in implementing its EEO program.
7. ☐ Describe the responsibility of each level of the employment unit's management with respect to application and enforcement of its EEO policy and explain the procedure for review and control of managerial and supervisory performance.
8. ☐ Describe the manner in which the employment unit conducts its continuing review of job structure and employment practices.
9. ☐ Other Inquiries:

Part III EEO Public File Report

Attach a copy of the EEO public file report from the previous year. Cable entities are required to place annually such information as is required by 47 C.F.R. Section 76.1702 in their public files.

EMP UNIT ID:

MSO NAME:
OPR NAME:

Federal Communications Commission
Washington, D. C. 20554

DRAFT
NOT Approved by OMB
3060-0922

BROADCAST MID-TERM REPORT

(For FCC Use Only)
Code No.

Legal Name of the Licensee		
Mailing Address		
City	State or Country (if foreign address)	ZIP Code
Telephone Number (include area code)	E-Mail Address (if available)	
	Facility ID Number	Call Sign

TYPE OF BROADCAST STATION :

Commercial Broadcast Station

☐ Radio ☐ TV

Low Power TV

International

Noncommercial Broadcast Station

☐ Educational Radio

☐ Educational TV

List call sign and location of all stations included on this statement. List commonly owned stations that share one or more employees. Also list stations operated by the licensee pursuant to a time brokerage agreement. Indicate on the table below which stations are operated pursuant to a time brokerage agreement. To the extent that licensees include stations operated pursuant to a time brokerage agreement on this report, responses or information provided in Sections I through III should take into consideration the licensee's EEO compliance efforts at brokered stations, as well as any other stations, included on this form. For purposes of this form, a station employment unit is a station or a group of commonly owned stations in the same market that share at least one employee.

Call Sign	Facility ID Number	Type (check applicable box)	Location (city, state)	Time Brokerage Agreement (check applicable box)
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No
		☐ AM ☐ FM ☐ TV		☐ Yes ☐ No

FCC 397
September 2002

SEND NOTICES AND COMMUNICATIONS TO THE FOLLOWING NAMED PERSON AT THE ADDRESS INDICATED BELOW:

Name			Street Address
City	State	Zip Code	Telephone No. ( )

FILING INSTRUCTIONS

Broadcast station licensees are required to afford equal employment opportunity to all qualified persons and to refrain from discriminating in employment and related benefits on the basis of race, color, national origin, religion, and sex. See 47 C.F.R. Section 73.2080. Pursuant to these requirements, a televsion station employment unit that employs five or more full-time station employees must file a full and complete Broadcast Mid-Term Report. If a televsoin station employment unit employs fewer than five full-time employees, only the first two pages of this report need be filed.

A copy of this Mid-Term Report must be kept in the station's public file. Failure to meet these requirements may result in sanctions or remedies. These requirements are contained in 47 C.F.R. Section 73.2080 and are authorized by the Communications Act of 1934, as amended.

Does your station employment unit employ fewer than ten full-time employees if television or fewer than eleven full-time employees if radio? ☐ Yes ☐ No

If yes, you do not have to file this form with the FCC. However, you have the option to complete the certification below, return the form to the FCC, and place a copy in your station(s) public file. You do not have to complete the rest of this form. If your station employment unit employs five or more full -time employees,if television, or eleven or more full-time employees if radio, you must complete all of this form and follow all instructions.

CERTIFICATION

This report must be certified, as follows:
A. By licensee, if an individual;
B. By a partner, if a partnership (general partner, if a limited partnership);
C. By an officer, if a corporation or an association; or
D. By an attorney of the licensee, in case of physical disability or absence from the United States of the licensee.

WILLFUL FALSE STATEMENTS ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001), AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. CODE, TITLE 47, SECTION 312(a)(1)), AND/OR FORFEITURE (U.S. CODE, TITLE 47, SECTION 503).

certify to the best of my knowledge, information and belief, all statements contained in this report are true and correct.

Signed	Name of Respondent
Title	Telephone No. (include area code)
Date	

GENERAL POLICY

A broadcast station must provide equal employment opportunity to all qualified individuals without regard to their race, color, national origin, religion or sex in all personnel actions including recruitment, evaluation, selection, promotion, compensation, training and termination.

RESPONSIBILITY FOR IMPLEMENTATION

A broadcast station must assign a particular official overall responsibility for equal employment opportunity at the station. That official's name and title are:

NAME	TITLE

It is also the responsibility of all persons at a broadcast station making employment decisions with respect to recruitment, evaluation, selection, promotion, compensation, training and termination of employees to ensure that no person is discriminated against in employment because of race, color, religion, national origin or sex.

MID-TERM REPORT

Television station employment units with five or more full-time employees and radio station employment units with more than ten full-time employees filing in the middle of the license term must attach a copy ofeach of the EEO public file reports from the previous two years. Stations are required to place annually such information as is required by 47 C.F.R. Section 73.2080 in their public files.

☐

FCC NOTICE TO INDIVIDUALS REQUIRED BY THE PRIVACY ACT AND THE PAPERWORK REDUCTION ACT

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[FR Doc. 02–31762 Filed 12–16–02; 8:45 am]
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Reader Aids

Federal Register

Vol. 67, No. 242

Tuesday, December 17, 2002

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

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FEDERAL REGISTER PAGES AND DATE, DECEMBER

71443–71796 2
71797–72088 3
72089–72362 4
72363–72550 5
72551–72826 6
72827–75798 9
75799–76102 10
76103–76292 11
76293–76670 12
76671–76980 13
76981–77146 16
77147–77398 17

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7631 72089
7632 72551
7633 76103
7634 76669

Administrative Orders:
Memorandums:
Memorandum of November 27, 2002 71795
Memorandum of November 6, 2002 75799

Executive Orders:
13278 76671
13279 77141
13280 77145

Presidential Determinations:
No. 2003–04 72363

7 CFR

27 77147
331 76908
718 71797
905 71798
989 71803
2200 76105

Proposed Rules:
46 77002
246 71774
916 77003
917 77003

8 CFR

103 ..... 71443, 76256
212 71443
214 ..... 71443, 76256
235 71443
248 76256
264 71443
274a 76256
286 71443
299 71443

9 CFR

93 72827
94 77148
121 76908

Proposed Rules:
71 77004
82 77004
94 77004

10 CFR

Ch. 1 72091
431 72274

Proposed Rules:
50 71490

11 CFR

100 76962
110 76962
111 76962
113 76962

12 CFR

223 76560
250 76560
506 76293
550 76293
551 76293
560 76304
562 75809
590 76304
591 76304

Proposed Rules:
223 76618
226 72618
701 72444
791 72113

13 CFR

Proposed Rules:
120 72622

14 CFR

21 72830
25 76652
39 ..... 71450, 71452, 71455, 71808, 71810, 71812, 71816, 72091, 72553, 75809, 75812, 76106, 76109, 76111, 76673, 76981, 76982
71 ..... 71457, 71458, 71459, 71460, 71815, 72365, 72441, 76306
91 72830
97 ..... 71816, 72553, 76675, 76677
119 72726
121 ..... 72726, 72830
125 72830
129 ..... 72726, 72830
135 72726
183 72726

Proposed Rules:
1 77326
23 71490
39 ..... 71493, 71495, 71497, 71500, 71503, 71505, 71904, 72115, 72119, 75819, 75822, 75824, 76120, 76702, 76704
71 ..... 71507, 71508, 71509, 71906, 75826, 76320, 77326
91 ..... 76624, 77326
95 77326
97 77326
119 76624
121 ..... 71908, 76624, 77326
125 ..... 76624, 77326
129 77326
135 ..... 76624, 77326
255 72869
399 ..... 72396, 72869

1260.....72121

15

50.....72095

17 CFR

Proposed Rules:
205.....71670
210.....76780
240.....71909, 76780
249.....76780
270.....71915
274.....76780

18 CFR

284.....72098

Proposed Rules:
35 .....76122, 76321, 77007
284.....72870

19 CFR

Proposed Rules:
101.....71510
122.....71510, 71512
123.....71512

20 CFR

260.....77152
320.....77152

Proposed Rules:
604.....72122

21 CFR

5.....71461
16.....71461
101.....71461
336.....72555
338.....72555
341.....72555
510.....72365
520.....71819, 72365
522.....72366, 72367
556.....72367
558 .....71820, 71821, 72368, 72369, 72370
868.....76678

Proposed Rules:
870.....76706
1020.....76056

22 CFR

40.....77158
41.....55159
42.....77160
45.....76681
62.....76307
507.....76112

Proposed Rules:
41.....76711

23 CFR

627.....75902
635.....75902
636.....75902
637.....75902
710.....75902

24 CFR

941.....76096

25 CFR

Proposed Rules:
Ch. 1 75828

26 CFR

1 .....71821, 72274, 76985

Proposed Rules:
1.....75899, 76123

27 CFR

9.....72834

28 CFR

540.....77161

29 CFR

500.....76985
1611.....72373
1904.....77165
4011.....71470
4022.....71470, 76682
4044.....71472, 76682

Proposed Rules:
1915.....76214

30 CFR

48.....76658
75.....76658
915.....72375
924.....71826
948.....71832

33 CFR

100.....71840, 76986
117 .....71473, 71474, 71840, 72099, 72100, 72559, 72560, 76116, 76116, 76988, 76989
165 .....71475, 71840, 72561, 72840, 76989, 76991
175.....72100
177.....72100
179.....72100
181.....72100
183.....72100

Proposed Rules:
52.....76142
117.....71513, 72126
165 .....71513, 75831, 77008

34 CFR

200.....71710

36 CFR

1200.....72101, 77133

Proposed Rules:
219.....72770, 72816

37 CFR

253.....77170
259.....71477

38 CFR

21.....72563

Proposed Rules:
3.....76322

39 CFR

255.....75814
501.....71843

Proposed Rules:
111.....72626

40 CFR

52 .....72379, 72573, 72574, 72576, 72579, 72842, 72844, 76316, 76993
61.....72579
62.....76116
63.....72330, 72580
81.....76450
86.....72821
70.....71479
131.....71843
141.....73011–74047
142.....73011–74047
180 .....71847, 72104, 72585, 72846
271.....76995
300.....76683
721.....72854
1065.....72724

Proposed Rules:
52 .....71515, 72874, 76326, 77010, 77196, 77204, 77212
62.....76150
63.....72276, 72875
81 .....77196, 77204, 77212
86.....72818
141.....71520
271.....77010
300.....72888
451.....71523
764.....71524
1610.....72890

41 CFR

101-6.....76882
101-18.....76882
101-19.....76882
101-20.....76882
101-33.....76882
101-47.....76882
102-71.....76820
102-72.....76820
102-73.....76820
102-74.....76820
102-75.....76820
102-76.....76820
102-78.....76820
102-79.....76820
102-80.....76820
102-81.....76820
102-83.....76820

42 CFR

Proposed Rules:
54.....77350
54a.....77350
73.....71528, 76886
405.....76684
1001.....72892, 72894
1003.....72896, 76886

43 CFR

Proposed Rules:
4.....77011
4100.....77011
5000.....77011

44 CFR

64.....72593
65.....71482

45 CFR

Proposed Rules:
31.....72128
96.....77350
260.....77362
1050.....77368

46 CFR

2.....72100
10.....72100
15.....72100
24.....72100
25.....72100
26.....72100
30.....72100
70.....72100
90.....72100
114.....72100
169.....72100
175.....72100
188.....72100
199.....72100

47 CFR

1.....77173
11.....77174
22.....77175
24.....77175
64.....71861
73 .....71891, 71892, 71893, 71894, 76318, 76998
90.....76697

Proposed Rules:
0.....77220
1.....76628
2.....75968
25.....75968
43.....77220
63.....77220
64.....77220
73 .....71924, 71925, 71926, 77220, 77374
76.....77374
87.....75968

48 CFR

Proposed Rules:
Ch. 10.....76150

49 CFR

1.....72383
241.....75938
571.....77193
573.....72384
577.....72384

Proposed Rules:
23.....76327
171.....72034
172.....72034
173.....72034
175.....72034
176.....72034
178.....72034
180.....72034
219.....75966
533.....77015

50 CFR

17.....76030
222.....71895
223.....71895
229.....71900, 75817
300.....72110, 72394
622 .....71901, 71902, 72112, 77193
635.....71487
648 .....71488, 72867, 76318, 76701
679 .....71489, 72595, 76998

Proposed Rules:
17 .....71529, 72396, 72407, 75834, 76156
600.....76329
635.....72629
648.....72131
679.....76344, 76362

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT DECEMBER 17, 2002

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Exportation and importation of animals and animal products:

Foot-and-mouth disease; disease status change—

Great Britain; published 12-17-02

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Caribbean, Gulf, and South Atlantic fisheries—

Gulf of Mexico and South Atlantic coastal migratory pelagic resources; published 12-17-02

RAILROAD RETIREMENT BOARD

Railroad Retirement Act:

Reconsideration and appeals requests; procedures clarfication; published 12-17-02

STATE DEPARTMENT

Exchange visitor program:

Foreign medical graduates; two-year home-country physical presence requirement waiver; correction; published 12-17-02

Visas; immigrant documentation:

Registration clarifications; published 12-17-02

Visas; nonimmigrant documentation:

Uncertified foreign health-care workers; published 12-17-02

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Eurocopter France; published 11-12-02

Extra Flugzeugbau GmbH; published 10-25-02

Piaggio Aero Industries S.p.A.; published 11-20-02

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Motor vehicle safety standards:

Technical amendments; published 12-17-02

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Prunes (dried) produced in—

California; comments due by 12-27-02; published 10-28-02 [FR 02-27305]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Exportation and importation of animals and animal products:

Exotic Newcastle disease; disease status change—

Campeche, Quintana Roo, and Yucatan, Mexico; comments due by 12-23-02; published 10-22-02 [FR 02-26811]

AGRICULTURE DEPARTMENT

Food and Nutrition Service

Child nutrition programs:

Child and Adult Care Program—

Strengthen program integrity; legislative reform implementation; comments due by 12-24-02; published 6-27-02 [FR 02-15776]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Alaska; fisheries of Exclusive Economic Zone—

Pacific halibut and sablefish; comments due by 12-27-02; published 10-29-02 [FR 02-27512]

DEFENSE DEPARTMENT

Acquisition regulations:

Commercial items—

Transportation of supplies by sea; comments due by 12-24-02; published 10-25-02 [FR 02-27106]

Federal Acquisition Regulation (FAR):

Reimbursement of relocation costs on lump-sum basis; comments due by 12-23-02; published 10-24-02 [FR 02-27083]

DEFENSE DEPARTMENT

Engineers Corps

Danger zones and restricted areas:

Sandy Hook Bay, NJ; Naval Weapons Station EARLE; comments due by 12-27-02; published 11-27-02 [FR 02-30028]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Missouri; comments due by 12-23-02; published 11-22-02 [FR 02-29610]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Missouri; comments due by 12-23-02; published 11-22-02 [FR 02-29609]

ENVIRONMENTAL PROTECTION AGENCY

Water pollution; effluent guidelines for point source categories:

Construction and development; storm water discharges; comments due by 12-23-02; published 10-16-02 [FR 02-26302]

Water programs:

Water quality standards—

Five Mile Creek, AL; designated use; comments due by 12-23-02; published 10-23-02 [FR 02-26845]

FARM CREDIT ADMINISTRATION

Farm credit system:

Loan policies and operations—

Young, beginning, and small farmers and ranchers; comments due by 12-23-02; published 9-23-02 [FR 02-24031]

FEDERAL COMMUNICATIONS COMMISSION

Radio services, special:

Private land mobile services—

450-470 MHz frequency band; airport terminal use frequencies; comments due by 12-23-02; published 11-21-02 [FR 02-29437]

FEDERAL ELECTION COMMISSION

Bipartisan Campaign Reform Act; implementation:

Electioneering communications—

FCC Database; comment request; comments due by 12-23-02; published 10-23-02 [FR 02-26483]

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):

Reimbursement of relocation costs on lump-sum basis; comments due by 12-23-02; published 10-24-02 [FR 02-27083]

HEALTH AND HUMAN SERVICES DEPARTMENT

Centers for Medicare & Medicaid Services

Medicare:

Medicare+Choice program—

Managed care modifications; comments due by 12-24-02; published 10-25-02 [FR 02-27142]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Human drugs:

Abbreviated new drug applications certifying that patent claiming drug is invalid or will not be infringed; patent listing requirements and 30-month stays; comments due by 12-23-02; published 10-24-02 [FR 02-27082]

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Public and Indian housing:

Housing Choice Voucher Program—

Homeownership option; eligibility of public housing agency-owned or controlled units; comments due by 12-27-02; published 10-28-02 [FR 02-27310]

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

Beluga sturgeon; comments due by 12-28-02; published 11-6-02 [FR 02-28334]

Critical habitat designations—

Bexar County, TX, karst-dwelling invertebrate

species; comments due by 12-23-02; published 11-21-02 [FR 02-29620]

Vernal pool crustaceans and plants in California and Oregon; comments due by 12-23-02; published 11-21-02 [FR 02-29619]

JUSTICE DEPARTMENT

Federal Employees Liability Reform and Tort Compensation Act:

Suits based on acts or omissions of Federal employees and other persons; certification and decertification; comments due by 12-23-02; published 10-22-02 [FR 02-26832]

LEGAL SERVICES CORPORATION

Legal assistance eligibility; maximum income guidelines; comments due by 12-23-02; published 11-22-02 [FR 02-29611]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):

Reimbursement of relocation costs on lump-sum basis; comments due by 12-23-02; published 10-24-02 [FR 02-27083]

NATIONAL CREDIT UNION ADMINISTRATION

Credit unions:

Insurance requirements; comments due by 12-26-02; published 9-26-02 [FR 02-24290]

Organization and operaations—

Reasonable retirement benefits for employees and officers; comments due by 12-26-02; published 11-29-02 [FR 02-30162]

NATIONAL CRIME PREVENTION AND PRIVACY COMPACT COUNCIL

Dispute adjudication procedures; comments due by 12-26-02; published 11-25-02 [FR 02-29709]

NUCLEAR REGULATORY COMMISSION

Materials licensees; financial assurance amendments; comments due by 12-23-02; published 10-7-02 [FR 02-25243]

POSTAL SERVICE

Postage meters:

Manufacture and distribution; authorization; comments due by 12-26-02; published 11-26-02 [FR 02-29939]

SECURITIES AND EXCHANGE COMMISSION

Securities, etc.:

Sarbanes-Oxley Act of 2002; implementation—

Audits and reviews; relevant records retention; comments due by 12-27-02; published 11-27-02 [FR 02-30036]

SMALL BUSINESS ADMINISTRATION

Small business size standards:

Job Corps Centers; comments due by 12-23-02; published 11-22-02 [FR 02-29647]

TRANSPORTATION DEPARTMENT

Coast Guard

Ports and waterways safety:

New York Marine Inspection Zone and Captain of Port Zone, NY; safety and security zones; comments due by 12-27-02; published 11-27-02 [FR 02-30105]

Port Valdez and Valdez Narrows, AK; security zone; comments due by 12-23-02; published 10-23-02 [FR 02-26974]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Air carrier certification and operations:

Incidents involving animals during air transport; reports by carriers; comments due by 12-27-02; published 10-18-02 [FR 02-26465]

Airmen certification:

Flight simulation device; initial and continuing qualification and use requirements; comments due by 12-24-02; published 9-25-02 [FR 02-14785]

Correction; comments due by 12-24-02; published 10-25-02 [FR 02-27169]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Bombardier-Rotax GmbH; comments due by 12-23-02; published 10-23-02 [FR 02-26912]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Fokker; comments due by 12-23-02; published 11-21-02 [FR 02-29678]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

McDonnell Douglas; comments due by 12-23-02; published 10-24-02 [FR 02-26480]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Pratt & Whitney; comments due by 12-24-02; published 10-25-02 [FR 02-26909]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Short Brothers PLC; comments due by 12-23-02; published 11-13-02 [FR 02-28751]

Jet routes; comments due by 12-23-02; published 11-7-02 [FR 02-28366]

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Motor vehicle safety standards:

Child restraint systems; comments due by 12-23-02; published 10-22-02 [FR 02-26824]

TREASURY DEPARTMENT

International Investment Office

Foreign persons; mergers, acquisitions, and takeovers:

Voluntary notice filing; comments due by 12-23-02; published 11-21-02 [FR 02-29622]

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:

Mixed use output facilities; guidance; comments due by 12-23-02; published 9-23-02 [FR 02-24138]

TREASURY DEPARTMENT

Thrift Supervision Office

Regulatory reporting standards:

Independent public accountants performing audit services for voluntary audit filers; qualifications; comments due by 12-26-02; published 11-25-02 [FR 02-29833]

LIST OF PUBLIC LAWS

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S. 2017/P.L. 107–331

Indian Financing Amendments Act of 2002 (Dec. 13, 2002; 116 Stat. 2834)

Last List December 11, 2002

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