12–30–02 Monday
Vol. 67 No. 250 Dec. 30, 2002
Pages 79513–79832

Federal Register

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Presidential Documents

Title 3—

The President

Memorandum of November 26, 2002

Designation of Officers of the Federal Emergency Management Agency To Act as Director of the Federal Emergency Management Agency

Memorandum for the Director of the Federal Emergency Management Agency

By the authority vested in me as President under the Constitution and laws of the United States of America and pursuant to the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345 *et seq.,* I hereby order that:

Section 1. *Order of Succession.*

During any period when both the Director of the Federal Emergency Management Agency (Director) and the Deputy Director of the Federal Emergency Management Agency (Deputy Director) have died, resigned, or otherwise become unable to perform the functions and duties of the office of Director, the following officers of the Federal Emergency Management Agency, in the order listed, shall perform the functions and duties of the office of Director, if they are eligible to act as Director under the provisions of the Federal Vacancies Reform Act of 1998, until such time as the Director or Deputy Director is able to perform the functions and duties of the office of Director:

Administrator of the United States Fire Administration;

Administrator of the Federal Insurance and Mitigation Administration;

Assistant Director, Administration and Resource Planning Directorate; and

Regional Director, Region IV.

Section 2. *Exceptions.*

(a) No individual who is serving in an office listed in section 1 in an acting capacity, by virtue of so serving, shall act as Director pursuant to this memorandum.

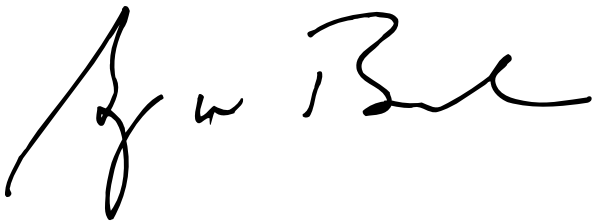
(b) Not withstanding the provisions of this memorandum, the President retains discretion, to the extent permitted by the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345–3349d, to depart from this order in designating an acting Director.

Section 3. *Termination.*

This memorandum shall terminate immediately upon the transfer of the authorities, functions, personnel, and assets of the Federal Emergency Management Agency to the Department of Homeland Security.

Section 4. *Publication.*

The Director is authorized and directed to publish this memorandum in the *Federal Register.*



THE WHITE HOUSE,
Washington, November 26, 2002.

[FR Doc. 02–33047
Filed 12–27–02; 8:45 am]
Billing code 6718–01–M

Rules and Regulations

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OFFICE OF MANAGEMENT AND BUDGET

5 CFR Part 1315

Prompt Payment

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Final rule.

SUMMARY: The Office of Management and Budget (OMB) is issuing a final revision to its rules on the Prompt Payment Act (PPA) to implement section 1010 of the National Defense Authorization Act for Fiscal Year 2001, as amended by section 1007 of the National Defense Authorization Act for Fiscal Year 2002. Section 1010 requires agencies to pay an interest penalty whenever they make an interim payment under a cost-reimbursement contract for services more than 30 days after the agency receives a proper invoice for payment from the contractor. Section 1007 states that the requirements of section 1010 apply to interim payments that are due on or after December 15, 2000 under any cost-reimbursement service contract regardless of when the contract was awarded.

DATES: *Effective Date:* This final rule is effective December 30, 2002. *Applicable Dates:* This final rule shall apply to all interim payment requests that are due on or after December 15, 2000 and received under cost-reimbursement service contracts awarded before, on, or after December 15, 2000. However, no interest penalty shall accrue under this rule for any delay in payment that occurred prior to December 15, 2000.

FOR FURTHER INFORMATION CONTACT: Martha Thomas-Mitchell, Financial Program Specialist, Financial Management Service, Department of the Treasury, on (202) 874–6757; Mathew Blum, Office of Federal Procurement Policy, OMB, on 202–395–4953; or Dana James, Office of Federal Financial Management, OMB, on 202–395–7480.

SUPPLEMENTARY INFORMATION:

I. Background

Contractors who are awarded cost-reimbursement contracts are generally authorized to seek reimbursement, including reimbursement during the course of the contract (''interim payments''), for the allowable costs they incur in the performance of the contract. In the National Defense Authorization Act for Fiscal Year 2001, Public Law 106–398, 114 Stat. 1654, Congress imposed a new statutory requirement on agencies to pay an interest penalty on interim payments that are made late under cost-reimbursement service contracts. This requirement is set forth in section 1010 of the Act—''Interest Penalties for Late Payment of Interim Payments Due Under Government Service Contracts.''

Under section 1010(a), ''an agency acquiring services from a business concern under a cost reimbursement contract requiring interim payments who does not pay the concern a required interim payment by the date that is 30 days after the date of the receipt of a proper invoice shall pay an interest penalty to the concern on the amount of the payment due.'' Interest is to be computed as provided in the Prompt Payment Act (PPA, 31 U.S.C. 3901, 3902(a)). Section 1010(b) directs OMB to ''prescribe regulations to carry out this section,'' which shall be prescribed as part of OMB's regulations implementing the PPA. (OMB's PPA regulations may be found at 5 CFR Part 1315.) Section 1010(c) states that ''[t]he provisions of chapter 39 of title 31, United States Code [*i.e.*, the PPA], shall apply to this section in the same manner as if this section were enacted as part of such chapter.'' Finally, section 1010(d) provides that ''Subsection (a) shall take effect on December 15, 2000. No interest shall accrue by reason of that subsection for any period before that date.''

On December 15, 2000, OMB published an interim final rule to implement section 1010 (65 FR 78403). The rule requires agencies to pay an interest penalty whenever they make an interim payment under a cost-reimbursement contract for services more than 30 days after the agency receives a proper invoice for payment from the contractor. The rule mandated application of the requirements of section 1010 to contracts awarded on or after December 15, 2000. The rule authorized agencies, at their discretion, to apply these requirements to interim payment requests received under cost-reimbursement service contracts awarded prior to December 15, 2000.

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council issued an interim rule amending the Federal Acquisition Regulation (FAR) to implement the changes in OMB's PPA regulations. See 66 FR 53485 (October 22, 2001). The FAR amendments add new policy and a contract clause to provide for penalty payments under covered contracts.

Three public comments were received in response to OMB's interim final rule. The comments focused on the rule's applicability. Each of the commenters stated that the rule failed to fully implement section 1010 because it did not require application of its requirements to interim payment requests received under cost-reimbursement service contracts awarded prior to December 15, 2000. The commenters asserted that Congress intended for all cost-reimbursement contracts for services requiring interim payment to be covered by the requirements of section 1010.

Subsequent to receipt of these public comments, Congress took action to clarify the application of section 1010, effectively removing the discretion that OMB afforded in its interim rule regarding application of section 1010 to contracts awarded prior to December 15, 2000. In particular, section 1007 of the National Defense Authorization Act for Fiscal Year 2002, Public Law 107–107, 115 Stat. 1012, enacted on December 28, 2001, states that the requirements of section 1010 apply with respect to ''interim payment that are due on or after [December 15, 2000] under contracts entered into before, on, or after that date.'' Accordingly, this final rule amends section 1315.20 of OMB's PPA's regulations, which address the application of section 1010, to incorporate the clarification made by section 1007. With the exception of the amendments made to section 1315.20, this final rule adopts the interim final rule without change.

Agencies are authorized to issue modifications to contracts, as necessary,

to conform them to the revisions made by this final rule. However, as required by Section 1010(d), no interest penalty shall accrue under this rule for any delay in payment that occurred prior to December 15, 2000.

Neither section 1010 nor this final rule is intended to modify current agency practices or policies regarding dates for payment for interim payments on cost-reimbursement service contracts, other than to require—in accordance with section 1010(a)—that PPA interest penalties be paid on interim payments that are made more than 30 days after the agency receives a proper invoice. In particular, section 1010 leaves unaffected existing agency policies that call for these interim payments to be made well in advance of 30 days. For example, it is the policy of the Department of Defense to generally pay contractors 14 days or less after being billed for reimbursements on cost-reimbursement contracts. See subpart 232.906 of the Department of Defense Supplement to the Federal Acquisition Regulation (DFARS), 48 CFR Chapter 2.

II. Regulatory Flexibility Act, Unfunded Mandates Reform Act, Congressional Review Act, and Executive Orders 12866 and 12875

This final rule will not have a significant economic effect on a substantial number of small entities; the regulations implement section 1010 of the National Defense Authorization Act for Fiscal Year 2001, as amended by section 1007 of the National Defense Authorization Act for Fiscal Year 2002. Section 1010 requires Federal agencies to pay an interest penalty whenever they make interim payments on cost-reimbursement service contracts more than 30 days after they receive a proper invoice. For purposes of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4), as well as Executive Orders 12866 and 12875, the final rule will not significantly or uniquely affect small governments, and will not result in increased expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more. Finally, the final rule is not a ''major rule'' under 5 U.S.C. Chapter 8; the rule will not have any of the effects set forth in 5 U.S.C. 804(2).

III. Paperwork Reduction Act

The Paperwork Reduction Act does not apply to this final rule because the rule's changes do not impose new recordkeeping requirements or collections of information from offerors, contractors, or members of the public that require approval under 44 U.S.C. 3501, *et seq.* The information a contractor must submit in order to receive an interim payment under a cost-reimbursement service contract is addressed at section 1315.9(b)(2) of the revised PPA regulations. Section 1315.9(b)(2) states that an interim payment request must correctly include all the information required by the contract or by agency procedures.

List of Subjects in 5 CFR Part 1315

Administrative practice and procedure, Government contracts, Penalties, Reporting and recordkeeping requirements.

Mitchell E. Daniels, Jr.,

Director.

Authority and Issuance

For reasons set out in the preamble, the interim rule amending 5 CFR Part 1315 published at 65 FR 78403, December 15, 2000, is adopted as final with the following change:

PART 1315—PROMPT PAYMENT

1. The authority citation for part 1315 is revised to read as follows:

Authority: 31 U.S.C. chapter 39; Section 1010 of Public Law 106–398, 114 Stat. 1654; Section 1007 of Public Law 107–107, 115 Stat. 1012.

2. Section 1315.20 is revised to read as follows:

§ 1315.20 Application of Section 1010 of the National Defense Authorization Act for Fiscal Year 2001.

Section 1010 of the National Defense Authorization Act for Fiscal Year 2001 (Public Law 106–398, 114 Stat. 1654), as amended by section 1007 of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107, 115 Stat. 1012), requires an agency to pay an interest penalty whenever the agency makes an interim payment under a cost-reimbursement contract for services more than 30 days after the date the agency receives a proper invoice for payment from the contractor. This part implements Section 1010, as amended, and is applicable in the following manner:

(a) This part shall apply to all interim payment requests that are due on or after December 15, 2000 under cost-reimbursement service contracts awarded before, on, or after December 15, 2000.

(b) No interest penalty shall accrue under this part for any delay in payment that occurred prior to December 15, 2000.

(c) Agencies are authorized to issue modifications to contracts, as necessary, to conform them to the provisions in this part implementing Section 1010, as amended.

[FR Doc. 02–32821 Filed 12–27–02; 8:45 am]

BILLING CODE 3110–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Docket # FV–98–303]

Apples; Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; correction.

SUMMARY: The Agricultural Marketing Service published in the **Federal Register** on November 19, 2002, (67 FR 69660) final regulations revising the United States Standards for Grades of Apples. In that document, incomplete paragraph references were published. This document corrects those references.

EFFECTIVE DATE: December 30, 2002.

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

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections contained conforming and editorial changes to the United States Standards for Grades of Apples. The rule was necessary to update and revise the standards to more accurately represent today's marketing practices.

Need for Correction

As published, the final regulations contains errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication on November 19, 2002 (67 FR 69660), which is the subject of FR Doc. 02–29034, is corrected as follows:

§ 51.316 [Corrected]

1. On page 69666, first column, paragraph (e)(3), the words ''paragraphs (1)'' are corrected to read ''paragraphs (e)(1)''.

§ 51.317 [Corrected]

2. On page 69666, third column, paragraph (g)(3), the words ''paragraphs (1)'' are corrected to read ''paragraphs (g)(1)''.

§ 51.318 [Corrected]

3. On page 69667, second column, paragraph (i)(e), the words ''paragraphs (1)'' are corrected to read ''paragraphs (i)(1)''.

Dated: December 20, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–32805 Filed 12–27–02; 8:45 am]

BILLING CODE 3410–02–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1228

RIN 3095–AB03

Expanding Transfer Options for Electronic Records

AGENCY: National Archives and Records Administration (NARA).

ACTION: Final rule.

SUMMARY: NARA is amending the regulations for the transfer of permanent records to NARA by permitting two additional electronic records transfer methods, File Transfer Protocol (FTP) and Digital Linear Tape IV (DLTtape IV). NARA is introducing these transfer methods to reduce the media and shipping costs of electronic records transferred from Government agencies, improve record and file integrity, and expand the options for transfer methods. This rule will affect Government agencies transferring permanent electronic records to the National Archives of the United States.

EFFECTIVE DATE: January 29, 2003. The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of January 29, 2003.

FOR FURTHER INFORMATION CONTACT: Jennifer Davis Heaps at telephone number 301–837–1801, or fax number 301–837–0319.

SUPPLEMENTARY INFORMATION: The proposed rule was published in the June 26, 2002, **Federal Register** (67 FR 43069) for a 60-day public comment period. NARA notified Federal records officers and historical, archival, and records management organizations of the availability of the proposed rule. A copy of the proposed rule was also posted on the NARA web site.

NARA received seven responses to the proposed rule, six from Federal agencies and one from a private sector commenter.

File Transfer Protocol

FTP is a media-less transfer method that can be used to transfer electronic records. FTP operates by using special software located at the sending and receiving sites. This software, in combination with a telecommunications network, provides the means for transferring electronic records. The agency may send any documentation in electronic format to NARA via FTP as part of the transfer of the electronic records or through any other acceptable method of transfer as specified in 36 CFR 1228.270.

Three comments raised questions concerning the security of FTP for transferring records. One agency asked whether files transferred by FTP would be sent encrypted because there is no mention of this in the proposed rule. Another agency and the non-Federal commenter expressed similar concern about FTP as an insecure method of transferring sensitive files and asked whether provisions have been made to secure the transfer and receipt of files by FTP. NARA is only accepting unclassified, uncompressed, unrestricted, and unencrypted files via FTP. We have made provisions to secure the transfer and receipt of electronic files transferred by FTP.

One agency asked whether there are risks to data integrity when transferring electronic records via FTP. The non-Federal commenter claimed that FTP is deficient for logging, or tracking and recording, transfers, for authenticating senders and receivers, and for reliability. During NARA's pilot testing of alternatives to media-based transfer methods, NARA has continued to evaluate various secure file transfer applications to ensure that we have a reliable system that maintains data integrity, authenticity, usability, traceability, and reliability. Any transfer application NARA uses at any time will also enforce security during the transfer of permanent scheduled electronic records.

One agency asked how data transferred by FTP will be verified for accuracy. All electronic files, not just those sent via FTP, go through an evaluation and validation review process before the accessioning process is completed.

One agency asked what specific telecommunication network, for example web site or dial-up modem, is required to transfer data via FTP. NARA's response is that the transfer of files using FTP can be accomplished in a variety of ways. The most common methods are dial-up modems and high-speed or broadband Internet connections. NARA works closely with each individual agency in arranging its specific FTP transfers to ensure that the agency has an appropriate secure means of transferring the records by FTP.

DLTtape IV

DLTtape IV cartridge tape is a high-density magnetic cartridge tape that can store up to 40 gigabytes of information on each cartridge. DLTtape IV tapes are used by selected tape drive units produced by several companies. DLTtape IV tape preparation will follow existing cartridge tape specifications.

One agency commented that requiring the format to be uncompressed reduces some of the viability of DLT media for file transfer and asked NARA to reconsider this requirement. NARA did not adopt this comment because compression can risk losing record information.

One agency asked whether NARA will provide further guidance on using these transfer methods. Yes, agencies seeking further guidance for specific transfers of records should contact NARA's Electronic and Special Media Records Services Division (NWME) as cited in §§ 1228.270(c)(1)(iii) and 1228.270(c)(3)(iii).

Other Transfer Methods and Media

NARA has only used media-based transfer methods in the past, but has been testing other methods as well as additional media. Three agencies commented that NARA should continue to consider other methods, media, and formats for the transfer of permanent electronic records. One of these agencies mentioned that DLT tapes are evolving to SDLT tapes that have 100/200GB densities. This agency expressed concern that although some SDLT tape drives claim to be backward compatible with the ability to read from DLT tapes of lesser densities, it is unknown whether that will hold as the SDLT technology matures. One agency commented that the new emerging standard for software and data storage is DVD and asked NARA to consider adding DVD to the approved media cited at § 1228.270(c)(2). NARA did not adopt this comment. While DVD may prove to be an emerging standard, it does not currently have significant presence in the industry for data storage. DVD lacks widespread standardization, market placement, and compatibility with various drive types. By comparison, DLT has established standardization, market placement, and

multi-drive compatibility. In addition, DLT has greater storage capacity. A DLT tape has up to a 40 GB capacity; DVD has less than 5GB capacity. We intend to periodically review additional methods for the transfer of permanent electronic records and will add them to the CFR where appropriate.

Although this final rule does not address the format of electronic records described in paragraph (d), NARA is exploring the acceptance of formats other than ASCII and EBCDIC as part of its E-Government initiative. Any proposed changes in this area will be addressed in a separate rulemaking.

Documentation

One agency asked whether NARA will require agencies to submit hardcopy documentation, such as codebooks, record layouts, and data dictionaries, with each FTP or DLT transfer. Paragraph (e) of § 1228.270, which was not modified in this rulemaking, states a preference for submission of required documentation in electronic form, but NARA will accept in hardcopy, electronic form, or both.

File Naming

One agency commented that limiting the file name to the 8.3 naming convention specified in ISO 9660–1990 is unnecessarily restrictive. The agency said that the Joliet extension to ISO 9660 allows file and folder names to be extended to 64 characters and other desirable features that many current operating systems use. NARA agrees that agencies may use the Joliet extension if they comply with certain restrictions, using letters, numbers, dashes, and underscores in the file and directory names with a slash used to indicate directory structures. This change has been made at § 1228.270(c)(3)(i).

Other Changes in This Final Rule

The proposed rule indicated at § 1228.270(c)(1)(iii) that a Tape Archive (TAR) utility would be the mechanism to group files and directories onto DLT cartridge tapes. After the publication of the proposed rule, NARA continued earlier work with DLT on a pilot basis and is changing the TAR requirement to an option, in favor of broader file transfer guidance. TAR-type utilities have been developed for many different electronic environments. There are several standards of TAR in the industry. However, these standards are subject to vendor implementation variances and changes. A restriction on receiving files in only a TAR format may pose a compliance burden on agencies. In addition, NARA has not had extensive experience with using multiple TAR utilities on DLT for various file sizes and types.

In addition, NARA is making an editorial clarification in § 1228.224(a) concerning publications incorporated by reference for subpart K of part 1228.

This final rule is a significant regulatory action for the purposes of Executive Order 12866 and has been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, I certify that this rule will not have a significant impact on a substantial number of small entities because it applies only to Federal agencies. This regulation does not have any federalism or tribalism implications. This rule is not a major rule as defined in 5 U.S.C. Chapter 8, Congressional Review of Agency Rulemaking.

List of Subjects in 36 CFR Part 1228

Archives and records, Incorporation by reference.

For the reasons set forth in the preamble, NARA amends Part 1228 of Title 36, Code of Federal Regulations, as follows:

PART 1228—DISPOSITION OF FEDERAL RECORDS

1. The authority citation for Part 1228 continues to read as follows:

Authority: 44 U.S.C. chs. 21, 29, and 33.

2. Amend § 1228.224 by revising paragraph (a) to read as follows:

§ 1228.224 Publications incorporated by reference.

(a) *General.* The following publications cited in this section are hereby incorporated by reference into this subpart K of part 1228. They are available from the issuing organizations at the addresses listed in this section. They are also available for inspection at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC. 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. These materials are incorporated as they exist on the date of approval, and a document indicating any change in these materials will be published in the **Federal Register**.

* * * * *

3. Amend § 1228.270 by revising paragraphs (a), (b), (c) and by adding paragraph (f) to read as follows:

§ 1228.270 Electronic records.

(a) *Timing of transfers.* Each agency is responsible for the integrity of the permanent records it transfers on physical media to the National Archives of the United States. For records transferred by a media-less method, NARA works with the agency to ensure integrity of the records during the transfer process. To ensure that permanent electronic records are preserved, each Federal agency must transfer electronic records to NARA promptly in accordance with the agency's records disposition schedule. Furthermore, if the agency cannot provide proper care and handling of the media (*see* part 1234 of this chapter), or if the media are becoming obsolete and the agency cannot migrate the records to newer media, the agency must contact NARA to arrange for timely transfer of permanent electronic records, even when sooner than provided in the records schedule.

(b) *Temporary retention of copy.* Each agency must retain a second copy of any permanent electronic records that it transfers to the National Archives of the United States until it receives official notification from NARA that the transfer was successful and that NARA has assumed responsibility for continuing preservation of the records.

(c) *Transfer media.* This paragraph covers the transfer of permanent records to the National Archives; it does not apply to the use or storage of records in agency custody. *See* 36 CFR 1234.30 for the requirements governing the selection of electronic records storage media for current agency use. The agency must use only media that is sound and free from defects for transfers to the National Archives of the United States; the agency must choose reasonable steps to meet this requirement. The approved media and media-less transfer forms are open reel magnetic tape, magnetic tape cartridge; Compact-Disk, Read Only Memory (CD–ROM); and File Transfer Protocol (FTP) as described in paragraphs (c) (1), (2) and (3) of this section.

(1) *Magnetic tape.* Agencies may transfer electronic records to the National Archives on magnetic tape as follows:

(i) Open-reel magnetic tape must be on ½ inch 9-track tape reels recorded at 1600 or 6250 bpi that meet ANSI X3.39–1986, American National Standard: Recorded Magnetic Tape for Information Interchange (1600 CPI, PE) or ANSI X3.54–1986, American National Standard: Recorded Magnetic Tape for Information Interchange (6250 CPI, Group Coded Recording), respectively.

(ii) Tape cartridges may be 18-track 3480-class cartridges. The 3480-class cartridge must be recorded at 37,871 bpi that meet ANSI X3.180–1990, American National Standard: Magnetic Tape and

Cartridge for Information Interchange—18-Track, Parallel, ½ inch (12.65 mm), 37871 cpi (1491 cpmm), Group-Coded—Requirements for Recording. The data must be blocked at no more than 32,760 bytes per block.

(iii) Tape cartridges may be DLTtape IV cartridges that must be recorded in an uncompressed format. Agencies interested in transferring scheduled electronic records using a Tape Archive (TAR) utility should contact NARA's Electronic and Special Media Records Services Division (NWME), 8601 Adelphi Rd., College Park, MD 20740–6001 or by email to *cer@nara.gov* to initiate transfer discussions. The data must be blocked at no more than 32,760 bytes per block and must conform to the standards cited in the table as follows:

If you are copying the records on . . .	. . . then, the standard below applies.
DLTtape IV With a DLT 4000 drive	ISO/IEC 15307:1997, First edition, December 1, 1997, Information technology—Data interchange on 12,7 mm 128-track magnetic tape cartridges—DLT 4 format (20 GB native, 40 GB compressed, 1.5 MB/sec).
DLTtape IV with a DLT 7000 drive	ISO/IEC 15896:1999, First edition, December 15, 1999, Information technology—Data interchange on 12,7 mm 208-track magnetic tape cartridges—DLT 5 format (35 GB native, 70 GB compressed, 5.0 MB/sec).
DLTtape IV with a DLT 8000 drive	ISO/IEC 16382:2000, First edition, May 15, 2000, Information technology—Data interchange on 12,7 mm 208-track magnetic tape cartridges—DLT 6 format (40 GB native, 80 GB compressed, 6.0 MB/sec).

(2) Compact-Disk, Read Only Memory (CD–ROM). Agencies may use CD–ROMs to transfer electronic records scheduled to be preserved in the National Archives. The files on such a CD–ROM must comply with the format and documentation requirements specified in paragraphs (d) and (e) of this section.

(i) CD–ROMs used for this purpose must conform to ANSI/NISO/ISO 9660–1990, American National Standard for Volume and File Structure of CD–ROM for Information Exchange.

(ii) Permanent electronic records must be stored in discrete files. The CD–ROMs transferred may contain other files, such as software or temporary records, but all permanent records must be in files that contain only permanent records. Agencies must indicate at the time of transfer if a CD–ROM contains temporary records and, if so, where those records are located on the CD–ROM. The agency must also specify whether NARA should return the CD–ROM to the agency or dispose of it after copying the permanent records to an archival medium.

(iii) If permanent electronic records that an agency disseminates on CD–ROM exist on other media, such as magnetic tape, the agency and NARA will mutually agree on the most appropriate medium for transfer of the records to the National Archives of the United States.

(3) *File Transfer Protocol.* Agencies may use File Transfer Protocol (FTP) to transfer electronic records scheduled for preservation at the National Archives of the United States. The files transferred via FTP must comply with the format and documentation requirements specified in paragraphs (d) and (e) of this section.

(i) FTP file structure may use the 64-character Joliet extension naming convention only when letters, numbers, dashes (-), and underscores (_) are used in the file and/or directory names, with a slash (\) used to indicate directory structures. Otherwise, FTP file structure must conform to an 8.3 file naming convention and file directory structure as cited in ANSI/NISO/ISO 9660–1990, American National Standard for Volume and File Structure of CD–ROM for Information Exchange.

(ii) Permanent electronic records must be stored in discrete files, separate from temporary files. All permanent records must be transferred in files that contain only permanent records.

(iii) When permanent electronic records may be disseminated through other types of mechanisms (*e.g.*, magnetic tape, CD–ROM), the agency and NARA will mutually agree on the most appropriate medium for transfer of the records to the National Archives and will select the appropriate files for FTP transfer. Several important factors may limit the use of FTP as a transfer method, including the number of records, record file size, and available bandwidth. NARA will retain approval for appropriateness of FTP as the selected mechanism for each scheduled records transfer based on certain criteria (file size, FTP transfer rate, record classification, etc.). Agencies interested in sending electronic records scheduled for transfer to NARA through FTP must contact NARA's Electronic and Special Media Records Services Division (NWME), 8601 Adelphi Rd., College Park, MD 20740–6001 or by email to *cer@nara.gov* to initiate the transfer discussions.

(iv) Each permanent electronic records transfer must be preceded with a signed Agreement to Transfer Records to the National Archives of the United States (Standard Form 258) sent to the Office of Records Services—Washington, DC (NWME), 8601 Adelphi Road, College Park, MD 20740–6001.

* * * * *

(f) *Incorporation by reference.* The following publications cited in this section are available from the American National Standards Institute (ANSI), 25 West 43rd Street, 4th floor, New York NY 10036 or electronically at *http://www.ansi.org/*. All these standards are also available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, D.C. 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. These materials are incorporated by reference as they exist on the date of approval and a notice of any change in these materials will be published in the **Federal Register**.

ANSI X3.39–1986, American National Standard: Recorded Magnetic Tape for Information Interchange (1600 CPI, PE).

ANSI X3.54–1986, American National Standard: Recorded Magnetic Tape for Information Interchange (6250 CPI, Group Coded Recording).

ANSI X3.180–1990, American National Standard: Magnetic Tape and Cartridge for Information Interchange—18-Track, Parallel, ½ inch (12.65 mm), 37871 cpi (1491 cpmm), Group-Coded—Requirements for Recording.

ANSI/NISO/ISO 9660–1990, American National Standard for Volume and File Structure of CD–ROM for Information Exchange.

ISO/IEC 15307:1997, First edition, December 1, 1997, Information technology—Data interchange on 12.7

mm 128-track magnetic tape cartridges—DLT 4 format.

ISO/IEC 15896:1999, First edition, December 15, 1999, Information technology—Data interchange on 12.7 mm 208-track magnetic tape cartridges—DLT 5 format.

ISO/IEC 16382:2000, First edition, May 15, 2000, Information technology—Data interchange on 12.7 mm 208-track magnetic tape cartridges—DLT 6 format.

* * * * *

Dated: October 25, 2002.

John W. Carlin,

Archivist of the United States.

[FR Doc. 02–32818 Filed 12–27–02; 8:45 am]

BILLING CODE 7515–01–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

37 CFR Parts 1, 2 and 3

[Docket No. 2003–T–005]

RIN 0651–AB58

Correspondence With the United States Patent and Trademark Office

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule; Technical Corrections Act of 2002 Rules Change.

SUMMARY: The United States Patent and Trademark Office (''USPTO'') is revising its rules of practice to simplify the requirements for: (1) Filing an application for registration based on a foreign registration under 15 U.S.C. 1126(e); and (2) designation of a domestic representative by a party who is not domiciled in the United States. These changes implement the changes to the Trademark Act of 1946, 15 U.S.C. 1051 *et seq.*, made by the Technical Corrections in Trademark Law Act, title III, subtitle B, sec. 13207 of Pub. L. 107–273, 116 Stat. 1758. The USPTO is also making some minor technical corrections to the rules of practice.

EFFECTIVE DATE: December 30, 2002.

FOR FURTHER INFORMATION CONTACT: Mary E. Hannon, Office of the Commissioner for Trademarks, by telephone at (703) 308–8910, extension 137, by e-mail at *mary.hannon@uspto.gov*, or by facsimile at (703) 872–9280.

SUPPLEMENTARY INFORMATION: The Technical Corrections in Trademark Law Act of 2002, Pub. L. 107–273, 116 Stat. 1758 (''Technical Corrections Act''), amended section 44(e) of the Trademark Act, 15 U.S.C. 1126(e), to eliminate the requirement that a foreign applicant who seeks registration in the United States based on a registration in the applicant's home country (country of origin) submit a certification or certified copy of the foreign registration. As amended, section 44(e) requires that the applicant submit ''a true copy, a photocopy, a certification, or a certified copy of the registration in the country of origin of the applicant.''

The Technical Corrections Act also amended sections 1(e), 8(f), 9(c), and 10 of the Trademark Act, 15 U.S.C. 1051(e), 1058(f), 1059(c) and 1060, to eliminate the requirement that an applicant or registrant who is not domiciled in the United States designate the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark (''domestic representative''). As amended, these sections provide that the applicant or registrant ''may'' designate a domestic representative, and that if the applicant or registrant does not designate a domestic representative (or if the person designated cannot be found at the address in the designation), then notices or process in proceedings affecting the mark may be served on the Director of the USPTO (''Director''). In other words, the designation of a domestic representative in trademark proceedings is now optional, not mandatory.

The Technical Corrections Act is effective November 2, 2002.

Discussion of Specific Rules

The USPTO is amending rules 1.4(d)(1)(iii)(A), 2.6(b)(8), 2.18, 2.24, 2.33(b)(2), 2.34, 2.119(d), 2.161(h), 2.183, 3.31(a), and 3.61.

Section 1.4(d)(1)(iii)(A) is amended to delete the requirement that a party who signs a trademark document electronically print, sign, date and maintain a paper copy of the electronic submission. It is burdensome and inefficient for parties who file electronically to maintain both paper and electronic records of the filings. Paper records are unnecessary because electronic records would be sufficient proof of filing if a document filed electronically were to become lost within the USPTO.

Section 2.6(b)(8) is amended to delete ''T-Search'' in both places in which it appears, and substitute ''X-Search.'' This merely updates the references to the USPTO's electronic search system.

Section 2.18 is amended to provide that if an applicant, registrant or party to a proceeding who does not reside in the United States has not appointed a domestic representative and the application or proceeding is not being prosecuted by an attorney, the USPTO will send correspondence directly to the applicant, registrant or party, unless the applicant, registrant or party has designated a different address to which correspondence should be sent. The rule previously stated that the USPTO would send correspondence to the domestic representative unless the application was being prosecuted by an attorney, in which case the USPTO would send correspondence to the attorney. The amendment is necessary because designation of a domestic representative is no longer mandatory.

Section 2.24 is amended to provide that an applicant not residing in the United States may designate a domestic representative, and that if the applicant does not designate a domestic representative (or if the person designated cannot be found at the address given in the designation), then notices or process in proceedings affecting the mark may be served on the Director of the USPTO. This incorporates the amendment of 15 U.S.C. 1051(e), and 1060.

Section 2.33(b)(2) is amended to require that an application under 15 U.S.C. 1051(b) or 15 U.S.C. 1126 include an allegation that the applicant believes it is entitled to use the mark ''in commerce''. This corrects an oversight in the rule (which previously omitted the language ''in commerce''), and makes it consistent with 15 U.S.C. 1051(b)(3)(A), which requires an allegation that the applicant believes itself ''to be entitled to use the mark in commerce''. This amendment does not change current practice.

Section 2.34(a)(2)(i) is amended to provide that in an application based on the applicant's bona fide intention to use the mark in commerce under 15 U.S.C. 1051(b), the ''applicant'' must verify that it has a bona fide intention to use the mark in commerce on or in connection with the goods or services listed in the application. The rule previously required verification by the ''trademark owner'', but this was inconsistent with 15 U.S.C. 1051(b)(3), which requires verification by the ''applicant''. An intent-to-use applicant who has not yet used a mark in commerce is not the ''owner'' of the mark. This amendment does not change current practice.

Section 2.34(a)(3)(i) is amended to provide that in an application based on registration of a mark in a foreign applicant's country of origin under 15 U.S.C. 1126(e), the ''applicant'' must verify that it has a bona fide intention to use the mark in commerce on or in connection with the goods or services listed in the application. The rule

previously required verification by the ''trademark owner''. This amendment is consistent with § 2.33 and does not change current practice.

Section 2.34(a)(3)(ii) is amended to provide that an application for registration of a mark based on a foreign registration under 15 U.S.C. 1126(e) must include a ''true copy, photocopy, certification, or certified copy'' of a registration in the applicant's country of origin. This incorporates the amendment of 15 U.S.C. 1126(e), which now permits submission of a photocopy of a foreign registration. Previously, the rule required a certification or certified copy of the foreign registration.

Section 2.34(a)(3)(iii) is amended to provide that in an application for registration of a mark based on a foreign registration under 15 U.S.C. 1126(e), if the record indicates that the foreign registration will expire before the United States registration will issue, the applicant must submit a true copy, photocopy, certification, or certified copy from the country of origin showing that the foreign registration has been renewed and is still in force. This incorporates the amendment of 15 U.S.C. 1126(e). Previously, the rule required a certification or certified copy showing that the foreign registration had been renewed.

Section 2.34(a)(4)(ii) is amended to provide that in an application based on an earlier-filed foreign application under 15 U.S.C. 1126(d), the ''applicant'' must verify that it has a bona fide intention to use the mark in commerce on or in connection with the goods or services listed in the application. The rule previously required verification by the ''trademark owner.'' This amendment is consistent with § 2.33 and does not change current practice.

Section 2.119(d) is amended to provide that if a party to an inter partes proceeding who does not reside in the United States has appointed a domestic representative, the USPTO will send correspondence to the domestic representative unless the proceeding is being prosecuted by an attorney at law, in which case the USPTO will send correspondence to the attorney; and that if the party has not appointed a domestic representative and the proceeding is not being prosecuted by an attorney, the USPTO will send correspondence directly to the party. The rule previously stated that the USPTO would send correspondence to the domestic representative unless the application was being prosecuted by an attorney, in which case the USPTO would send correspondence to the attorney. The amendment is necessary because designation of a domestic representative is no longer mandatory.

Section 2.161 is amended by deleting paragraph (h), which required that an affidavit of continued use or excusable nonuse under 15 U.S.C. 1058 include a designation of domestic representative if the registrant is not domiciled in the United States. This incorporates the amendment of 15 U.S.C. 1058(f), which makes the designation of domestic representative optional.

Section 2.183 is amended by deleting paragraph (d), which required that a renewal application under 15 U.S.C. 1059 include a designation of domestic representative if the registrant is not domiciled in the United States, and by redesignating paragraphs (e) and (f) as paragraphs (d) and (e). This incorporates the amendment of 15 U.S.C. 1059(c), which makes the designation of domestic representative optional.

Section 3.31 is amended by deleting paragraph (a)(7), which required that a trademark cover sheet under § 3.28 include an indication that an assignee who is not domiciled in the United States had designated a domestic representative, and by redesignating paragraph (a)(8) as paragraph (a)(7). This incorporates the amendment of 15 U.S.C. 1060, which makes the designation of domestic representative optional.

Section 3.61 is amended to provide that the assignee of a trademark application or registration who does not reside in the United States ''may'' designate a domestic representative. This incorporates the amendment of 15 U.S.C. 1060. The rule previously provided that an assignee who does not reside in the United States ''must'' designate a domestic representative.

Administrative Procedure Act

This final rule merely involves rules of agency practice and procedure within the meaning of 5 U.S.C. 553(b)(A), as the amendments merely incorporate changes to the statute enacted by the Technical Corrections Act, Public Law 107–273, 116 Stat. 1758, which simplify or eliminate existing procedural requirements. Therefore, this final rule may be adopted without prior notice and opportunity for public comment under 5 U.S.C. 553(b) and (c), or thirty-day advance publication under 5 U.S.C. 553(d).

Regulatory Flexibility Act

As prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553 (or any other law), a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is not required. *See* 5 U.S.C. 603 and 604.

Executive Order 13132

This rule making does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

Executive Order 12866

This rule making has been determined not to be significant for purposes of Executive Order 12866 (Sept. 30, 1993).

Paperwork Reduction Act

This rule making does not create any information collection requirements under the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*); however, this rule making does contain information collection requirements subject to the PRA. This final rule eliminates the requirement to maintain a paper copy of an application that has been filed electronically. This rule also eliminates the requirement that applicants or registrants who are not domiciled in the United States must designate the name and address of a person resident in the United States on whom may be served notice or process in proceedings affecting the mark (''domestic representative''). The designation of a domestic representative is now an optional requirement. These requirements have been previously submitted to OMB for review and approval under OMB Control Number 0651–0009. The USPTO will update 0651–0009 to reflect the change in the record keeping requirements associated with the amendment of section 1.4(d)(1)(iii)(A) and any possible burden changes associated with the optional designation of a domestic representative. The public reporting burden for these requirements averages three minutes, including the time for reviewing instructions and gathering the information. Send comments regarding this burden estimate to Mary E. Hannon, Office of the Commissioner for Trademarks, by telephone at (703) 308–8910, extension 137, by e-mail at *mary.hannon@uspto.gov*, or by facsimile at (703) 872–9280 or to the OMB Office of Information and Regulatory Affairs, New Executive Office Bldg., 725 17th Street, NW., Washington, DC 20230 (Attn: USPTO Desk Officer).

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of

information displays a currently valid OMB control number.

List of Subjects

37 CFR Part 1

Administrative practice and procedure, Trademarks.

37 CFR Part 2

Administrative practice and procedure, Trademarks.

37 CFR Part 3

Administrative practice and procedure, Trademarks, Assignments.

For the reasons given in the preamble and under the authority contained in 35 U.S.C. 2 and 15 U.S.C. 1123, as amended, the USPTO is amending parts 1, 2 and 3 of title 37 as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR Part 1 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2).

2. Amend § 1.4 by revising paragraph (d)(1)(iii)(A) to read as follows:

§ 1.4 Nature of correspondence and signature requirements.

* * * * *

(d) * * *

(1) * * *

(iii) * * *

(A) Place a symbol comprised of numbers and/or letters between two forward slash marks in the signature block on the electronic submission; or

* * * * *

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

3. The authority citation for 37 CFR Part 2 continues to read as follows:

Authority: 15 U.S.C. 1123, 35 U.S.C. 2, unless otherwise noted.

4. Amend § 2.6 by revising paragraph (b)(8) to read as follows:

§ 2.6 Trademark fees.

* * * * *

(b) * * *

(8) Marginal cost, paid in advance, for each hour of terminal session time, including print time, using X-Search capabilities, prorated for the actual time used. The Director may waive the payment by an individual for access to X-Search upon a showing of need or hardship, and if such waiver is in the public interest $40.00

* * * * *

5. Revise § 2.18 to read as follows:

§ 2.18 Correspondence, with whom held.

If papers are transmitted by an attorney at law, or a written power of attorney is filed, the United States Patent and Trademark Office will send correspondence to the attorney at law transmitting the papers, or to the attorney at law designated in the power of attorney. If an application or proceeding is not being prosecuted by an attorney at law, and the applicant, registrant or party to a proceeding before the Office has appointed a domestic representative, the Office will send correspondence to the domestic representative, unless the applicant, registrant or party designates in writing another address to which correspondence is to be sent. If the application or proceeding is not being prosecuted by an attorney and the applicant, registrant or party has not designated a domestic representative, the Office will send correspondence directly to the applicant, registrant or party, unless the applicant, registrant or party designates in writing another address to which correspondence is to be sent. Correspondence will continue to be sent to such address until the applicant, registrant or party, or the attorney or other authorized representative of the applicant, registrant or party, indicates in writing that correspondence is to be sent to another address. The Office will not undertake double correspondence, and if more than one attorney at law or other authorized representative appears or signs a paper, the Office's reply will be sent to the address already established in the record until another correspondence address is specified by the applicant, registrant or party or by the attorney or other authorized representative of the applicant, registrant or party.

6. Revise § 2.24 and its heading to read as follows:

§ 2.24 Designation of domestic representative by foreign applicant.

If an applicant is not domiciled in the United States, the applicant may designate by a document filed in the United States Patent and Trademark Office the name and address of some person resident in the United States on whom may be served notices or process in proceedings affecting the mark. If the applicant does not file a document designating the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark, or if the last person designated cannot be found at the address given in the designation, then notices or process in proceedings affecting the mark may be served on the Director. The mere designation of a domestic representative does not authorize the person designated to prosecute the application unless qualified under paragraph (a), (b) or (c) of § 10.14 of this subchapter and authorized under § 2.17(b).

7. Amend § 2.33 by revising paragraph (b)(2) to read as follows:

§ 2.33 Verified statement.

* * * * *

(b) * * *

(2) In an application under section 1(b) or section 44 of the Act, the verified statement must allege:

That the applicant has a bona fide intention to use the mark shown in the accompanying drawing in commerce on or in connection with the specified goods or services; that the applicant believes it is entitled to use the mark in commerce; that to the best of the declarant's knowledge and belief, no other person has the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when applied to the goods or services of the other person, to cause confusion or mistake, or to deceive; and that the facts set forth in the application are true.

* * * * *

8. Amend § 2.34 by revising paragraphs (a)(2)(i), (a)(3)(i), (a)(3)(ii), (a)(3)(iii), and (a)(4)(ii) to read as follows:

§ 2.34 Bases for filing.

(a) * * *

(2) * * *

(i) In an application under section 1(b) of the Act, the applicant must verify that it has a bona fide intention to use the mark in commerce on or in connection with the goods or services listed in the application. If the verification is not filed with the initial application, the verified statement must allege that the applicant had a bona fide intention to use the mark in commerce as of the filing date of the application.

* * * * *

(3) * * *

(i) The applicant's verified statement that it has a bona fide intention to use the mark in commerce on or in connection with the goods or services listed in the application. If the verification is not filed with the initial application, the verified statement must allege that the applicant had a bona fide intention to use the mark in commerce as of the filing date of the application.

(ii) A true copy, a photocopy, a certification, or a certified copy of a registration in the applicant's country of origin showing that the mark has been

registered in that country, and that the registration is in full force and effect. The certification or copy of the foreign registration must show the name of the owner, the mark, and the goods or services for which the mark is registered. If the foreign registration is not in the English language, the applicant must submit a translation.

(iii) If the record indicates that the foreign registration will expire before the United States registration will issue, the applicant must submit a true copy, a photocopy, a certification, or a certified copy from the country of origin to establish that the foreign registration has been renewed and will be in force at the time the United States registration will issue. If the foreign registration is not in the English language, the applicant must submit a translation.

* * * * *

(4) * * *

(ii) The applicant's verified statement that it has a bona fide intention to use the mark in commerce on or in connection with the goods or services listed in the application. If the verification is not filed with the initial application, the verified statement must allege that the applicant had a bona fide intention to use the mark in commerce as of the filing date of the application.

* * * * *

9. Amend § 2.119 by revising paragraph (d) to read as follows:

§ 2.119 Service and signing of papers.

* * * * *

(d) If a party to an inter partes proceeding is not domiciled in the United States and is not represented by an attorney or other authorized representative located in the United States, the party may designate by document filed in the United States Patent and Trademark Office the name and address of a person resident in the United States on whom may be served notices or process in the proceeding. If the party has appointed a domestic representative, official communications of the United States Patent and Trademark Office will be addressed to the domestic representative unless the proceeding is being prosecuted by an attorney at law or other qualified person duly authorized under § 10.14(c) of this subchapter. If the party has not appointed a domestic representative and the proceeding is not being prosecuted by an attorney at law or other qualified person, the Office will send correspondence directly to the party, unless the party designates in writing another address to which correspondence is to be sent. The mere designation of a domestic representative does not authorize the person designated to prosecute the proceeding unless qualified under § 10.14(a), or qualified under § 10.14(b) and authorized under § 2.17(b).

* * * * *

10. Amend § 2.161 by removing paragraph (h), and by revising paragraph (g)(2) to read as follows:

* * * * *

(g) * * *

(2) Be flat and no larger than 8½ inches (21.6 cm.) wide by 11.69 inches (29.7 cm.) long. If a specimen exceeds these size requirements (a ''bulky specimen''), the Office will create a facsimile of the specimen that meets the requirements of the rule (*i.e.*, is flat and no larger than 8½ inches (21.6 cm.) wide by 11.69 inches (29.7 cm.) long) and put it in the file wrapper.

11. Amend § 2.183 by removing paragraph (d); and redesignating paragraphs (e) and (f) as (d) and (e).

PART 3—ASSIGNMENT, RECORDING AND RIGHTS OF ASSIGNEE

12. The authority citation for 37 CFR part 3 continues to read as follows:

Authority: 15 U.S.C. 1123; 35 U.S.C. 2(b)(2).

13. Amend § 3.31 by removing paragraph (a)(7) and redesignating paragraph (a)(8) as paragraph (a)(7).

14. Revise § 3.61 to read as follows:

§ 3.61 Domestic representative.

If the assignee of a patent, patent application, trademark application or trademark registration is not domiciled in the United States, the assignee may designate a domestic representative in a document filed in the United States Patent and Trademark Office. The designation should state the name and address of a person residing within the United States on whom may be served process or notice of proceedings affecting the application, patent or registration or rights thereunder.

Dated: December 20, 2002.

James E. Rogan,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 02–32801 Filed 12–27–02; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KY 125–2–200308(a); FRL–7430–9]

Approval and Promulgation of Implementation Plans for Kentucky: Air Permit Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving revisions to the State Implementation Plan (SIP) of the Commonwealth of Kentucky which separate rule 401 KAR 50:035 into several rules based on the type of air permit, and renumber and rewrite in plain English rule 401 KAR 50:032 and the resulting rules from 401 KAR 50:035. The EPA is also removing 401 KAR 50:030 from the Kentucky SIP and correcting typographical errors in a separate, related action addressing rule 401 KAR 52:080, ''Regulatory limit on potential to emit.''

DATES: This direct final rule is effective February 28, 2003 without further notice, unless EPA receives adverse comment by January 29, 2003. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to: Michele Notarianni, Air Planning Branch, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. (404/562–9031 (phone) or *notarianni.michele@epa.gov* (e-mail).)

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

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. (Michele Notarianni, 404/562–9031, *notarianni.michele@epa.gov)*

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

FOR FURTHER INFORMATION CONTACT: Michele Notarianni at the address listed above or 404/562–9031 (phone) or *notarianni.michele@epa.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

I. Today's Action

The EPA is approving revisions to the State Implementation Plan (SIP) of the Commonwealth of Kentucky submitted on March 15, 2001. These revisions

separate rule 401 KAR 50:035 into several rules based on the type of air permit, and renumber and rewrite in plain English the resulting regulations. The revisions also rewrite in plain English rule 401 KAR 50:032 and renumber it as 401 KAR 52:090. Today's action fully approves a total of four rules into the Kentucky SIP. The four rules that EPA is adding to the SIP are: 401 KAR 52:001: ''Definitions for 401 KAR Chapter 52,'' 401 KAR 52:030: ''Federally-enforceable permits for non-major sources'' 401 KAR 52:090: ''Prohibitory rule for hot mix asphalt plants,'' and 401 KAR 52:100: ''Public, affected state, and U.S. EPA review.'' The two rules being replaced by these four, new rules are 401 KAR 50:032, ''Prohibitory rule for hot mix asphalt plants,'' and 401 KAR 50:035, ''Permits,'' which are listed under Chapter 50, ''General Administrative Procedures.''

Also under Chapter 50, EPA is removing 401 KAR 50:030, ''Registration of sources,'' from the list of EPA-approved Kentucky regulations because it is a nonregulatory provision and has no basis for inclusion in the SIP. In addition, EPA is correcting typographical errors in a separate, related action by replacing all references to rule, ''401 KAR 50:080,'' with the correct citation, ''401 KAR 52:080.'' (See 67 FR 53312, August 15, 2002.) In this earlier action, the Agency conditionally approved, but incorrectly cited, Rule 401 KAR 52:080: ''Regulatory limit on potential to emit,'' which was submitted as part of the March 15, 2001, package as one of the rules resulting from the rewrite of 401 KAR 50:035.

II. Final Action

The EPA is approving four rules, 401 KAR 52:001, 401 KAR 52:030, 401 KAR 52:090, and 401 KAR 52:100, in a new Chapter 52 into the Kentucky SIP and deleting the following, three rules in their entirety: 401 KAR 50:030, 401 KAR 50:032, and 401 KAR 50:035. The EPA is also correcting typographical errors in a separate, related action addressing rule 401 KAR 52:080, ''Regulatory limit on potential to emit.'' The EPA is approving these changes because they are consistent with the Clean Air Act and EPA policy.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective February 28, 2003 without further notice unless the Agency receives adverse comments by January 29, 2003.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on February 28, 2003 and no further action will be taken on the proposed rule.

III. Administrative Requirements

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 28, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to

enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: December 16, 2002.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

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

PART 52—[AMENDED]

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

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

Subpart S—Kentucky

2. Section 52.920(c) is amended to read as follows:

(a) Under Chapter 50, ''General Administrative Procedures,'' remove the entries for ''401 KAR 50:030,'' ''401 KAR 50:032,'' and ''401 KAR 50:035'';

(b) Add, in numerical order, a new entry for ''Chapter 52 Permits, Registrations, and Prohibitory Rules.''

§ 52.920 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED KENTUCKY REGULATIONS FOR KENTUCKY

Regulation	Title/subject	State effective date	EPA approval date	Federal Register Notice
*	*	*	*	*
Chapter 52 Permits, Registrations, and Prohibitory Rules				
401 KAR 52:001	Definitions for 401 KAR Chapter 52	01/15/01	12/30/02	[Insert FR page citation]
401 KAR 52:030	Federally-enforceable permits for non-major sources	01/15/01	12/30/02	[Insert FR page citation]
401 KAR 52:090	Prohibitory rule for hot mix asphalt plants	01/15/01	12/30/02	[Insert FR page citation]
401 KAR 52:100	Public, affected state, and U.S. EPA review	01/15/01	12/30/02	[Insert FR page citation]
*	*	*	*	*

* * * * *

[FR Doc. 02–32778 Filed 12–27–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket Nos. 96–45, 98–171, 90–571, 92–237, 99–200, 95–116, 98–170; FCC 02–329]

Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission adopts several interim modifications to the existing federal universal service contribution system. The Commission concludes that these modifications to the current revenue-based contribution methodology will sustain the universal service fund and increase the predictability of support in the near term, while we continue to examine more fundamental reforms.

DATES: Effective January 29, 2003.

FOR FURTHER INFORMATION CONTACT: Diane Law Hsu, Acting Deputy Chief, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in CC Docket Nos. 96–45, 98–171, 90–571, 92–237, 99–200, 95–116, and 98–170 released on December 13, 2002. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC 20554.

I. Introduction and Overview

1. In this Report and Order, we take interim measures to maintain the viability of universal service in the near term—a fundamental goal of this Commission—while we consider further long-term reforms. First, we increase to 28.5 percent the current interim safe harbor that allows cellular, broadband Personal Communications Service (PCS), and certain Specialized Mobile Radio (SMR) providers to assume that 15 percent of their telecommunications revenues are interstate. We also require wireless telecommunications providers to make a single election whether to report actual revenues or to use the revised safe harbor for all affiliated entities within the same safe harbor category. In addition, we seek to improve competitive neutrality among contributors by modifying the existing revenue-based methodology to require universal service contributions based on contributor-provided projections of collected end-user interstate and international telecommunications revenues, instead of historical gross-billed revenues. These changes will be implemented with the FCC Form 499–Q filed on February 1, 2003. We conclude that our actions to modify the current revenue-based contribution methodology will sustain the universal service fund and increase the predictability of support in the near term, while we continue to examine more fundamental reforms.

2. In light of these changes, we also conclude that telecommunications carriers may not recover their federal universal service contribution costs through a separate line item that includes a mark-up above the relevant contribution factor beginning April 1, 2003. Limiting the federal universal service line-item charge to an amount that does not exceed the contribution factor, set quarterly by the Commission, will increase billing transparency and decrease confusion for consumers about the amount of universal service contributions that are passed through by carriers. Carriers will continue to have the flexibility to recover legitimate administrative costs from consumers through other means.

II. Report and Order

3. As noted above, we adopt several modifications to the current revenue-based system to ensure the sufficiency and predictability of universal service while we consider reforms to sustain the universal service fund for the long term. To address concerns raised in the record that the current interim safe harbor for mobile wireless providers is inappropriate in light of changing market conditions, we raise the safe harbor from 15 to 28.5 percent. We establish an all-or-nothing rule for affiliated wireless telecommunications providers when determining whether to report actual interstate telecommunications revenues or to avail themselves of the wireless safe harbor percentages. We also modify the current revenue-based methodology by basing contributions on a percentage of projected collected, instead of historical gross-billed, interstate and international end-user telecommunications revenues reported by contributors on a quarterly basis. In light of the modifications adopted by the Commission, we conclude that carriers may not mark-up universal service line item amounts above the contribution assessment rate. Finally, we revise our Lifeline rules to prohibit all Eligible Telecommunications Carriers (ETCs) from recovering contribution costs from their Lifeline customers.

A. Modified Revenue-Based Assessment Methodology

1. Mobile Wireless Safe Harbor

4. Based on the record before us, we raise the current safe harbor for mobile wireless providers from 15 percent to 28.5 percent. We conclude that a 15 percent interim mobile wireless safe harbor no longer reflects the extent to which mobile wireless consumers utilize their wireless phones for interstate calls, particularly in light of the increased substitution of wireless for traditional wireline service. According to revenue data included on the latest FCC Form 499–Q, it appears that 43 percent of mobile wireless filers, representing 78 percent of mobile wireless end-user telecommunications revenues, currently avail themselves of the mobile wireless safe harbor. As noted by several commenters, revising the mobile wireless safe harbor is appropriate because it is no longer based on actual market conditions. Increasing the interim mobile wireless safe harbor will, therefore, help to ensure that universal service contributions remain equitable and non-discriminatory. Such action also will improve the near-term viability of the universal service mechanisms by ensuring that the contribution base more accurately reflects today's marketplace.

5. Mobile wireless providers availing themselves of the revised interim safe harbor will be required to report 28.5 percent of their telecommunications revenues as interstate beginning with fourth quarter 2002 revenues reported on the February 1, 2003, FCC Form 499–Q. Mobile wireless providers will still have the option of reporting their actual interstate telecommunications revenues. We note that mobile wireless providers must provide documentation to support the reporting of actual interstate telecommunications revenues upon request.

6. In order to ensure that contributions remain equitable and nondiscriminatory, we also adopt an all-or-nothing rule for wireless telecommunications providers seeking to avail themselves of the safe harbors. Under this rule, wireless providers will continue to be permitted to report revenues at either the legal entity level or on a consolidated basis, but will be required to decide whether to report either actual or safe harbor revenues for all of their affiliated legal entities within the same safe harbor category (*i.e.*, 28.5 percent, 12 percent or 1 percent). We conclude, in the interests of consistency, equity, and fairness, that such a contributor that chooses to determine actual interstate telecommunications revenues for one of its affiliated entities must do so for all affiliated entities within the same safe harbor category. Likewise, wireless telecommunications providers must use the safe harbor for all affiliated carriers within the same category if they choose to use it for one. If a wireless telecommunications provider can and does separate its interstate revenues from intrastate revenues for universal service contribution purposes, we find that it is reasonable to presume that its affiliates subject to the same safe harbor can employ the same measures to report their interstate revenues. It is inappropriate, therefore, to allow affiliated wireless providers to ''pick and choose'' which entities use the interim safe harbors.

7. Beginning with the first Form 499–Q filing following the effective date of this Order, wireless providers, including mobile wireless providers, paging providers, and analog SMR providers, shall determine whether to report revenues based on the interim wireless safe harbors at the affiliated-company level, as opposed to the legal-entity level, as is the case today. Under this new requirement, if one wireless entity chooses to report and contribute based on actual interstate telecommunications revenues, all affiliated companies subject to the same safe harbor must do the same. Conversely, if one wireless entity chooses to utilize the interim safe harbors, all affiliated companies in the same safe harbor category must also use the safe harbor. For purposes of this requirement and consistent with section 3(1) of the Act, we define ''affiliate'' as a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person.

8. In addition to the universal service support mechanisms, consistent with existing Commission practice, revenues reported on the Form 499–A will continue to be used in administering the Telecommunications Relay Services, North American Numbering Plan, Local Number Portability programs, as well as the regulatory fees administration program for wireline telecommunications providers. We can see no reason to permit carriers to use a different safe harbor for revenue reporting for purposes of these other programs. Thus, we conclude that our actions taken here to revise the interim mobile wireless safe harbor and modify the reporting of data by wireless providers on the 499–A also will apply to assessments for the mechanisms established for Telecommunications Relay Services, the North American Numbering Plan, and the Local Number Portability programs.

2. Assessment on Projected Collected Revenues

9. Based on our experience with the current collection methodology, we now find it appropriate to modify this aspect of the methodology to promote competitive neutrality and to simplify the assessment and recovery of universal service contributions for carriers and consumers. We therefore conclude that, instead of assessing universal service contributions based on revenues accrued as much as six months prior, the Universal Service Administrative Company (USAC) will assess contributions based on projections provided by contributors of their collected end-user interstate and international telecommunications revenues for the following quarter. Because contributors will be assessed in the period for which revenues are projected, the modified methodology will eliminate the interval between the accrual of revenues and the assessment of universal service contributions based on those revenues. The modified methodology also will result in minimal changes to current reporting requirements. The revised methodology

therefore will base assessments on revenue data that is more reflective of current market conditions, without significantly increasing administrative costs for contributors and USAC. We view this and other changes we make to the revenue-based system to be interim measures while we consider the approaches raised in the companion Second Further Notice of Proposed Rulemaking (*Second Further NPRM*) published elsewhere in the issue of the **Federal Register**.

10. We also conclude that the revised contribution methodology ensures that contributions to universal service support mechanisms continue to operate in a competitively neutral manner. As noted by several commenters, the current contribution system based on historical revenues creates competitive advantages for new entrants and contributors with increasing interstate telecommunications revenues, while disadvantaging those carriers with declining revenues. Interexchange carriers, for example, which currently contribute more than 60 percent of universal service contributions, are particularly disadvantaged by the so-called ''lag'' that results because they have experienced sharp declines in their interstate revenues. Because contributions are assessed on revenues from six months prior, carriers with decreasing revenues must recover their contributions from a revenue base smaller than the one assessed. By basing contribution assessments on projected collected end-user interstate and international telecommunications revenues, as opposed to historical gross-billed revenues, the modified mechanism mitigates the anti-competitive effects of the current system. This, in turn, helps to ensure the sufficiency and stability of the universal service fund.

11. For purposes of our revised contribution methodology, ''collected end-user'' revenues refers to gross-billed end-user interstate and international telecommunications revenues less estimated uncollectibles. We define uncollectibles as the percentage of interstate and international telecommunications revenues that the contributor anticipates will not be collected from end-user customers. Contributors must make best efforts to collect interstate and international telecommunications revenues, including any federal universal service pass-through charges, before characterizing revenues as uncollectible. As we discuss below, these projected uncollectibles will be trued up against actual uncollectibles reported on the FCC Form 499–A. This percentage should be calculated in accordance with Generally Accepted Accounting Principles. Contributors will report their uncollectible percent on the Form 499 filings (*i.e.*, Forms 499–Q and 499–A), which will be modified to collect additional information about uncollectibles consistent with the rules adopted in this Order.

12. Consistent with our existing policy, contributors will continue to file a Form 499–Q on a quarterly basis and the Form 499–A on an annual basis. The Commission and USAC will also continue to set contribution factors on a quarterly basis using the same timeframes as the current methodology. Under the revised methodology, however, in addition to filing the Form 499–Q to report historical gross-billed revenues from the prior quarter, contributors also will project their gross-billed and collected end-user interstate and international telecommunications revenues for the upcoming quarter. We believe that this will not be burdensome for contributors, as they need to develop such projections for their own internal business purposes. Consistent with current procedures, contributors will have the option of certifying as to the confidential nature of such projections on the FCC Form 499–Q.

13. We note that we retain the requirement for an officer to certify to the truthfulness and accuracy of the FCC Form 499–A submitted to the Administrator. We also will require an executive officer to certify that the projections of gross-billed and collected revenues included in the FCC Form 499–Q represent a good-faith estimate based on company policies and procedures. To ensure that contributors report correct information on the FCC Form 499–A, we require all contributors to maintain records and documentation to justify the information reported in the Form 499–A for three years. We also will require filers to maintain records detailing the methodology used to determine projections in the Form 499–Q for three years. Filers will be required to provide such records and documentation to the Commission and USAC upon request.

14. Under the modified methodology, contributors will continue to include pass-through charges, if any, as part of their projection of collected end-user revenues. In order to eliminate circularity, however, the Administrator will reduce each provider's contribution obligation by a circularity discount factor representing the provider's projected contributions to universal service in the upcoming quarter. Prior to each quarter, we will announce a contribution factor equal to the projected universal service funding requirement for the upcoming quarter (projected revenue requirement) divided by an adjusted contribution base. As discussed below, carriers will be prohibited from marking up their federal universal service line item above this contribution factor. In order to calculate an individual provider's contribution, USAC then will reduce the provider's unadjusted contribution obligation (*i.e.*, its projected collected end-user revenues times the contribution factor) by an amount equal to its contribution obligation times the circularity discount factor. The circularity discount factor will equal one minus an amount equal to the adjusted contribution base divided by total projected end-user interstate and international telecommunication revenues. USAC will send contributors a firm bill each month based on the above-described calculation. Therefore, we do not anticipate the need for a reserve fund, because contributors will be billed monthly based on their reported projected collected revenues, the same amounts used to calculate the contribution factor.

15. Although our modified mechanism relies on the ability of contributors to project gross-billed and collected revenues on a quarterly basis, it only requires contributors to project for the upcoming quarter, which should minimize the potential for inaccurate estimates. Similar to existing policies, contributors will have an opportunity to correct their projections up to 45 days after the due date of each Form 499–Q filing and through the annual true-up process. We find it appropriate to modify the current requirement that revisions be filed by the due date of the next Form 499–Q (which effectively provides 90 days for revisions) in light of the changes to the methodology we adopt today. In particular, we believe it necessary to eliminate incentives for contributors to revise their revenue projections after the announcement of the contribution factor for the upcoming quarter in order to reduce their contribution obligations and to otherwise reduce the likelihood of a shortfall in universal service funding in a given calendar quarter. USAC will use the actual revenue data provided by contributors on the FCC Form 499–A to perform annual true-ups to the quarterly projected revenue data submitted by contributors during the prior calendar year. As necessary, USAC will then refund or collect from contributors any over-payments or under-payments. If the combined quarterly projected

revenues reported by a contributor are greater than those reported on its annual revenue report (Form 499–A), then a refund will be provided to the contributor based on an average of the two lowest contribution factors for the year. If the combined quarterly revenues reported by a contributor are less than those reported on its annual revenue report (Form 499–A), then USAC will collect the difference from the contributor using an average of the two highest contribution factors from that year. This approach is consistent with the existing system.

16. We direct USAC to begin implementation of the revised reporting requirements, consistent with our modifications to ensure that carriers begin contributing based on projected collected end-user revenues, in the next quarterly filing to occur on February 1, 2003. Therefore, the contribution factor for the second quarter of 2003 will be based on projected collected end-user interstate and international telecommunications revenues. As part of the transition to the modified contribution system, contributors must begin providing information concerning their projected collected end-user interstate and international telecommunications revenues (*i.e.*, anticipated end-user revenues and estimated uncollectibles) for the upcoming quarter with the filing of the modified 499–Q on February 1, 2003, to reflect projections for the second quarter of 2003. In order to provide USAC with a full year of projected revenues with which to conduct the annual true up for 2003 revenues, contributors also will be required to include projected collected revenues for the first quarter of 2003 on the 499–Q that will be filed on February 1, 2003. As discussed above, subsequent 499–Qs will only include historical revenues from the prior calendar quarter and projected revenues for the upcoming quarter. The FCC Form 499–A, which must be filed on April 1, 2003, will include historical gross-billed revenues for the period of January 2002 through December 2002. Subsequent FCC Form 499–As will include historical gross-billed revenues and actual collected end-user interstate and international telecommunications revenues for the relevant reporting year.

B. Recovery of Universal Service Contributions

1. Recovery Limitations

17. In this Order, consistent with the goals of the Act and this Commission for universal service, we adopt rules related to contribution recovery that will ensure that federal universal service line items on customer bills accurately reflect the extent of a carrier's contribution obligations, while at the same time maximizing fairness and flexibility for carriers. We conclude that telecommunications carriers may not recover their federal universal service contribution costs through a separate line item that includes a mark up above the relevant contribution factor. Contributing carriers still will have the flexibility to recover their contribution costs through their end-user rates if they so choose and to recover any administrative or other costs they currently recover in a universal service line-item through their customer rates or through another line item. Contributors will also have the flexibility to express the line item either as a flat amount or a percentage, as long as the line item does not exceed the total amount associated with the contribution factor, or the actual percentage thereof.

18. Based on our experience over the course of the last three years, we believe it is necessary to provide greater clarity about the practices we deem reasonable to protect consumers. In light of the changes to the contribution methodology adopted herein, we conclude that the practice of marking up federal universal service line-item charges above the relevant assessment amount will be prohibited prospectively. Any carrier that applies a federal universal service line-item charge above the relevant assessment amount could be subject to enforcement action for violating the rules we adopt in the Order.

19. The elimination of mark-ups in carrier universal service line items will alleviate end-user confusion regarding the universal service line item. Specifically, the amount of a carrier's federal universal service line item will not exceed the relevant interstate telecommunications portion of the bill times the relevant contribution factor. This result should eliminate a significant portion of the consumer frustration and confusion pertaining to universal service line items. This requirement also should foster a more competitive market by better enabling customers to comparison shop among carriers. This furthers our goal of promoting transparency for the end user in order to facilitate informed customer choice.

20. Therefore, beginning April 1, 2003, carriers that elect to recover their contribution costs through a separate line item may not mark up the line item above the relevant contribution factor. To the extent that a carrier recovers its contribution costs through a line item, that line item may not exceed the relevant assessment rate. So, for example, if the contribution factor is 7.28 percent, a carrier's federal universal service line-item cannot exceed 7.28 percent of the total amount of the interstate portion of charges for telecommunications service on each customer's bill. Likewise, if a carrier chooses to express its federal universal service line-item charge as a flat amount, that amount may not exceed the interstate telecommunications portion of the bill times the relevant contribution factor. In addition, we no longer will permit carriers—whether wireline or wireless—to average contribution costs across all end-user customers when establishing federal universal service line-item amounts. Similarly, because customers of Lifeline services do not generate assessable interstate telecommunications revenues for ETCs, the relevant assessment rate and contribution amounts recovered from such customers would be zero.

21. We recognize that these changes may require modifications in billing practices for certain carriers. Accordingly, this requirement will not become effective until April 1, 2003. We will monitor closely carrier compliance with these new requirements and will take appropriate action if it appears carriers are not complying with our rules.

22. We stress that this rule only applies to carriers that choose to recover their contribution costs through a line item. Carriers will continue to have flexibility to recover their contribution costs through their rates or through a line item. In this way, we accommodate entities such as payphone and prepaid wireless providers that are unable, for practical or business reasons, to recover universal service contribution costs through a line item. In addition, carriers will have the flexibility to express the line item either as a flat amount or as a percentage, as long as the line item does not exceed the interstate telecommunications portion of a customer's bill times the relevant contribution factor.

23. Carriers that are not rate-regulated by this Commission, namely interexchange carriers, CMRS providers, and competitive local exchange carriers, will have the same flexibility that exists today to recover legitimate administrative and other related costs. In particular, such costs can always be recovered through these carriers' rates or through other line items. The rule that we adopt today does not prevent any legitimate cost recovery. Administrative costs of incumbent local exchange carriers (ILECs) subject to rate-of-return regulation solely related to

implementation and compliance with the contribution methodology will be included in their cost accounting and therefore will be part of their end-user revenue requirement. As for carriers subject to price cap regulation, we do not anticipate that administrative costs associated with our contribution methodology will be extraordinary. Nothing in this Order modifies our existing Truth-in-Billing requirements.

24. We emphasize that the rules we adopt today do not require the filing of new tariffs, but may result in revisions to existing tariffs. We note that the Commission has detariffed most interstate services offered by interexchange carriers. Further, CLECs and CMRS providers do not tariff their federal universal service line items with the Commission.

25. Because carriers cannot include mark ups in their federal universal service line item, we need not address whether such charges should be uniform across customer classes. We also need not adopt an interim safe harbor for mark ups.

26. Consistent with the record developed in this proceeding, we prohibit all eligible telecommunications carriers from recovering contribution costs from their Lifeline customers. Under our current rules, ILECs may not recover universal service contributions from Lifeline customers, while other carriers may do so. We find that extending the prohibition on recovery of universal service contributions from Lifeline customers to all ETCs, including CLECs and CMRS providers designated as ETCs, will promote equitable and nondiscriminatory contributions, consistent with section 254 of the Act. Prohibiting recovery of universal service contributions from Lifeline customers also helps to increase subscribership by reducing qualifying low-income consumers' monthly basic local service charges, consistent with our rules. We also conclude that our actions here further the universal service goals of the Act by helping to ensure that low-income consumers have access to telecommunications and information services.

27. While we believe that the adoption of rules in this Order will greatly reduce the amount of customer confusion surrounding contribution recovery issues, the Consumer and Governmental Affairs Bureau will continue to monitor complaints and consumer calls received on this topic. In addition, the Consumer and Governmental Affairs Bureau will continue its educational and outreach programs regarding federal universal service. We expect the Consumer and Governmental Affairs Bureau will educate consumers about the new rules adopted in this order. In this way we can monitor whether the policy goal of fostering competition through consumer choice is being met. If we observe a sustained marked increase in consumer complaints regarding the recovery of carrier contribution costs, we may revisit this issue at that time.

2. Labeling of Line-Item Charges

28. At this time, we decline to mandate a specific label for federal universal service line-items pursuant to our Truth-in-Billing rules. We will monitor how the reforms we adopt today affect carrier recovery practices and will take further action if necessary.

III. Procedural Matters

A. Final Regulatory Flexibility Analysis

29. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the First Notice of Proposed Rulemaking (*First Further NPRM*), 67 FR 1125, March 13, 2002. The Commission sought written public comment on the proposals in the *First Further NPRM*, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA. To the extent that any statement in this FRFA is perceived as creating ambiguity with respect to our rules or statements made in preceding sections of this Order, the rules and statements set forth in those preceding sections shall be controlling.

1. Need for, and Objectives of, the Report and Order

30. In this Order, we take interim measures to maintain the viability of universal service in the near term—a fundamental goal of this Commission—while we consider further long-term reforms. First, we increase to 28.5 percent the current interim safe harbor that allows cellular, broadband PCS, and certain specialized SMRS providers to assume that 15 percent of their telecommunications revenues are interstate. We also will require wireless telecommunications providers to make a single election whether to report actual revenues or to use the revised safe harbor for all affiliated entities within the same safe harbor category. In addition, we seek to improve competitive neutrality among contributors by modifying the existing revenue-based methodology to require universal service contributions based on contributor provided projections of collected end-user interstate telecommunications revenues, instead of historical gross-billed revenues. We conclude that our actions to modify the current revenue-based contribution methodology will sustain the universal service fund and increase the predictability of support in the near term, while we continue to examine more fundamental reforms.

31. We also take steps to protect consumers from unjust and unreasonable universal service contribution recovery practices. Specifically, we conclude that telecommunications carriers may not recover their federal universal service contribution costs through a separate line item that includes a mark up above the relevant contribution factor. Limiting the federal universal service line-item charge to an amount that does not exceed the contribution factor, set quarterly by the Commission, will increase billing transparency and decrease confusion for consumers about the amount of universal service contributions that are passed through by carriers. Carriers will continue to have the flexibility to recover legitimate administrative costs from consumers through other means. We find that our modified contribution methodology will simplify the assessment and recovery of universal service contributions for all carriers and consumers, including small entities.

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

32. The Commission received no comments specifically addressing the IRFA. We did receive, however, some general small entity-related comments. Some commenters, for example, asserted that a connection-based methodology would be inequitable and burdensome for small businesses, particularly with respect to assessment of multi-line business connections based on the proposed tiers of capacity outlined in the *First Further NPRM*. Commenters also expressed general concerns about carrier recovery practices. Other commenters maintained that a *de minimis* exemption was essential to any contribution system adopted by the Commission. In this Order, we modify the existing methodology; therefore, issues raised with respect to the impact of a connection-based assessment on small entity concerns are not directly implicated by our actions taken today. We do note, however, that the Commission, concurrent with the issuance of the Order adopted a companion *Second Further NPRM* that seeks comment on specific aspects of

three connection-based proposals in the record. To the extent that commenters continue to have small entity-related concerns, they may submit comments in response to the *Second Further NPRM.*

33. In the Order, we adopt certain modifications to the existing methodology. As noted in the Order, we, among other things, have adopted rules related to contribution recovery that will increase billing transparency and decrease confusion for all consumers, including small entities, about the amount of universal service contributions that are passed through by carriers, while maximizing fairness and flexibility for carriers. By allowing carriers to contribute based on projections of their collected end-user revenues, we eliminate one of the major reasons for carriers to recover amounts in excess of the relevant assessment rate. We prohibit carriers from marking up federal universal service line items above the contribution factor. These actions address small entity concerns regarding recovery practices. We have also retained the *de minimis* exemption to ensure that compliance costs associated with contributing to universal service do not exceed actual contribution amounts.

3. Description and Estimate of the Number of Small Entities to which Rules will Apply

34. 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 rules adopted herein. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' 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. ''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 governmental entities, total, in the United States. This number includes 38,978 cities, counties, and towns; of these, 37,566, or 96%, have populations of fewer than 50,000. The 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 (96%) are small entities. In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities. Under the Small Business Act, a ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).

35. We have included small incumbent local exchange carriers in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent local exchange carriers in this FRFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

36. *Wireline Carriers and Service Providers (Wired Telecommunications Carriers).* The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1500 or fewer employees. According to Census Bureau data for 1997, there were 2,225 firms in this category, total, that operated for the entire year. Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more. Thus, under this size standard, the great majority of firms can be considered small.

37. *Local Exchange Carriers, Interexchange Carriers, Competitive Access Providers, Operator Service Providers, Payphone Providers, and Resellers.* Neither the Commission nor SBA has developed a definition particular to small local exchange carriers (LECs), interexchange carriers (IXCs), competitive access providers (CAPs), operator service providers (OSPs), payphone providers or resellers. The closest applicable definition for these carrier-types under SBA rules is for Wired Telecommunications Carriers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. According to our most recent data, there are 1,329 incumbent LECs, 532 CAPs, 229 IXCs, 22 OSPs, 936 payphone providers and 710 resellers. Of these, an estimated 1,024 incumbent LECs, 411 CAPs, 181 IXCs, 20 OSPs, 933 payphone providers, and 669 resellers reported that they have 1,500 or fewer employees; 305 incumbent LECs, 121 CAPs, 48 IXCs, 2 OSPs, 3 payphone providers, and 41 resellers reported that, alone or in combination with affiliates, they have more than 1,500 employees. We do not have data specifying the number of these carriers that are not independently owned and operated, and therefore we are unable to estimate with greater precision the number of these carriers that would qualify as small business concerns under SBA's definition. Consequently, most incumbent LECs, IXCs, CAPs, OSPs, payphone providers and resellers are small entities that may be affected by the decisions and rules adopted in this Order.

38. *Wireless Service Providers.* The SBA has size standards for wireless small businesses within the two separate Economic Census categories of Paging and of Cellular and Other Wireless Telecommunications. For both of those categories, the SBA considers a business to be small if it has 1,500 or fewer employees. According to the most recent *Trends in Telephone Report* data, 1,761 companies reported that they were engaged in the provision of wireless service. Of these 1,761 companies, an estimated 1,175 reported that they have 1,500 or fewer employees and 586 reported that, alone or in combination with affiliates, they have more than 1,500 employees. Consequently, we estimate that most wireless service providers are small entities that may be affected by the rules adopted herein.

39. *Broadband Personal Communications Service (PCS).* The broadband PCS spectrum is divided into six frequency designated A through F, and the Commission has held auctions for each block. The Commission defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of $40 million or less in the three previous calendar years. For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These standards defining ''small entity'' in the context of broadband PCS auctions have been approved by the SBA. No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total

of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses; there were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as ''small'' or ''very small businesses.'' Based on this information, we conclude that the number of small broadband PCS licensees will include the 90 winning C Block bidders, the 93 qualifying bidders in the D, E, and F blocks, the 48 winning bidders in the 1999 re-auction, and the 29 winning bidders in the 2001 re-auction, for a total of 260 small entity broadband PCS providers, as defined by the SBA small business size standards and the Commission's auction rules. Consequently, we estimate that 260 broadband PCS providers are small entities that may be affected by the rules and policies adopted herein.

40. *Narrowband PCS*. To date, two auctions of narrowband PCs licenses have been conducted. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. For purposes of the two auctions that have already been held, small businesses were defined as entities with average gross revenues for the prior three calendar years of $40 million or less. To ensure meaningful participation of small business entities in the auctions, the Commission adopted a two-tiered definition of small businesses in the *Narrowband PCS Second Report and Order*, 65 FR 35843, June 6, 2000. A small business is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A very small business is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. These definitions have been approved by the SBA. In the future, the Commission will auction 459 licenses to serve MTAs and 408 response channel licenses. There is also one megahertz of narrowband PCS spectrum that has been held in reserve and that the Commission has not yet decided to release for licensing. The Commission cannot predict accurately the number of licenses that will be awarded to small entities in future auctions. However, four of the 16 winning bidders in the two previous narrowband PCS auctions were small businesses, as that term was defined under the Commission's Rules. The Commission assumes, for purposes of this FRFA, that a large portion of the remaining narrowband PCS licenses will be awarded to small entities. The Commission also assumes that at least some small businesses will acquire narrowband PCS licenses by means of the Commission's partitioning and disaggregation rules.

41. *Specialized Mobile Radio (SMR)*. The Commission awards ''small entity'' and ''very small entity'' bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years, or that had revenues of no more than $3 million in each of the three previous calendar years, respectively. In the context of both the 800 MHz and 900 MHz SMR service, the definitions of ''small entity'' and ''very small entity'' have been approved by the SBA. These bidding credits apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. We assume, for our purposes here, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz SMR bands. There were 60 winning bidders that qualified as small and very small entities in the 900 MHz auctions. Of the 1,020 licenses won in the 900 MHz auction, bidders qualifying as small and very small entities won 263 licenses. In the 800 MHz SMR auction, 38 of the 524 licenses won were won by small and very small entities. Consequently, we estimate that there are 301 or fewer small entity SMR licensees in the 800 MHz and 900 MHz bands that may be affected by the rules and policies adopted herein.

42. *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). For purposes of this FRFA, we will use the SBA's size standard applicable to wireless service providers, *supra*—an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that almost all of them qualify as small entities under the SBA's size standard. Consequently, we estimate that there are 1,000 or fewer small entity licensees in the Rural Radiotelphone Service that may be affected by the rules and policies adopted herein.

43. *Air-Ground Radiotelephone Service*. The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service. For purposes of this FRFA, we will use the SBA's size standard applicable to wireless service providers, *supra*—an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA definition.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

44. Pursuant to the Order, contributions to the Commission's universal service will be based on projections provided by contributors of their collected end-user interstate and international telecommunications revenues (*i.e.*, end-user telecommunications revenues less estimated uncollectibles). As noted in the Order, the modified methodology will result in minimal changes to current reporting requirements. Because the projected collection approach we adopt is similar to the existing contribution methodology, it will be relatively easy for both USAC and contributors to administer and implement this modification to our current methodology while we consider other reforms to the current system. Consistent with our existing policy, contributors will continue to file a Form 499–Q on a quarterly basis and the Form 499–A on an annual basis. The Commission and USAC will also continue to set contribution factors on a quarterly basis using the same timeframes as the current methodology. Under the revised methodology, however, in addition to filing the Form 499–Q to report historical gross-billed revenues from the prior quarter, contributors also will project their gross-billed and collected end-user interstate and international telecommunications revenues for the upcoming quarter. We believe that this will not be burdensome for contributors, as they need to develop such projections for their own internal business purposes. Consistent with

current procedures, contributors will have the option of certifying as to the confidential nature of such projections on the FCC Form 499–Q.

45. As noted in the Order, we retain the requirement for an officer to certify to the truthfulness and accuracy of the FCC Form 499–A submitted to the Administrator. We also will require an officer to certify that the projections of revenue and uncollectibles included in the FCC Form 499–Q represent a good-faith estimate based on company policies and procedures. To ensure the contributors report correct information on the FCC Form 499–A, we require all contributors to maintain records and documentation to justify the information reported in the Form 499–A for three years. We also will require filers to maintain records detailing the methodology used to determine projections in the Form 499–Q for three years. Filers will be required to provide such records and documentation to the Commission and USAC upon request.

5. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

46. 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.''

47. The Commission has taken numerous steps to minimize significant economic impact on small entities in adopting modifications to the revenue-based methodology for assessing and recovering contributions to the federal universal service mechanisms. In modifying the existing contribution system, we have adopted rules related to contribution recovery that will increase billing transparency and decrease confusion for consumers about the amount of universal service contributions that are passed through by carriers, while ensuring that carriers continue to have the flexibility to recover legitimate administrative costs from consumers through other means. By allowing carriers to contribute based on projected collected end-user revenues, we eliminate one of the major reasons for carriers to recover amounts in excess of the relevant assessment rate. In light of these changes, we prohibit carriers from marking up federal universal service line items above the contribution factor. These actions address small entity concerns regarding recovery practices. We have also retained the *de minimis* exemption to ensure that compliance costs associated with contributing to universal service do not exceed actual contribution amounts. Consistent with the views expressed by many commenters, including small entity commenters, we find that the alternatives to revise or eliminate the *de minimis exemption* are not supported by the record developed at this time.

48. As discussed in the Order, we have also considered various alternative proposals on how to reform the universal service contribution system. We conclude that the modifications to the current revenue-based contribution methodology, as adopted in the Order will maintain the viability of universal service in the near term, while we continue to examine reforms that are more fundamental based on proposals submitted in the record in this proceeding.

6. Report to Congress

49. The Commission will send a copy of the Order, including the FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the Order, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

B. Paperwork Reduction Act Analysis

50. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose new or modified reporting and recordkeeping requirements or burdens on the public. Implementation of these new or modified reported and recordkeeping requirements will be subject to approval by the Office of Management and Budget (OMB) as prescribed by the Act, and will go into effect upon announcement in the **Federal Register** of OMB approval.

IV. Ordering Clauses

51. It is ordered that, pursuant to the authority contained in sections 1–4, 201–205, 214, 218–220, 254, 403, and 405 of the Communications Act of 1934, as amended, this Report and Order is adopted.

52. Part 54 of the Commission's rules, is amended, effective January 29, 2003.

53. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Report and order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 54

Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 54 as follows:

PART 54—UNIVERSAL SERVICE

1. The authority citations continue to read as follows:

Authority: 47 U.S.C. 1, 4(i), 201, 205, 214, 254 unless otherwise noted.

2. Amend § 54.706 by revising paragraphs (b) and (c) to read as follows:

§ 54.706 Contributions.

* * * * *

(b) Prior to April 1, 2003, except as provided in paragraph (c) of this section, every telecommunications carrier that provides interstate telecommunications services, every provider of interstate telecommunications that offers telecommunications for a fee on a non-common carrier basis, and every payphone provider that is an aggregator shall contribute to the federal universal service support mechanisms on the basis of its interstate and international end-user telecommunications revenues, net of prior period actual contributions. Beginning April 1, 2003, except as provided in paragraph (c) of this section, every such provider shall contribute on the basis of its projected collected interstate and international end-user telecommunications revenues, net of projected contributions.

(c) Prior to April 1, 2003, any entity required to contribute to the federal universal service support mechanisms whose interstate end-user telecommunications revenues comprise less than 12 percent of its combined interstate and international end-user telecommunications revenues shall contribute to the federal universal service support mechanisms for high cost areas, low-income consumers,

schools and libraries, and rural health care providers based only on such entity's interstate end-user telecommunications revenues, net of prior period actual contributions. Beginning April 1, 2003, any entity required to contribute to the federal universal service support mechanisms whose projected collected interstate end-user telecommunications revenues comprise less than 12 percent of its combined projected collected interstate and international end-user telecommunications revenues shall contribute based only on such entity's projected collected interstate end-user telecommunications revenues, net of projected contributions. For purposes of this paragraph, an ''entity'' shall refer to the entity that is subject to the universal service reporting requirements in § 54.711 and shall include all of that entity's affiliated providers of telecommunications services.

* * * * *

2. Amend § 54.709 by revising paragraphs (a) introductory text, and (a)(1), and by removing the first sentence of paragraph (a)(2) and adding two sentences in its place to read as follows:

§ 54.709 Computations of required contributions to universal service support mechanisms.

(a) Prior to April 1, 2003, contributions to the universal service support mechanisms shall be based on contributors' end-user telecommunications revenues and on a contribution factor determined quarterly by the Commission. Contributions to the mechanisms beginning April 1, 2003 shall be based on contributors' projected collected end-user telecommunications revenues, and on a contribution factor determined quarterly by the Commission.

(1) For funding the federal universal service support mechanisms prior to April 1, 2003, the subject revenues will be contributors' interstate and international revenues derived from domestic end users for telecommunications or telecommunications services, net of prior period actual contributions. Beginning April 1, 2003, the subject revenues will be contributors' projected collected interstate and international revenues derived from domestic end users for telecommunications or telecommunications services, net of projected contributions. (2) Prior to April 1, 2003, the quarterly universal service contribution factor shall be determined by the Commission based on the ratio of total projected quarterly expenses of the universal service support mechanisms to the total end-user interstate and international telecommunications revenues, net of prior period actual contributions. Beginning April 1, 2003, the quarterly universal service contribution factor shall be determined by the Commission based on the ratio of total projected quarterly expenses of the universal service support mechanisms to the total projected collected end-user interstate and international telecommunications revenues, net of projected contributions.

* * *

* * * * *

3. Amend § 54.711 by revising paragraph (a) to read as follows:

§ 54.711 Contributor reporting requirements.

(a) Contributions shall be calculated and filed in accordance with the Telecommunications Reporting Worksheet which shall be published in the **Federal Register**. The Telecommunications Reporting Worksheet sets forth information that the contributor must submit to the Administrator on a quarterly and annual basis. The Commission shall announce by Public Notice published in the **Federal Register** and on its website the manner of payment and dates by which payments must be made. An executive officer of the contributor must certify to the truth and accuracy of historical data included in the Telecommunications Reporting Worksheet, and that any projections in the Telecommunications Reporting Worksheet represent a good-faith estimate based on the contributor's policies and procedures. The Commission or the Administrator may verify any information contained in the Telecommunications Reporting Worksheet. Contributors shall maintain records and documentation to justify information reported in the Telecommunications Reporting Worksheet, including the methodology used to determine projections, for three years and shall provide such records and documentation to the Commission or the Administrator upon request. Inaccurate or untruthful information contained in the Telecommunications Reporting Worksheet may lead to prosecution under the criminal provisions of Title 18 of the United States Code. The Administrator shall advise the Commission of any enforcement issues that arise and provide any suggested response.

* * * * *

4. Add § 54.712 to subpart H to read as follows:

§ 54.712 Carrier recovery of universal service costs from end-users.

(a) Federal universal service contribution costs may be recovered through interstate telecommunications-related charges to end users. If a telecommunications carrier chooses to recover its federal universal service contribution costs through a line item on a customer's bill, as of April 1, 2003, the amount of the federal universal service line-item charge may not exceed the interstate telecommunications portion of that customer's bill times the relevant contribution factor.

(b) Eligible telecommunications carriers may not recover federal universal service contribution costs from Lifeline customers.

[FR Doc. 02–32925 Filed 12–27–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 225

[FRA–1998–4898, Notice No. 5]

RIN 2130–AB57

Retention of Current Monetary Threshold for Reporting Rail Equipment Accident/Incidents During Calendar Year 2003 and Until Further Amended

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Interim final rule with request for comments.

SUMMARY: This Interim Final Rule establishes at $6,700 the monetary threshold for reporting certain railroad accidents/incidents involving railroad property damage that occur during calendar year 2003 and, until further notice, during subsequent calendar years. The 2003 threshold remains the same as the threshold for calendar year 2002 due to the unavailability of Bureau of Labor Statistics wage data that were previously used to calculate the threshold. FRA is not calculating a new threshold; rather, the old one is being retained as it is not possible to calculate a new threshold with the current formula due to the lack of BLS data. FRA will be providing notice and seeking comment at a future date to establish a new formula for calculating the monetary threshold for reporting rail equipment accidents/incidents. This action is needed to ensure and maintain comparability between different years of accident data by having the threshold

keep pace with any increases or decreases in equipment and labor costs so that each year accidents involving the same minimum amount of railroad property damage are included in the reportable accident counts.

DATES: (1) This regulation is effective January 1, 2003.

(2) *Written Comments:* Written comments must be received by February 28, 2003. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

ADDRESSES: Anyone wishing to file a comment should refer to the FRA docket and notice numbers (Docket No. FRA–1998–4898, Notice No. 5). You may submit your comments and related material by only one of the following methods:

By mail to the Docket Management System, United States Department of Transportation, room PL–401, 400 7th Street, SW., Washington, DC 20590–0001; or electronically through the Web site for the Docket Management System at *http://dams.dot.gov*. For instructions on how to submit comments electronically, visit the Docket Management System Web site and click on the ''Help'' menu.

The Docket Management Facility maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza Level of the Nassif Building at the same address during regular business hours. You may also obtain access to this docket on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Robert L. Finkelstein, Staff Director, Office of Safety Analysis, RRS–22, Mail Stop 17, FRA, 1120 Vermont Ave., NW., Washington, DC 20590 (telephone 202–493–6280) or Roberta Stewart, Trial Attorney, Office of Chief Counsel, RCC–12, Mail Stop 10, FRA, 1120 Vermont Ave., NW., Washington, DC 20590 (telephone 202–493–6027).

SUPPLEMENTARY INFORMATION:

Background

A ''rail equipment accident/incident'' is a collision, derailment, fire, explosion, act of God, or other event involving the operation of railroad on-track equipment (standing or moving) that causes reportable damages greater than the reporting threshold for the year in which the event occurs. 49 CFR 225.19(c). Each rail equipment accident/incident must be reported to FRA using the Rail Equipment Accident/Incident Report (Form FRA F 6180.54). 49 CFR 225.19(b), (c). As revised, effective in 1997, paragraphs (c) and (e) of 49 CFR 225.19 provide that the dollar figure that constitutes the reporting threshold for rail equipment accidents/incidents will be adjusted, every year in accordance with the procedures outlined in appendix B to part 225, to reflect any cost increases or decreases. 61 FR 30942, 30969 (June 18, 1996); 61 FR 60632, 60634 (Nov. 29, 1996); 61 FR 67477, 67490 (Dec. 23, 1996). As stated in the procedures in appendix B, information from the Bureau of Labor Statistics (BLS) is used to calculate the threshold. ''The equation used to adjust the reporting threshold uses the average hourly earnings reported for Class I railroads and Amtrak and an overall railroad equipment cost index determined by the BLS.'' 49 CFR part 225, App. B, paragraph 1. The formula set forth in appendix B is consistent with 49 U.S.C. 20901(b), which reads as follows:

(b) Monetary threshold for reporting.

(1) In establishing or changing a monetary threshold for the reporting of a railroad accident or incident, the Secretary shall base damage cost calculations only on publicly available information obtained from—

(A) the Bureau of Labor Statistics; or

(B) another department, agency, or instrumentality of the United States Government if the information has been collected through objective, statistically sound survey methods or has been previously subject to a public notice and comment process in a proceeding of a Government department, agency, or instrumentality.

(2) If information is not available as provided in paragraph (1)(A) or (B) of this subsection, the Secretary may use any other source to obtain the information. However, use of the information shall be subject to public notice and an opportunity for written comment.

New Reporting Threshold

Approximately one year has passed since the rail equipment accident/incident reporting threshold was last reviewed and revised. 66 FR 66346 (Dec. 26, 2001). However, FRA will not be recalculating the threshold this year based on the current formula in appendix B. The threshold from calendar year 2002, $6,700, will remain in place. The reason for this is that the BLS is no longer publishing the figures necessary for FRA to compute the wage component of the equation, i.e., the average hourly earnings of production workers for Class I railroads and Amtrak, due to inadequate sampling data. Specifically, the Class I railroads and Amtrak have not provided the monthly hours and earnings data for production workers that BLS needs to publish these numbers for calendar year 2002. BLS does not foresee a better response rate in future years and, as a result, is completely changing its methodology and the information that it publishes. Therefore, it is not possible for FRA to calculate a new threshold based on the current formula. The calendar year 2002 threshold of $6,700 will be held over for calendar year 2003 and until further notice so that a threshold remains in place. Beginning in calendar year 2003, FRA will develop a new method for calculating the accident reporting threshold in a separate notice-and-comment rulemaking consistent with 49 U.S.C. 20901(b).

The threshold amount of $6,700 will remain in effect on January 1, 2003. Sections 225.5 and 225.19 and appendix B have been amended to state that the reporting threshold is $6,700 for calendar year 2003 and, until further notice, for subsequent calendar years.

Notice-and-Comment Procedures

Although FRA is soliciting comments, FRA believes that it is necessary to issue this Interim Final Rule immediately in order to ensure that a monetary accident/incident reporting threshold remains in place while FRA proposes and establishes a new method for calculating the threshold, based on different data. Because a threshold must be in place at the beginning of calendar year 2003, extended notice-and-comment procedures are ''impracticable, unnecessary, or contrary to the public interest'' within the meaning of section 4(b)(3)(B) of the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B). It is currently impossible for FRA to calculate a new threshold based on the current formula, and there is not enough time to create, propose and issue a new methodology for establishing a threshold consistent with 49 U.S.C. 20901(b) before January 1, 2003. As a consequence, FRA is proceeding directly to an Interim Final Rule.

However, in accordance with Executive Order 12866, FRA is allowing 60 days for comments. FRA believes that a 60-day comment period is appropriate to allow the public to comment on this Interim Final Rule. FRA solicits written comments on all aspects of this Interim Final Rule.

FRA does plan to issue a notice of proposed rulemaking (NPRM) establishing a new formula for determining the amount of the reporting threshold.

Regulatory Impact

Executive Order 12866 and DOT Regulatory Polices and Procedures

This rule has been evaluated in accordance with existing policies and procedures, and determined to be non-significant under both Executive Order 12866 and DOT policies and procedures (44 FR 11034; Feb. 26, 1979). This Interim Final Rule has also been reviewed under Executive Order 12866 and is also considered ''nonsignificant'' under that order.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of proposed and final rules to assess their impact on small entities, unless the Secretary certifies that the rule will not have a significant economic impact on a substantial number of small entities. Pursuant to Section 312 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), FRA has published an interim policy that formally establishes ''small entities'' as being railroads that meet the line-haulage revenue requirements of a Class III railroad. 62 FR 43024 (Aug. 11, 1997). For other entities, the same dollar limit in revenues governs whether a railroad, contractor, or other respondent is a small entity.

About 645 of the approximately 700 railroads in the United States are considered small businesses by FRA. FRA certifies that this Interim Final Rule will have no significant impact on a substantial number of small entities. To the extent that this rule has an impact on small entities, the impact will be neutral or insignificant. The frequency of rail equipment accidents/incidents, and therefore also the frequency of required reporting, is generally proportional to the size of the railroad. A railroad that employs thousands of employees and operates trains millions of miles is exposed to greater risks than one whose operation is substantially smaller. Small railroads may go for months at a time without having a reportable occurrence of any type, and even longer without having a rail equipment accident/incident. For example, a total number of 426 rail equipment accidents/incidents were reported as occurring in calendar year 2001. Of that number, only 24 were reported by small railroads. Hypothetically, if the cost of repairing rail equipment did slightly increase over the last year, and the monetary reporting threshold for the new year remained the same, it is possible that a small number of accidents would become reportable that would not be reportable if the threshold were increased to account for the increased costs. Therefore, this rule will be neutral in effect for railroads who do not experience any rail equipment accidents/incidents. For railroads that do experience a rail equipment accident/incident, it is possible that there would be a slight increase in the number of reportable accidents, and thus as slight increase of the reporting burden. This burden would not be significant, and would affect the large railroads more than the small entities.

The American Shortline and Regional Railroad Association (ASLRRA) represents the interests of most small freight railroads and some excursion railroads operating in the United States. FRA field offices and the ASLRRA engage in various outreach activities with small railroads. For instance, when new regulations are issued that affect small railroads, FRA briefs the ASLRRA, which in turn disseminates the information to its members and provides training as appropriate. When a new railroad is formed, FRA safety representatives visit the operation and provide information regarding applicable safety regulations. FRA regularly addresses questions and concerns regarding regulations raised by railroads. Because this Interim Final Rule is not anticipated to significantly affect small railroads, FRA is not providing alternative treatment for small railroads under this rule.

Paperwork Reduction Act

There are no new information collection requirements associated with this Interim Final Rule. Therefore, no estimate of a public reporting burden is required.

Federalism Implications

Executive Order 13132, entitled, ''Federalism,'' issued on August 4, 1999, requires that each agency ''in a separately identified portion of the preamble to the regulation as it is to be issued in the **Federal Register**, provided to the Director of the Office of Management and Budget a federalism summary impact statement, which consists of a description of the extent of the agency's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of the State and local officials have been met * * *.'' This rulemaking action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132. This rule will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and the responsibilities among the various levels of government, as specified in the Executive Order 13132. Accordingly, FRA has determined that this rule will not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a Federalism Assessment. Accordingly, a Federalism Assessment has not been prepared.

Environmental Impact

FRA has evaluated this regulation in accordance with its ''Procedures for Considering Environmental Impacts'' (FRA's Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this regulation is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. 64 FR 28545, 28547, May 26, 1999. Section 4(c)(20) reads as follows:

(c) Actions Categorically Excluded. Certain classes of FRA actions have been determined to be categorically excluded from the requirements of these Procedures as they do not individually or cumulatively have a significant effect on the human environment. * * * The following classes of FRA actions are categorically excluded: * * *

(20) Promulgation of railroad safety rules and policy statements that do not result in significantly increased emissions of air or water pollutants or noise or increased traffic congestion in any mode of transportation.

In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review. As a result, FRA finds that the regulation is not a major Federal action significantly affecting the quality of the human environment.

Unfunded Mandates Reform Act of 1995

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent

that such regulations incorporate requirements specifically set forth in law).'' Section 202 of the Act (2 U.S.C. 1532) further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement'' detailing the effect on State, local, and tribal governments and the private sector. The Interim Final Rule would not result in the expenditure, in the aggregate, of $100,000,000 or more in any one year, and thus preparation of such a statement is not required.

Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' 66 FR 28355 (May 22, 2001). Under the Executive Order, a ''significant energy action'' is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulator action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this Interim Final Rule in accordance with Executive Order 13211. FRA has determined that this Interim Final Rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this regulator action is not a ''significant energy action'' within the meaning of Executive Order 13211.

List of Subjects in 49 CFR Part 225

Investigations, Penalties, Railroad safety, Reporting and recordkeeping requirements.

The Rule

In consideration of the foregoing, FRA amends part 225, title 49 Code of Federal Regulations as follows:

PART 225—RAILROAD ACCIDENT/INCIDENTS: REPORTS CLASSIFICATION, AND INVESTIGATIONS

1. The authority citation for part 225 continues to read as follows;

Authority: 49 U.S.C. 20103, 20107, 20901, 20902, 21302, 21311; 49 U.S.C. 103; 49 CFR 1.49.

2. By amending § 225.19 by adding a heading for paragraph (c), revising the first and last sentences of paragraph (c) and revising paragraph (e) to read as follows:

§ 225.19 Primary groups of accidents/incidents.

(c) *Group II—Rail equipment.* Rail equipment accidents/incidents are collisions, derailments, fires, explosions, acts of God, and other events involving the operation of on-track equipment (standing or moving) that result in damages higher than the current reporting threshold (*i.e.,* $6,300 for calendar years 1991 through 1966, $6,500 for calendar year 1997, and $6,700 for calendar years 2002 and 2003 and, until further notice, for calendar years thereafter) to railroad on-track equipment, signals, tracks, track structures, or roadbed, including labor costs and the costs for acquiring new equipment and material.* * * The reporting threshold will be reviewed periodically, and, if necessary, will be adjusted every year.

* * * * *

(e) The reporting threshold is $6,300 for calendar years 1991 through 1996. The reporting threshold is $6,500 for calendar year 1997, $6,600 for calendar years 1998 through 2001, and $6,700 for calendar years 2002 and 2003 and, until further notice, for calendar years thereafter. The procedure for determining the reporting threshold for calendar years 1997 through 2002 appears as paragraphs 1–9 of appendix B to part 225. The primary rationale for the reporting threshold established for calendar year 2003 and, until further notice, for subsequent calendar years, appears as paragraph 10 of appendix B to part 225.

3. Part 225 is amended by revising paragraph 9 of appendix B and adding new paragraph 10 to appendix B to read as follows:

Appendix B to Part 225—Procedure for Determining Reporting Threshold

* * * * *

9. The result of these calculations is $6,682.254777. Since the result is rounded to the nearest $100, the reporting threshold for rail equipment accidents/incidents that occur during calendar year 2002 is $6,700.

10. In the absence of data necessary to compute the reporting threshold for calendar year 2003 according to the procedure described in paragraphs 1–9 of this appendix B, the calendar year 2002 threshold of $6,700 remains in effect for calendar year 2003 and, until further notice, for all subsequent years.

Issued in Washington, DC., on December 19, 2002.

Allan Rutter,

Federal Railroad Administrator.

[FR Doc. 02–32766 Filed 12–27–02; 8:45 am]

BILLING CODE 4910–06–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 020819201–2327–03; I.D. 122302A]

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

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

ACTION: Temporary rule.

SUMMARY: The Assistant Administrator for Fisheries (AA), NOAA, announces voluntary restrictions consistent with the requirements of the Atlantic Large Whale Take Reduction Plan's (ALWTRP) implementing regulations. These voluntary restrictions apply to lobster trap/pot and anchored gillnet fishermen in an area totaling approximately 1,460 square nautical miles (nm2) (2,706 km2), east of Cape Ann, MA, called Cashes Ledge, for 15 days. The purpose of this action is to provide protection to an aggregation of North Atlantic right whales (right whales).

DATES: Effective beginning at 0001 hours December 24, 2002, through 2400 hours January 13, 2003.

ADDRESSES: Copies of the proposed and final Dynamic Area Management rules, Environmental Assessment (EA), Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, and progress reports on implementation of the ALWTRP may also be obtained by writing Diane Borggaard, NMFS/Northeast Region, One Blackburn Drive, Gloucester, MA 01930.

Several of the background documents for the ALWTRP and the take reduction planning process can be downloaded from the ALWTRP web site at *http://www.nero.nmfs.gov/whaletrp/.*

FOR FURTHER INFORMATION CONTACT: Diane Borggaard, NMFS/Northeast Region, 978–281–9145; or Patricia Lawson, NMFS, Office of Protected Resources, 301–713–2322.

SUPPLEMENTARY INFORMATION: The ALWTRP was developed pursuant to section 118 of the Marine Mammal Protection Act (MMPA) to reduce the incidental mortality and serious injury of four species of whales (right, fin, humpback, and minke) due to incidental interaction with commercial fishing activities. The ALWTRP, implemented through regulations codified at 50 CFR 229.32, relies on a combination of fishing gear modifications and time/area closures to reduce the risk of whales becoming entangled in commercial fishing gear (and potentially suffering serious injury or mortality as a result).

On January 9, 2002, NMFS published the final rule to implement the ALWTRP's Dynamic Area Management (DAM) program (67 FR 1133). The DAM program provides specific authority for NMFS to temporarily restrict the use of lobster trap/pot and anchored gillnet fishing gear in areas north of 40° N. lat. on an expedited basis to protect right whales. Under the DAM program, NMFS may: (1) Require the removal of all lobster trap and anchored gillnet fishing gear for a 15–day period; (2) allow lobster trap and anchored gillnet fishing within a DAM zone with gear modifications determined by NMFS to sufficiently reduce the risk of entanglement; and/or (3) issue an alert to fishermen requesting the voluntary removal of all lobster trap and anchored gillnet gear for a 15–day period, and asking fishermen not to set any additional gear in the DAM zone during the 15–day period.

A DAM zone is triggered when NMFS receives a reliable report from a qualified individual of three or more right whales sighted within an area (75nm2 (139 km2)) such that right whale density is equal to or greater than 0.04 right whales per nm2 (1.85 km2). A qualified individual is an individual ascertained by NMFS to be reasonably able, through training or experience, to identify a right whale. Such individuals include, but are not limited to, NMFS staff, U.S. Coast Guard and Navy personnel trained in whale identification, scientific research survey personnel, whale watch operators and naturalists, and mariners trained in whale species identification through disentanglement training or some other training program deemed adequate by NMFS. A reliable report would be a credible right whale sighting.

On December 19, 2002, NMFS Aerial Survey Team reported a sighting of 4 right whales in the proximity of 42° 54′ N lat. and 69° 14′ W long. This position lies east of Cape Ann, MA, in an area called Cashes Ledge.

Once a DAM zone is triggered, NMFS determines whether to impose restrictions on fishing and/or fishing gear in the zone. This determination is based on the following factors, including but not limited to: the location of the DAM zone with respect to other fishery closure areas, weather conditions as they relate to the safety of human life at sea, the type and amount of gear already present in the area, and a review of recent right whale entanglement and mortality data.

NMFS has reviewed the factors and management options noted above and, through this action, requests the voluntary removal of lobster trap and gillnet gear set in the waters bounded by:

43°13′N, 69°44′W (NW Corner)
43°13′N, 68°50′W
42°36′N, 68°50′W
42°36′N, 69°44′W (SW Corner)

It is appropriate to request voluntary restrictions within the DAM zone because, in consideration of the safety of human life at sea, the current and forecasted adverse weather conditions in the Gulf of Maine make it unsafe for affected fishermen to remove active gear.

The voluntary restrictions for the DAM zone are as follows: voluntary removal of all lobster trap/pot and gillnet gear from these waters. Furthermore, NMFS asks lobster trap/pot and gillnet fishermen not to set any new gear in this area during the 15–day restricted period. The restrictions will be in effect beginning at 0001 hours December 24, 2002, through 2400 hours January 13, 2003, unless terminated sooner or extended by NMFS, through another notification in the **Federal Register**. The voluntary restrictions will be announced to state officials, fishermen, Atlantic Large Whale Take Reduction Team (ALWTRT) members, and other interested parties through e-mail, phone contact, NOAA website, and other appropriate media immediately upon filing with the **Federal Register**.

Classification

In accordance with section 118(f)(9) of the MMPA, the Assistant Administrator (AA) has determined that this action is necessary to implement a take reduction plan to protect North Atlantic right whales.

This action falls within the scope of alternatives and impacts analyzed in the Final EA prepared for the ALWTRP's DAM program. Further analysis under the National Environmental Policy Act (NEPA) is not required.

NMFS determined that the regulations establishing the DAM program and actions such as this one taken pursuant to those regulations are consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of the U.S. Atlantic coastal states. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. Following state review of the regulations creating the DAM program, no state disagreed with NMFS' conclusion that the DAM program is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program for that state.

The DAM program under which NMFS is taking this action contains policies with federalism implications warranting preparation of a federalism assessment under Executive Order 13132. Accordingly, in October 2001, the Assistant Secretary for Intergovernmental and Legislative Affairs, DOC, provided notice of the DAM program to the appropriate elected officials in states to be affected by actions taken pursuant to the DAM program. Federalism issues raised by state officials were addressed in the final rule implementing the DAM program. A copy of the federalism Summary Impact Statement for that final rule is available upon request (**ADDRESSES**).

The rule implementing the DAM program has been determined to be not significant under Executive Order 12866.

Authority: 16 U.S.C. 1361 *et seq.* and 50 CFR 229.32(g)(3)

Dated: December 23, 2002.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 02–32843 Filed 12–24–02; 11:12 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 250
Monday, December 30, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[REG–103735–00 and REG–103736–00]

RIN 1545–AX81

Tax Shelter Disclosure Statement and Requirement to Maintain List of Investors in Potentially Abusive Tax Shelters; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Reschedule of public hearing on proposed rulemaking.

SUMMARY: This document contains a notice of public hearing on proposed regulations relating to the modification of tax shelters under sections 6011, 6111, and 6112.

DATES: The public hearing is being held on Tuesday, January 7, 2002, at 10 a.m.

ADDRESSES: The public hearing is being held in room 4718, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the 1111 Constitution Avenue location. In addition, all visitors must present photo identification to enter the building.

Mail outlines to: Regulations Unit CC:ITA:RU (REG–103735–00 and REG–103736–00), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Hand deliver outlines Monday through Friday between the hours of 8 a.m. and 4 p.m. to: Regulations Unit CC:ITA:RU (REG–103735–00 and REG–103736–00), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Submit electronic outlines of oral comments directly to the IRS Internet site at *http://www.irs.gov/regs.*

FOR FURTHER INFORMATION CONTACT: Concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing contact Sonya Cruse, Paralegal, (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

The subject of the public hearing is the notice of proposed regulations (REG–103735–00 and REG–103736–00). The public hearing was originally scheduled on December 11, 2002, and notice of the public hearing was published in the **Federal Register** on Tuesday, October 22, 2002 (67 FR 64842). Due to inclement weather, some hearing participants were unable to attend. For this reason, the IRS is rescheduling the public hearing.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who have submitted written comments and wish to present oral comments at the hearing, must submit an outline of the topics to be discussed and the amount of time to be devoted to each topic (signed original and eight copies) by Friday, January 3, 2002.

A period of 10 minutes is allocated to each person for presenting oral comments.

After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available, free of charge, at the hearing.

Because of access restrictions, the IRS will not admit visitors beyond the immediate entrance area no more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, *see* the **FOR FURTHER INFORMATION CONTACT** section of this document.

Cynthia E. Grigsby,

Chief, Regulations Unit, Associated Chief Counsel, (Income Tax and Accounting).

[FR Doc. 02–32893 Filed 12–26–02; 8:45 am]

BILLING CODE 4830–01–P

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket No. RM2003–1; Order No. 1355]

Additional Filing Requirements

AGENCY: Postal Rate Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposal requires the Postal Service to provide ''overview'' testimony specifically discussing how other testimony in the case interrelates and identifying all material changes affecting cost attribution, volume projections and rate design. This additional explanation and detail will assist the Commission and case participants in more readily understanding complex filings without unduly burdening the Postal Service.

DATES: Initial comments are due February 12, 2003; reply comments are due February 26, 2003.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system, which may be accessed at *www.prc.gov.*

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6818.

SUPPLEMENTARY INFORMATION: The ratemaking summit, jointly sponsored by the Postal Service and the Postal Rate Commission in May and June, encouraged the public to offer suggestions for modifying the ratemaking process. Among the issues discussed were phasing, negotiated service agreements, and procedural suggestions designed to ease the burdens associated with litigating omnibus rate cases. Based on a review of the transcripts of the summit and the parties' written comments, the Commission proposes to amend its rules of practice to require the Postal Service to file, as support for its rate and classification requests, testimony providing both a roadmap of how witnesses' testimony interrelate, and identification of all material changes affecting cost attribution methodology, volume projections, or rate design. Interested persons are invited to comment on the proposed rules by February 12, 2003.

Background

In written comments as well as at the conferences, several parties suggested various mechanisms designed generally to address the burdens associated with litigating omnibus rate proceedings under the statutory 10-month deadline. The proposals varied widely. Some parties proposed to limit issues that could be considered in omnibus rate proceedings, suggesting, for example, that costing issues be resolved in separately conducted rulemaking proceedings. In a similar vein, other parties proposed to prohibit consideration of classification changes.

Others followed a different tack, suggesting that discovery be sharply curtailed or even supplanted by depositions. Finally, some advocated an approach intended to enable participants to better and more quickly understand the Postal Service's filing by suggesting that the Postal Service submit testimony providing a roadmap of how its evidence supports its request, including highlighting any methodological changes.

The Postal Service did not support any of these suggestions citing a variety of concerns. See generally Tr. 2 at 245–56. Briefly, it opposed considering costing methodology apart from the ratemaking process arguing, among other things, that the rate consequences would be too uncertain and further that separate proceedings would be unlikely to save any time or expense. Id. at 249–50. Recognizing the complexity of rate proceedings, the Postal Service suggested an alternative intended to speed up the litigation process. Specifically, it signaled its willingness to hold a technical conference following submission of its request to afford parties an opportunity to gain a better understanding of the Postal Service's case. Id. at 253. Likewise, the Postal Service dismissed suggestions that discovery be revamped either by greater reliance on depositions or otherwise limiting written discovery as representing no improvement over the current system. It did, however, indicate its willingness to engage in informal consultations to attempt to reduce the burdens associated with discovery. Id. at 253–54. Lastly, although it agreed that a rate case devoid of any classification proposals would reduce the complexity of the case, the Postal Service argued that benefits of such proposals outweigh any extra burden that may accompany them. Id. at 255–56.

For its part, the Office of the Consumer Advocate (OCA) expressed disappointment with the Postal Service's universal rejection of the various proposals. It did, however, endorse the Postal Service's suggestion to hold a global technical conference, adding that it should also submit testimony providing an overview (or roadmap) of its case, highlighting the impact of the various methodological changes it proposes. Id. at 262–63.[1] Citing its workload and time constraints associated with preparing and filing an omnibus rate request, the Postal Service dismissed this suggestion as impractical and largely unnecessary. Id. at 264–67. In response, OCA suggested that the Postal Service provide the write-up shortly after filing its request. Id. at 267–68.

Discussion

The summit was designed to serve as a forum to explore potential changes to the ratemaking process to make it more responsive to the needs of the various stakeholders, including the Postal Service, the Commission, and mailers. The discussion was wide-ranging and frank, providing a useful exchange of ideas. Many suggestions do not lend themselves to consideration in this rulemaking. In particular, until experience is gained regarding negotiated service agreements and phased rates, two of the principal topics at the summit, it is premature to consider possible amendments to the rules that may prove unnecessary.[2]

Other ideas, such as conducting costing proceedings apart from ratemaking, offer the potential for simplifying omnibus rate cases. As noted at the summit, however, countervailing considerations may more than offset any streamlining benefits implied by this suggestion. The limited examination of this complex proposal does not clearly indicate that any savings in time or expense would materialize or that the result would benefit the ratemaking process. Accordingly, the Commission declines to consider implementation of that suggestion as part of this rulemaking.

This conclusion, however, should not be read as a determination on the merits. Rather, the record is simply not well developed on the point. More importantly, the possibility of separate costing proceedings raises myriad issues which, if fully considered, would enlarge this limited rulemaking more than is practical or desirable. The burdens associated with rate proceedings are such that potentially mitigating alternatives are worthy of close consideration. The Commission remains open to additional suggestions for new ways to improve the process.

By statute, the Commission is required to transmit its recommended decision on Postal Service proposed rate and fee requests by no later than ten months after receiving the request. See 39 U.S.C. 3624(c)(1).[3] As is well known to anyone participating in previous omnibus proceedings, the procedural schedule necessitated by this timetable is exceedingly tight, imposing extraordinary demands on all active participants. The Commission appreciates the litigation burdens assumed by all participants in omnibus rate proceedings. Over time, those burdens appear to have grown dramatically.

By virtually any measure, Postal Service rate requests are complex and massive. Supporting documentation includes testimony, exhibits, workpapers, and library references. In docket no. R2000–1, for example, the Postal Service's direct case consisted of the testimony and exhibits of 41 witnesses (42 testimonies).[4] Consistent with the Commission's rules, it simultaneously filed more than 170 library references, the vast majority of which supported its direct case.[5] Intervenors, including OCA, also submit testimony most of which is based on information obtained from the Postal Service. In total, in docket no. R2000–1, 78 participants sponsored 178 testimonies (from 120 witnesses) that were received into evidence during 40 days of hearing. Under these circumstances, suggestions that the process could be materially shortened through limiting discovery are neither practical nor realistic. Certainly, the summit produced no consensus that the 10-month period was too long for the task at hand. Nonetheless, the process can be improved and made less onerous.

This overview is not meant as criticism, but is simply descriptive of the size and scope of Postal Service operations, *e.g.*, a revenue requirement of nearly $75 billion and annual volumes approaching 213 billion.[6] To its credit, the Postal Service does yeoman's work throughout omnibus rate proceedings, particularly responding to discovery requests on a wide variety of subjects. Participants are also subject to

[1] Other parties proposed, in written comments, that the Postal Service be required to identify any change in costing methodology, including quantifying its impact.

[2] On September 19, 2002, the Postal Service filed a negotiated service agreement pursuant to rule 67 involving an experimental classification change. See Experimental Rate and Service Changes to Implement Negotiated Service Agreement with Capital One Services, Inc., docket no MC2002–2.

[3] The ten months may be extended upon a finding that the Postal Service unreasonably delayed consideration of its required. Id. § 3624(c)(2).

[4] Likewise, the Postal Service's direct case in docket no. R2001–1 was supported by 40 witnesses covering 44 testimonies.

[5] To some degree, the increased complexity of the Postal Service's direct cases can be measured by the explosive growth in the number of witnesses it employs. Fifteen years ago, in docket no. R87–1, it relied on 21 witnesses. This grew modestly to 23 witnesses in docket no. R90–1. The proposed settlement in docket no. R94–1 distinguishes that request for purposes of comparison. In that docket, only 11 witnesses supported the Postal Service's direct case. In docket no. R97–1, however, the number ballooned to 40 witnesses (42 testimonies).

[6] PRC Op. R2001–1, Appendix C and Appendix G at 1, respectively.

substantial demands. To understand the Postal Service's proposals, they must review its direct case, prepare discovery, and, if appropriate, cross examine witnesses and file testimony in response to the Postal Service, all within a few months of the docketing of the Postal Service's request. The Commission believes that this process would be facilitated if, at the outset of the proceeding, the Postal Service submits a single piece of summarizing testimony providing a roadmap of its filing and identifying all methodological changes.

Scope of the Proposed Rules

Preparing an omnibus rate request entails coordinating the testimony of various witnesses in support of the Postal Service's proposal. Even a summary description of the process highlights its complexity. The process requires the development of base year costs, predicated on a prior fiscal year Cost and Revenue Analysis (CRA) modified to reflect intervening changes in costing methodologies as well as any changes proposed in the request. Necessarily, base year testimony, which is routinely sponsored by a single witness, relies on the testimony of numerous costing witnesses, namely, those addressing issues of cost attribution and distribution in various cost segments and components, *e.g.*, mail processing, carrier activities, purchased transportation, and equipment and facility costs.

To develop test year estimates, base year costs must be rolled forward to the proposed test year. To accomplish this, the roll-forward witness must rely on, among others, witnesses sponsoring the revenue requirement, volume forecasts, and final adjustments. Once estimated test year costs by subclass and service are available, rates must be designed consistent with the statutory criteria, including the breakeven requirement, taking into account, inter alia, volume estimates, cost coverage constraints, and any cost testimony affecting rate levels, *e.g.*, studies supporting proposed discounts. Finally, proposed test year after rates must be checked for compatibility with the proposed revenue requirement, including consistency with the underlying assumptions used to develop test year estimated costs, projected volumes, and roll-forward results. In recent cases, the Postal Service has supported its request with the testimony of more than 40 witnesses. No single witness addresses the proposal as a whole, describes how the various testimonies interrelate, or identifies changes (from the preceding recommended decision) affecting costs, volumes, or rate design. To be sure, certain witnesses reference the testimony of other witnesses. For example, typically the base year costs witness provides a brief description of the changes in the treatment of costs reflected in the Request and identifies the witnesses sponsoring the changes.[7] While this testimony is helpful to the extent it alerts the reader to changes to base year costs, its utility is limited, for the most part, to identifying the sources of changes, not their implications. This observation should not be read as criticism of such testimony since it neither designed nor intended to serve as a roadmap of the Postal Service's filing. Based on the parties' oral and written comments, the Commission is of the opinion that it would be advantageous to require the Postal Service to submit, in support of its request, testimony by a single witness that provides both an overview of how the testimony of its other witnesses interrelates and highlights all material changes in cost attribution methodology, the development of volume estimates, and rate design. The changes would be measured against the methods employed by the Commission in its immediately preceding recommended decision in an omnibus rate proceeding.[8] In addition, the proposed rules would relocate and clarify the Postal Service's current obligation to submit testimony addressing material changes affecting costing, volume projections, or rate design.

The roadmap testimony has two primary purposes. First, it is designed to allow intervenors to quickly identify how the testimony of 40 or more witnesses fits together. Intervenors' tasks should be simplified by having a roadmap of the Postal Service's filing, providing a brief description of each witness's testimony and its interrelationship with the testimony of other witnesses. For example, in docket no. R2001–1, witness Van-Ty-Smith distributed cost segment 3 costs based on IOCS distributions within MODS cost pools. Her results were utilized by several witnesses, including Meehan (base year costs), Smith (cost by shape and deriving piggyback factors), and Patelunas (roll-forward costs).[9] In cursory fashion, Van-Ty-Smith briefly notes that certain witnesses use her mail processing volume-variable costs. See docket no. R2001–1, USPS–T–13 at 1. The proposed rule would require something more from the roadmap witness. Specifically, the roadmap witness's overview of the Postal Service's filing would identify the subject matter of each witness's testimony, explain how the testimony of the various witnesses interrelates, and highlight changes in cost methodology, volume estimation, and rate design. See proposed § 3001.53(b). Thus, with reference to Van-Ty-Smith's testimony, the roadmap witness would, among other things, explain the linkage between her analysis and the testimony of those witnesses who rely on it.

The description of the interrelation between the testimonies should be sufficient to identify what each witness relied upon. This could be explained in narrative form or perhaps by diagram. The interrelationship between or among witnesses becomes particularly critical where a witness uses inputs from one or more witnesses to produce outputs used by one or more witnesses. Again with reference to docket no. R2001–1, witness Smith (USPS–T–15) used inputs from witnesses Bozzo and Van-Ty-Smith to develop the variabilities for mail processing equipment-related costs subsequently used by witnesses Meehan and Patelunas. Additionally, Smith developed a variety of piggyback and premium pay factors that were used by Miller, Eggleston, Mayes, Nieto and Abdirahman to calculate workshare cost avoidance estimates. Under the proposed rules, the roadmap witness would be required to explain how the testimony of the various witnesses interrelates thereby enabling parties to quickly understand the flow of the analytic work of a case and to identify all witnesses affecting the development of a particular rate.[10]

Continuing the example, a rate design witness often must rely on testimony of other witnesses to determine avoided workshare costs and establish presort discounts. In docket no. R2001–1, witness Robinson's rates for First-Class Mail relied on, among others, the testimony of witnesses Miller, Schenk, and Smith. Under the proposed rules, the roadmap testimony should identify any linkage among the various pieces of testimony, briefly describing how it is employed.

[7] See, *e.g.*, docket no. R2001–1, Direct Testimony of Karen Meehan, USPS–T–11 at 2–9; docket no. R2000–1, Direct Testimony of Karen Meehan, USPS–T–11 at 2–9; and docket no. R97–1, Direct Testimony of Joe Alexandrovich, USPS–T–5 at 2–5.

[8] If a charge was adopted in an intervening classification proceeding, the testimony need only reference that fact.

[9] In addition, witnesses Kay, Eggleston, Mayes, and Miller reply directly on Van-Ty-Smith's results.

[10] In addition, each witness relying on the testimony of another must identify the specific source of the material relied upon, *e.g.*, the portion of the testimony, exhibits, or workpapers.

Second, the roadmap testimony also is intended as a means to quickly apprise participants of changes in costing, volume estimation, and rate design. As a general matter, the Postal Service notes changes in costing methodology in the testimony of its base year witness, principally by reference to the sponsoring witness's testimony. In docket no. R2000–1, for example, the Postal Service sponsored several new studies affecting base year volume variability. Witness Meehan identified these studies, briefly describing the topic addressed and referencing the sponsoring witness.[11] Under the proposed rules, the roadmap witness would be charged with highlighting meaningful changes in cost methodology, as well as changes in volume forecasting and rate design that have a material effect on rates.

Pursuant to proposed rule 53(c), it would fall to the sponsoring witness to provide the details of the change, including estimating (or quantifying) its effects. For purposes of the latter, the intent of the proposed rules would be satisfied if the direction of the change were indicated, *e.g.*, that the proposed change in mail processing variability increased (or decreased) segment 3 volume variability by approximately x percent; or the proposed change in cost distribution shifted approximately $x million from letters to flats. The Commission recognizes that quantification may, in certain circumstances, prove difficult. Therefore, the Commission invites interested persons to comment on the benefits of imposing this requirement, and if imposed, potential methods for evaluating the sufficiency of estimates measuring the effects of the proposed changes.

The proposed rules are not intended to require the Postal Service to address each change regardless of its consequence. Rather the intent is to capture substantive changes, namely, those that meaningfully affect cost estimates and volume projections and changes in rate design that materially affect rates. Thus, for example, minor modifications in the in-office cost system, *e.g.*, those not causing significant cost shifts, need not be highlighted, whereas changes affecting the development of cost pools would likely need to be highlighted. Similarly, minor changes in estimated demand elasticities need not be highlighted, whereas changes in volume estimates based on alternative specifications of demand equations should be addressed. Changes in rate design present a vexing problem. Rate levels may be affected by myriad factors that manifest themselves through changes in rate design, *e.g.*, new modeled costs, different distribution keys, or revised benchmarks. Changes of this nature that materially affect rate levels fall within the scope of the proposed rules. The Commission will accept good faith estimates to comply with this aspect of the new requirements while experience is gained on reasonable levels of detail. In sum, the proposed rules are designed to be neither all encompassing so as to excessively burden the Postal Service nor so narrowly drawn as to defeat their purpose. The goal is to establish a reasonably achievable (and objective) standard to govern the roadmap and sponsoring witnesses' testimony while ultimately facilitating the ratemaking process. Interested persons are encouraged to comment on the scope of the proposed rules, including whether they are sufficiently objective to satisfy their intended purpose. The Commission also welcomes any other suggestions regarding possible improvements to its procedures, either as supplementary comments herein, or in separate transmissions to the Commission.

Relative Burdens

Although the proposed rules will require some additional effort by the Postal Service, the benefits would appear to outweigh any inconvenience associated with them.

First, the Postal Service is intimately familiar with the elements of its request, being compelled to make decisions as to its details as it develops. Thus, it is not as if the new testimony must be created out of whole cloth. Rather, the testimony describes the Postal Service's filing, providing an overview of its disparate pieces, and identifies and explains changes that may significantly affect rates. As described above, it is intended simply as a roadmap of the Postal Service's proposal.

Second, the requirement is generally similar to, even if more expansive than, the current obligation under the rules mandating that the Postal Service describe any changes in cost attribution procedures in its request or, alternatively, in testimony. See rule 54(a).

Third, time is of the essence in omnibus rate proceedings. The new explanatory testimony will enable participants to more quickly grasp the essential elements of the Postal Service's filing, highlighting the principal factors influencing proposed rate levels. This should enable participants to focus their discovery on substantive issues and more effectively use the limited time available to explore the merits of the Service's proposals.

Finally, public participation in Commission proceedings is to be encouraged. Participation by mailers in Commission proceedings is important to the development of a complete record. Active participation in Commission proceedings can be costly. As it is, the advantages lie with the Postal Service. It is the proponent of proposed rate changes; it is the repository of virtually all of the relevant data; and it has resources not generally available to intervenors. The proposed amendments are designed to enable participants to gain a better understanding of the Postal Service's filing at the outset of the proceeding. As a consequence, the burdens of participating in Commission proceedings should be lessened. An example may illustrate the point.

In docket no. R2001–1, the Postal Service changed its Parcel Post transportation cost model, compared to that used in docket no. R2000–1, causing estimated DBMC intermediate transportation costs per cubic foot to increase and estimated inter-BMC long distance zone-related transportation costs per cubic foot to decrease. The witness presenting the estimates provides only a general description of the methodology employed, sprinkled with references to the appropriate library reference. See USPS–T–25 at 11–13, and 18–19. While the resulting cost figures were presented in a library reference,[12] there is no explanation for the changes. Only some six weeks later, in response to interrogatories, was the methodological change adequately explained.[13]

The failure to adequately identify the change initially causes delay, unnecessarily encumbers participants' efforts to review and understand the Postal Service's request, and increases the participants' (and ultimately) the Postal Service's workload. Had the

[11] See docket no. R2000–1, USPS–T–11 at 6–7.

[12] *See* USPS–LR–J–64, Attachment B at 12.

[13] Response of United States Postal Service Witness Jennifer L. Eggleston to Interrogatories of Parcel Shippers Association (PSA/USPS–T25–1–3), November 8, 2001. *See* Tr. 11–A/3947–53. The methodological change involved the manner in which Inter-BMC highway transportation costs were distributed. In docket No. R2000–1, it was assumed that all Inter-BMC highway transportation costs were associated with transportation between BMCs. It was determined, however, that the inter-BMC highway account also reflects costs for stops at other than BMCs. The witness indicated that only 45 percent of the stop-days of Inter-BMC highway transportation are at BMCs. Accordingly, the witness adjusted the Parcel Post transportation model by distributing 45 percent of the inter-BMC highway transportation costs to the long distance zone-related cost category, with the balance distributed to the intermediate cost category. Id. at 3947–51.

change been prominently identified at the outset, confusion would have been avoided, and delay minimized. Given the tight timetables necessary in omnibus rate proceedings, participants are unduly disadvantaged when material changes are proposed but are not adequately identified in testimony accompanying the request.

The proposed rulemaking is responsive to the summit process, specifically addressing the parties' concerns that the burdens of litigating omnibus rate cases would be reduced if the Postal Service were required to file a roadmap of its filing and to identify all methodological changes. Requiring the Postal Service to submit such testimony should not add to its burden appreciably. It will, however, enable participants to quickly gain a better understanding of the Postal Service's filing, including methodological issues that may have a substantial influence on rates. As a result, discovery should be more focused, and the Postal Service's workload may be reduced. In sum, the benefits of the proposed amendments appear to outweigh any burden that might be imposed on the Postal Service.

Requests for proposed classification changes filed pursuant to subpart C of the Commission's rules do not suffer from the same time constraints. For simple or minor proposed classification changes the current rules suffice. For more complex classification proposals, however, there would appear to be no valid reason not to extend the proposed amendments which are intended to expedite and simplify the review process. Thus, when proposing classification changes affecting more than one subclass or special service, the Postal Service should include with its request testimony providing an overview of its filing, and describing all changes affecting costs, volumes, or rate design.

Comments; Representation of the General Public

By this order, the Commission hereby gives notice that comments from interested persons concerning the proposed amendments to the Commission's rules are due on or before February 12, 2003. Reply comments may also be filed and are due February 26, 2003.

In conformance with § 3624(a) of title 39, the Commission designates Shelley S. Dreifuss, director of the Commission's Office of the Consumer Advocate, to represent the interests of the general public in this proceeding. Pursuant to this designation, Ms. Dreifuss will direct the activities of Commission personnel assigned to assist her and, upon request, will supply their names for the record. Neither Ms. Dreifuss nor any of the assigned personnel will participate in or provide advice on any Commission decision in this proceeding.

Ordering Paragraphs

It is ordered:

1. Interested persons may submit comments by no later than February 12, 2003. Reply comments may also be filed and are due February 26, 2003.

2. Shelley S. Dreifuss, director of the Office of the Consumer Advocate, is designated to represent the interests of the general public in this docket.

3. The Secretary shall arrange for publication of this notice of proposed rulemaking in the **Federal Register**.

Issued December 13, 2002.

By the Commission.

Steven W. Williams,

Secretary.

List of Subjects in 39 CFR Part 3001

Administrative practice and procedure, Postal Service.

For the reasons discussed in the preamble, the Commission proposes to amend 39 CFR part 3001—Rules of Practice and Procedure Subparts B—Rules Applicable to Requests for Changes in Rates or Fees and Subpart C—Rules Applicable to Requests for Establishing or Changing the Mail Classification Schedule as follows:

PART 3001—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 3001 continues to read as follows:

Authority: 39 U.S.C. 404(b); 3603, 3622–24; 3661, 3662, 3663.

Subpart B—Rules Applicable to Requests for Changes in Rates or Fees

2. Revise § 3001.53 to read as follows:

§ 3001.53 Filing of prepared direct evidence.

(a) *General requirements.* Simultaneously with the filing of the formal request for a recommended decision under this subpart, the Postal Service shall file all of the prepared direct evidence upon which it proposes to rely in the proceeding on the record before the Commission to establish that the proposed changes or adjustments in rates or fees are in the public interest and are in accordance with the policies and the applicable criteria of the Act. Such prepared direct evidence shall be in the form of prepared written testimony and documentary exhibits which shall be filed in accordance with § 3001.31.

(b) *Overview of filing.* As part of its direct evidence, the Postal Service shall include a single piece of testimony that provides an overview of its filing, including identifying the subject matter of each witness's testimony, explaining how the testimony of its witnesses interrelates, and highlighting changes in cost methodology, volume estimation, or rate design, as compared to the manner in which they were calculated by the Commission to develop recommended rates and fees in the most recent general rate proceeding. This testimony should also identify, with reference to the appropriate testimony, each witness responsible for addressing any methodological change described in paragraph (c) of this section.

(c) *Proposed changes.* As part of its direct evidence, the Postal Service shall submit testimony that identifies and explains each material change in cost methodology, volume estimation, or rate design, compared to the method employed by the Commission in the most recent general rate proceeding. This requirement shall not apply to any such change adopted by the Commission in an intervening proceeding. The testimony required in this paragraph (c) shall also include a discussion of the impact of each such change on the levels of attributable costs, projected volumes, and rate levels.

3. Revise § 3001.54(a) to read as follows:

§ 3001.54 Contents for formal requests.

(a) *General requirements.* (1) Each formal request filed under this subpart shall include such information and data and such statements of reasons and bases as are necessary and appropriate fully to inform the Commission and the parties of the nature, scope, significance, and impact of the proposed changes or adjustments in rates or fees and to show that the changes or adjustments in rates or fees are in the public interest and in accordance with the policies of the Act and the applicable criteria of the Act. To the extent information is available or can be made available without undue burden, each formal request shall include the information specified in paragraphs (b) through (r) of this section. If a request proposes to change the cost attribution principles applied by the Commission in the most recent general rate proceeding in which its recommended rates were adopted, the Postal Service's request shall include an alternate cost presentation satisfying paragraph (h) of this section that shows what the effect on its request would be if it did not

propose changes in attribution principles.

* * * * *

Subpart C—Rules Applicable to Requests for Establishing or Changing the Mail Classification Schedule

4. Revise § 3001.63 to read as follows:

§ 3001.63 Filing of prepared direct evidence.

(a) General requirements. Simultaneously with the filing of the formal request for a recommended decision under this subpart, the Postal Service shall file all of the prepared direct evidence upon which it proposes to rely in the proceeding on the record before the Commission to establish that the mail classification schedule or changes therein proposed by the Postal Service are in accordance with the policies and the applicable criteria of the Act. Such prepared direct evidence shall be in the form of prepared written testimony and documentary exhibits which shall be filed in accordance with § 3001.31.

(b) Requests affecting more than one subclass. Each formal request filed under this subpart affecting more than one subclass or special service is subject to the requirements of §§ 3001.53(b) and (c).

[FR Doc. 02–32707 Filed 12–27–02; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KY 125–2—200308(b); FRL–7431–1]

Approval and Promulgation of Implementation Plans for Kentucky: Air Permit Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve revisions to the State Implementation Plan (SIP) of the Commonwealth of Kentucky which separate rule 401 KAR 50:035 into several rules based on the type of air permit, and renumber and rewrite in plain English rule 401 KAR 50:032 and the resulting rules from 401 KAR 50:035. The EPA is also removing 401 KAR 50:030 from the Kentucky SIP and correcting typographical errors in a separate, related action addressing rule 401 KAR 52:080, ''Regulatory limit on potential to emit.'' In the Final Rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no significant, material, and adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before January 29, 2003.

ADDRESSES: All comments should be addressed to: Michele Notarianni, Air Planning Branch, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. (404/562–9031 (phone) or *notarianni.michele@epa.gov* (e-mail).)

Copies of the Commonwealth's submittal are available at the following addresses for inspection during normal business hours: Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. (Michele Notarianni, 404/562–9031, *notarianni.michele@epa.gov*)

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

FOR FURTHER INFORMATION CONTACT: Michele Notarianni at the address listed above or 404/562–9031 (phone) or *notarianni.michele@epa.gov* (e-mail).

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

Dated: December 16, 2002.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 02–32777 Filed 12–27–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket Nos. 96–45, 98–171, 90–571, 92–237, 99–200, 95–116, 98–170; FCC 02–329]

Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission seeks comment on specific aspects of three connection-based proposals to further refine the record in its proceeding to revisit its universal service contribution methodology.

DATES: Comments are due on or before January 29, 2003. Reply comments are due on or before February 28, 2003. Written comments by the public on the proposed information collections are due on or before January 14, 2003. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collections on or before February 28, 2003.

ADDRESSES: All filings must be sent to the Commission's Secretary, Marlene Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. *See* **SUPPLEMENTARY INFORMATION** for filing instructions.

FOR FURTHER INFORMATION CONTACT: Diane Law Hsu, Acting Deputy Chief, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Further Notice of Proposed Rulemaking (*Second Further NPRM*) in CC Docket Nos. 96–45, 98–171, 90–571, 92–237, 99–200, 95–116, 98–170; FCC 02–329 released on December 13, 2002. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. This *Second Further NPRM* contains proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed information collections contained in this proceeding.

Paperwork Reduction Act

The *Second Further NPRM* contains a proposed information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the information collection(s) contained in this *Second Further NPRM*, as required by the PRA, Pub. L. 104–13. Public and agency comments on the proposed information collections are due on or before January 14, 2003. Written comments must be submitted by the Office of Management

and Budget (OMB) on the proposed and/or modified information collections on or before February 28, 2003. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden 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.

OMB Control Number: 3060–1009.

Title: Telecommunications Reporting Worksheet, CC Docket No. 96–45.

Form No.: FCC Form 499 (499–A, 499–Q, 499–M).

Type of Review: Proposed Revised Collection.

Respondents: Business or other for-profit; Not for Profit Institutions.

Title	Number of respondents	Est. time per response	Total annual burden
1. Connections Based Methodology	5,500	11.5 [1]	427,936
Total Annual Burden			427,936
Cost to Respondents	$0		
2. Splitting Connection-Based Methodology	5,500	11.5 [2]	867,472
Total Annual Burden			867,472
Cost to Respondents	$0		
3. Telephone Number-Based Assessments	5,500	11.5 [3]	461,290
Total Annual Burden			461,290
Cost to Respondents			$0

[1] 11.5 hrs for 5,500 respondents for the annual filing. 13.3 hrs for 2,285 respondents for each monthly filing, if adopted.
[2] 11.5 hrs for 5,500 respondents for the annual filing. 28.1 hrs for 2,385 respondents for each monthly filing, if adopted.
[3] 11.5 hrs for 5,500 respondents for the annual filing. 10.7 hrs for 3,100 respondents for each monthly filing, if adopted.

Needs and Uses: The Commission has issued a Second Further Notice of Proposed Rulemaking which seeks comment on whether to return a revenue-based system and specific aspects of three connection-based proposals in the record. First, the Commission seeks comment on a contribution methodology that would impose a minimum contribution obligation on all interstate telecommunications carriers, and a flat charge for each end-user connection, depending on the nature or capacity of the connection. Next, the Commission seeks comment on a proposal to assess all connections based purely on capacity. Finally, the Commission seeks comment on a proposal to assess providers of switched connections based on their working telephone numbers. The Commission is also seeking comment on whether to use a modified FCC Form 499–M, the Telecommunications Reporting Worksheet (OMB 3060–1009), to serve as the appropriate means for the collection of contribution information. The Universal Service Company (Administrator) would use information filed on connections and capacity or revenues to determine the universal service contribution factor. Section 254 of the Act requires carriers providing interstate telecommunications services to contribute to universal service. Currently, respondents file their end-user telecommunications revenues on a quarterly basis in FCC Form 499–Q, and on an annual basis in FCC Form 499–A.

Synopsis of Second Further Notice of Proposed Rulemaking

I. Introduction

1. In the *Second Further NPRM,* we seek to further refine the record in the contribution methodology proceeding. Although the interim measures we adopt in the companion Order will improve the current contribution methodology, they do not address our concerns regarding the long-term viability of any revenue-based system. In the *First Further NPRM,* 67 FR 1125, March 13, 2002, we observed that interstate telecommunications revenues are becoming increasingly difficult to identify as customers migrate to bundled packages of interstate and intrastate telecommunications and non-telecommunications products and services. This has increased opportunities to mischaracterize revenues that should be counted for contribution purposes. Such mischaracterization may result in decreases in the assessable revenue base. Increased competition also is placing downward pressure on interstate rates and revenues, which also contributes to the decline in the contribution base. For example, traditional long-distance providers increasingly are entering local markets at the same time that competitive and incumbent local exchange carriers are increasingly providing long-distance services. Customers also are migrating to mobile wireless and Internet-based services. As we recently noted, these changes have led to fluctuations in the contribution base and rising contribution obligations.

2. The Commission initiated this proceeding to consider alternatives or modifications to a revenue-based system. An analysis of the record reveals interest in a connection-based methodology that would assess carriers based on their provision of connectivity to interstate networks, regardless of how many minutes of use or revenues are derived from a connection. A substantial number of parties across various industry segments now support adoption of a connection-based assessment methodology. In addition, four out of five state members of the Federal-State Joint Board on Universal Service (Joint Board) recommend adoption of a connection-based system for calculating universal service contributions, while the fifth member proposes assessing contributions on a combination of connections, capacity, and terminating minutes of use.

3. Although many parties agree that a connection-based contribution methodology will best ensure the long-term viability of the Commission's universal service mechanisms as the telecommunications marketplace continues to evolve, they differ on how best to implement such a mechanism. Key areas of disagreement include whether to make the provider of the end-user connection (most often the local exchange carrier) solely

responsible for contributions or whether that responsibility should be shared between the access (*e.g.*, local exchange carrier) and transport (*e.g.*, interexchange carrier) providers. Commenters also disagree on how best to calculate assessments for higher-capacity connections. Moreover, parties have expressed concern that they cannot estimate assessments for multi-line business connections without access to more reliable data on the number and capacity of non-switched (*e.g.*, special access or private line) connections. We conclude that it is appropriate to further study long-term reforms of the contribution methodology.

II. Overview

4. In this *Second Further NPRM,* we seek to further refine the record in this proceeding. We are hopeful that we will adopt additional modifications to our contribution methodology to ensure the continued viability of universal service as the marketplace continues to develop.

5. First, we ask commenters to discuss whether the changes to the revenue-based methodology adopted herein are sufficient to ensure the long-term viability of universal service as the telecommunications marketplace evolves. Should any additional modifications to the revenue-based system be made? For example, we seek comment on whether bundling of local and long distance services raises any unique problems for wireline carriers in identifying interstate telecommunications revenues and how such problems should be addressed.

6. In addition, although we have increased the mobile wireless safe harbor to 28.5 percent, we note that some commenters assert that, using certain methodologies, mobile wireless carriers are capable of determining their actual interstate end-user telecommunications revenues. If a revenue-based system is retained, we seek comment on whether we should abolish the safe harbor for mobile wireless carriers and, if so, how such carriers should determine their actual interstate end-user telecommunications revenues. We specifically seek comment on whether minutes of use is an appropriate proxy for determining interstate revenues for mobile wireless providers. We also request comment on whether the originating cell site and the terminating area code or NPA of a call reasonably approximates the jurisdictional nature of traffic for reporting purposes. In addition, we seek comment on whether it would be appropriate to include both outgoing and incoming calls in mobile wireless provider traffic studies and whether and how to include roaming and international minutes in such studies. We seek comment on burdens presented by proposed methodologies to determine interstate revenues and particularly invite comment from smaller mobile wireless providers on whether they face unique difficulties in identifying interstate telecommunications revenues. We also ask commenters to discuss whether other CMRS carriers, such as paging and analog SMR carriers, are able to determine their actual interstate end-user telecommunications revenues and whether those safe harbors should also be abolished. We seek comment on how eliminating the safe harbors would affect wireless carriers whose contributions to universal service are *de minimis*.

7. Although the actions taken today will improve the operation of our revenue-based methodology in the near term, we remain concerned that any contribution system based on interstate telecommunications revenues will be dependent on the ability of contributors to distinguish between interstate and intrastate telecommunications and non-telecommunications revenues. Several commenters have argued that a connection-based mechanism may be the best alternative to ensure the long-term viability of the Commission's universal service mechanisms as the telecommunications marketplace continues to evolve. We, therefore, seek additional comment on three specific connection-based proposals.

8. In the *First Further NPRM,* we sought comment on a specific proposal to base contributions on the number and capacity of connections a contributor provides to interstate networks, rather than revenues. Since that time, a number of parties across various industry segments, as well as four out of five state members of the Joint Board, have supported adoption of a connection-based assessment methodology and have proposed their own variations of connection-based proposals. Proponents of a connection-based methodology argue that such a system would provide a sufficient and predictable funding source for universal service in a telecommunications marketplace increasingly characterized by new and innovative bundles of intrastate and interstate telecommunications and non-telecommunications products and services, and increased competition between wireline and wireless technology platforms. These commenters point out that the number of connections historically has been more stable than end-user interstate telecommunications revenues. Commenters also point out that connection-based assessments would eliminate the need for contributors to distinguish between interstate and intrastate revenues, or revenues from telecommunications and non-telecommunications services, as is required under the current methodology. These commenters therefore argue that connection-based assessments would better accommodate new services and technologies as they develop. Such a framework also may be more economically efficient than the current revenue-based methodology, because connection-based assessments are less likely to create inefficient incentives for end users to curtail their usage of interstate telecommunications networks.

9. The proponents of certain connection-based proposals argue that their proposals would be consistent with the requirement of section 254(d) that every telecommunications carrier that provides interstate telecommunications services contribute to the Commission's universal service mechanisms on an equitable and nondiscriminatory basis. However, several other parties have expressed concerns that such proposals in the record would be inconsistent with this statutory mandate. We specifically take note of arguments that specific connection-based proposals in the record may be inconsistent with section 254(d)'s requirement that every provider of interstate telecommunications service contribute on an equitable basis.

10. We conclude it is appropriate to further develop the record on aspects of certain proposals to assess universal service contributions on the number and capacity of connections. We also conclude it is appropriate to continue refining our analysis of the potential impacts on contributors, and, ultimately, consumers, of the various proposals. In this *Second Further NPRM,* we seek comment on specific measures the Commission could take to ensure that a connection-based contribution methodology would be consistent with the Act. First, we seek comment on a contribution methodology that would impose a minimum contribution obligation on all interstate telecommunications carriers, and a flat charge for each end-user connection, depending on the nature or capacity of the connection. Next, we seek comment on a proposal to assess all connections based purely on capacity (without regard to distinctions between residential/single-line business and multi-line business connections),

and share contribution obligations for each switched end-user connection between access and transport providers. Finally, we seek comment on a proposal to assess providers of switched connections based on their number of working telephone numbers.

11. We invite commenters to discuss potential advantages and disadvantages of each approach, and whether each satisfies the requirements of section 254 that ''[e]very telecommunications carrier that provides interstate telecommunications services * * * contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient [universal service support] mechanisms.'' We urge commenters to submit data and analysis on assessment levels under each approach. We further request comment on the relative contribution obligations of different industry segments under each approach. We ask commenters to address the potential impacts of the different methodologies on consumers, both generally and also on residential consumers that place no long-distance calls. What would be the impact of each of the proposals on the average residential customer and on residential customers generally? Would the typical residential customer pay more, less, or approximately the same amount of pass-through charges to different carriers than they do today?

12. Commenters should also describe and estimate the costs associated with the implementation of each proposal, including the cost of any necessary billing system changes. We also invite comment on the reporting obligations associated with each of the proposals discussed below and ask that commenters quantify, to the extent possible, the burdens associated with each proposal and compare the relative burdens. We seek comment on whether it would be appropriate to require contributors to report their number and capacity of end-user connections and/or numbers on a monthly basis, or whether less frequent reporting would be adequate. We particularly invite comment on the potential administrative burdens associated with each of these proposals from entities that are ''small business concerns'' under the Small Business Act. We also seek comment on whether to continue basing contributions to the Telecommunications Relay Service, Numbering Administration, Local Number Portability and wireline regulatory fees programs on annual revenue data, or whether contributions to these mechanisms also should be based on connections and/or numbers.

III. Procedural Matters

A. Initial Regulatory Flexibility Act Analysis

13. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) on the possible significant economic impact on small entities of policies and rules proposed in this Second Further Notice of Proposed Rulemaking. 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 *Second Further NPRM* provided below.

1. Need for and Objectives of the Proposed Rules

14. The assessment and recovery of universal service contributions are governed by the statutory framework established by Congress in the Act. Section 254(b) instructs the Commission to establish universal service support mechanisms with the goal of ensuring the delivery of affordable telecommunications services to all Americans, including consumers in high-cost areas, low-income consumers, eligible schools and libraries, and rural health care providers. Section 254(d) of the Act states that ''[e]very telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service.''

15. Consistent with section 254 of the Act and as noted in the companion Order, we take interim measures to maintain the viability of universal service in the near term—a fundamental goal of this Commission—while we consider further long-term reforms. As discussed in further detail in the companion Order, although the interim measures we adopt today will improve the current contribution methodology, they do not address our concerns regarding the long-term viability of any revenue-based system. We therefore conclude that it is appropriate to further study long-term reforms of the contribution methodology.

16. Therefore, in this *Second Further NPRM,* we seek comment on specific aspects of three connection-based proposals in the record. First, we ask for comment on a proposed contribution methodology that would impose a minimum contribution obligation on all interstate telecommunications carriers and flat charge for each end-user connection depending on the nature or capacity of the connection. Next, we seek comment on a proposal to assess all connections based purely on capacity. Under this proposal, contribution obligations for each switched end-user connection would be shared between access and transport providers. Finally, we seek comment on a proposal to assess providers of switched connections based on their working telephone numbers.

2. Legal Basis

17. The legal basis as proposed for this *Second Further NPRM* is contained in sections 4(i), 4(j), 201–205, 254, and 403 of the Communications Act of 1934, as amended.

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

18. 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 proposals herein. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' 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. ''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 governmental entities, total, in the United States. This number includes 38,978 cities, counties, and towns; of these, 37,566, or 96%, have populations of fewer than 50,000. The 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 (96%) are small entities. In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities. Under the Small Business Act, a ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).

19. We have included small incumbent local exchange carriers in

this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

20. *Wireline Carriers and Service Providers (Wired Telecommunications Carriers).* The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1500 or fewer employees. According to Census Bureau data for 1997, there were 2,225 firms in this category, total, that operated for the entire year. Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more. Thus, under this size standard, the great majority of firms can be considered small.

21. *Local Exchange Carriers, Interexchange Carriers, Competitive Access Providers, Operator Service Providers, Payphone Providers, and Resellers.* Neither the Commission nor SBA has developed a definition particular to small local exchange carriers (LECs), interexchange carriers (IXCs), competitive access providers (CAPs), operator service providers (OSPs), payphone providers or resellers. The closest applicable definition for these carrier-types under SBA rules is for Wired Telecommunications Carriers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. According to our most recent data, there are 1,329 incumbent LECs, 532 CAPs, 229 IXCs, 22 OSPs, 936 payphone providers and 710 resellers. Of these, an estimated 1,024 incumbent LECs, 411 CAPs, 181 IXCs, 20 OSPs, 933 payphone providers, and 669 resellers reported that they have 1,500 or fewer employees; 305 incumbent LECs, 121 CAPs, 48 IXCs, 2 OSPs, 3 payphone providers, and 41 resellers reported that, alone or in combination with affiliates, they have more than 1,500 employees. We do not have data specifying the number of these carriers that are not independently owned and operated, and therefore we are unable to estimate with greater precision the number of these carriers that would qualify as small business concerns under SBA's definition. Consequently, most incumbent LECs, IXCs, CAPs, OSPs, payphone providers and resellers are small entities that may be affected by the proposed rules discussed in this Order.

22. *Wireless Service Providers.* The SBA has size standards for wireless small businesses within the two separate Economic Census categories of Paging and of Cellular and Other Wireless Telecommunications. For both of those categories, the SBA considers a business to be small if it has 1,500 or fewer employees. According to the most recent *Trends in Telephone Report* data, 1,761 companies reported that they were engaged in the provision of wireless service. Of these 1,761 companies, an estimated 1,175 reported that they have 1,500 or fewer employees and 586 reported that, alone or in combination with affiliates, they have more than 1,500 employees. Consequently, we estimate that most wireless service providers are small entities that may be affected by the proposed rules discussed herein.

23. *Broadband Personal Communications Service (PCS).* The broadband PCS spectrum is divided into six frequency designated A through F, and the Commission has held auctions for each block. The Commission defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of $40 million or less in the three previous calendar years. For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These standards defining ''small entity'' in the context of broadband PCS auctions have been approved by the SBA. No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses; there were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as ''small'' or ''very small businesses.'' Based on this information, we conclude that the number of small broadband PCS licensees will include the 90 winning C Block bidders, the 93 qualifying bidders in the D, E, and F blocks, the 48 winning bidders in the 1999 re-auction, and the 29 winning bidders in the 2001 re-auction, for a total of 260 small entity broadband PCS providers, as defined by the SBA small business size standards and the Commission's auction rules. Consequently, we estimate that 260 broadband PCS providers are small entities that may be affected by the proposed rules discussed herein.

24. *Narrowband PCS.* To date, two auctions of narrowband PCs licenses have been conducted. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. For purposes of the two auctions that have already been held, small businesses were defined as entities with average gross revenues for the prior three calendar years of $40 million or less. To ensure meaningful participation of small business entities in the auctions, the Commission adopted a two-tiered definition of small businesses in the *Narrowband PCS Second Report and Order*, 65 FR 35843, June 6, 2000. A small business is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A very small business is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. These definitions have been approved by the SBA. In the future, the Commission will auction 459 licenses to serve MTAs and 408 response channel licenses. There is also one megahertz of narrowband PCS spectrum that has been held in reserve and that the Commission has not yet decided to release for licensing. The Commission cannot predict accurately the number of licenses that will be awarded to small entities in future auctions. However, four of the 16 winning bidders in the two previous narrowband PCS auctions were small businesses, as that term was defined under the Commission's Rules. The Commission assumes, for purposes of this FRFA, that a large portion of the remaining narrowband PCS licenses will be awarded to small entities. The Commission also assumes that at least some small businesses will acquire narrowband PCS licenses by means of the Commission's partitioning and disaggregation rules.

25. *Specialized Mobile Radio (SMR).* The Commission awards ''small entity'' and ''very small entity'' bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in

the 800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years, or that had revenues of no more than $3 million in each of the three previous calendar years, respectively. In the context of both the 800 MHz and 900 MHz SMR service, the definitions of ''small entity'' and ''very small entity'' have been approved by the SBA. These bidding credits apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. We assume, for our purposes here, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz SMR bands. There were 60 winning bidders that qualified as small and very small entities in the 900 MHz auctions. Of the 1,020 licenses won in the 900 MHz auction, bidders qualifying as small and very small entities won 263 licenses. In the 800 MHz SMR auction, 38 of the 524 licenses won were won by small and very small entities. Consequently, we estimate that there are 301 or fewer small entity SMR licensees in the 800 MHz and 900 MHz bands that may be affected by the proposed rules discussed herein.

26. *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). For purposes of this FRFA, we will use the SBA's size standard applicable to wireless service providers, *supra*—an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that almost all of them qualify as small entities under the SBA's size standard. Consequently, we estimate that there are 1,000 or fewer small entity licensees in the Rural Radiotelphone Service that may be affected by the proposed rules discussed herein.

27. *Air-Ground Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service. For purposes of this FRFA, we will use the SBA's size standard applicable to wireless service providers, *supra*—an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA definition.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

28. Should the Commission decide that fundamental reform of the existing contribution methodology is needed, the associated rule changes potentially could modify the reporting and recordkeeping requirements of telecommunications service providers regulated under the Communications Act. Under a connection-based mechanism, we potentially could require telecommunications service providers to file additional and/or different monthly or quarterly reports. Any such reporting requirements potentially could require the use of professional skills, including legal and accounting expertise. Without more data, we cannot accurately estimate the cost of compliance by small telecommunications service providers. In this IFRA, we therefore seek comment on the frequency with which carriers should submit reports to USAC, the types of burdens carriers will face in periodically submitting reports to USAC, and whether the costs of such reporting are outweighed by the potential benefits of the possible reforms. Entities, especially small businesses and small entities, more generally, are encouraged to quantify the costs and benefits of the reporting requirement proposals.

5. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

29. 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.

30. The *Second Further NPRM* seeks comment on a number of connection-based alternatives to modify the existing contribution methodology system. Although the proponents of specific connection-based proposals argue that they would be consistent with the requirements of section 254(d) of the Act that every telecommunications carrier that provides interstate telecommunications services contribute to the Commission's universal service mechanisms on a equitable and nondiscriminatory basis, several other parties have expressed concerns that the connection-based proposals in the record would be inconsistent with the statutory mandate. We specifically take note of those commenters that argue that the connection-based proposals in the record would result in inequitable contributions.

31. We therefore believe it is appropriate to further develop the record on aspects of certain proposals to assess universal service contributions at least in part on the number and capacity of connections. We also believe it is appropriate to continue refining our analysis of the potential impacts on consumers and contributors, including small entities, of adopting such a methodology. In this *Second Further NPRM,* we seek comment on specific measures the Commission could take to ensure that a connection-based contribution methodology would be consistent with these statutory mandates. The Commission will also consider additional significant alternatives developed in the record.

32. Wherever possible, the *Second Further NPRM* seeks comment on how to reduce the administrative burden and cost of compliance for small telecommunications service providers. For example, we seek comment on the operation of a *de minimis* exemption under the various connections-based proposals. We also seek comment on the appropriate frequency and content of reporting under a connection-based methodology. We specifically seek comment from contributors that are small entities under the Small Business Act.

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

33. None.

B. Initial Paperwork Reduction Act of 1995 Analysis

34. The *Second Further NPRM* contains a proposed information collection. As part of a 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 *Second Further NPRM,* as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. Public and agency comments are due January 14, 2003; OMB comments are due February 28, 2003. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden 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.

C. Comment Filing Procedures

35. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments January 29, 2003. Reply comments are due on or before February 28, 2003. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.

36. 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, U.S. 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.

37. 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 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, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission. In addition to filing comments with the Secretary, a copy of any comments on the information collection(s) contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *JBoley@fcc.gov* and to Kim A. Johnson, OMB Desk Officer, 10236 NEOB, 725 17th Street, NW., Washington, DC 20503, or via the Internet to *Kim_A._Johnson@omb.eop.gov.*

38. Parties also must send three paper copies of their filing to Sheryl Todd, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street SW., Room 5–B540, Washington, DC 20554. 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 20054.

D. Ex Parte Presentations

39. This is a permit but disclose rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's rules.

IV. Ordering Clauses

40. It is further ordered that, pursuant to the authority contained in sections 4(i), 4(j), 201–205, 254, and 403 of the Communications Act of 1934, as amended, this Second Further Notice of Proposed Rulemaking is adopted.

41. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Second Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 54

Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 02–32926 Filed 12–27–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 533

[Docket No. 2002–11419; Notice 3]

RIN 2127–AI70

Light Truck Average Fuel Economy Standards Model Years 2005–07; Correction

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

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This document corrects the preamble to a proposed rule published in the **Federal Register** of December 16, 2002, regarding the establishment of corporate average fuel economy standards for light trucks manufactured in model years (MY) 2005 through 2007. This correction adds a request for the submission of additional written copies of comments directly to the agency to facilitate reviewing the comments and meeting the statutory deadline for issuance of the final rule.

FOR FURTHER INFORMATION CONTACT: Kenneth Katz, 202–366–0846.

Correction

In proposed rule FR Doc. 02–31522, beginning on page 77015 in the issue of December 16, 2002, make the following correction, in the **SUPPLEMENTARY INFORMATION** section. On page 77029 in the 1st column, add after 4th paragraph under the subject heading ''How Do I Prepare and Submit Comments?'' the following:

''In addition, given the statutory deadline for issuance of the final rule, we request that, for those comments of 4 or more pages in length, you send 10 additional copies, as well as one copy on computer disc, to: Mr. Kenneth Katz, Lead Engineer, Fuel Economy Division,

Office of Planning and Consumer Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Electronic mail *kkatz@nhtsa.dot.gov*. We emphasize that this is not a requirement. However, we ask that you do this to aid us in expediting our review of all comments. The copy on computer disc may be in any format, although we would prefer that it be in Word 2000.''

Issued: December 24, 2002.

Noble N. Bowie,

Director, Office of Planning and Consumer Standards.

[FR Doc. 02–32944 Filed 12–26–02; 9:30 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 020424095–2095–01; I.D. 032801B]

RIN 0648–AP25

Fishing Capacity Reduction Program for the Crab Species Covered by the Fishery Management Plan for the Bering Sea/Aleutian Islands King and Tanner Crabs

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Correction to a proposed rule.

SUUMMARY: This document corrects the formula for calculating the bid score in the preamble to the proposed rule for establishing a fishing capacity reduction program for the crab species managed under the Bering Sea/Aleutian Islands King and Tanner Crab Fishery Management Plan (FMP), as published on December 12, 2002. The numerator and denominator were inadvertently reversed in the first sentence under IV.F. of the preamble. This document also corrects paragraph references. When paragraphs were redesignated, some of the references within the text were not modified accordingly.

DATES: Effective December 30, 2002. Comments on the proposed rule will continue to be accepted until January 27, 2003, as indicated in the December 12, 2002, publication (67 FR 76329). Comments on this correction will be accepted until January 29, 2003.

ADDRESSES: Mail or fax written comments about this correction or the proposed rule to Michael L. Grable. The mailing address is: Michael L. Grable, Chief, Financial Services Division, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3282. The fax number is (301) 713–1306. NMFS will not accept e-mail or internet comments.

If a comment involves any aspect of the proposed rule's collection of information requirements, send the comment both to Michael L. Grable and to the National Oceanic and Atmospheric Administration Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Anyone may obtain, from Michael L. Grable, the Environmental Assessment, Regulatory Impact Review, and Initial Regulatory Flexibility Analysis for this proposed rule.

Anyone wishing to contact the Restricted Access Management Program (which issues crab species fishing licenses) may do so at this address: Restricted Access Management Program, National Marine Fisheries Service, PO Box 21668, Juneau, AK 99802–1668. The fax number is (907) 586–7354.

FOR FURTHER INFORMATION CONTACT: Michael L. Grable, (301) 713–2390

SUPPLEMENTARY INFORMATION:

Background

On December 12, 2002 (67 FR 76329), NMFS published a proposed rule in the **Federal Register** that would implement regulations for a program to reduce excess capacity and promote economic efficiency in the crab fishery under the FMP. NMFS would finance the voluntary program's $100 million cost with a 30-year loan to be repaid by post-reduction fishermen.

The deadline for comments on the proposed rule was January 27, 2003. In one portion of the preamble, under the heading ''IV. Process Specifics, F. Bid Scoring,'' the explanation of how each bid score would be calculated incorrectly reversed the numerator (the bid amount) with the divisor (the value of each reduction vessel's documented crab harvest for crab program purposes (bid crab)). In another portion of the preamble, under IV. Process Specifics, Q. Penalties for Prohibited Activities, last sentence of 4., incorrectly refers to paragraph (u) when it should have referred to paragraph (v).

Also, the following proposed regulatory text provisions of § 600.1018 should have been redesignated as one succeeding paragraph designation after a new paragraph was added: paragraph (k) should have referred to paragraph (j)(2) rather than (i)(2); paragraph (l)(3) should have referred to (l)(1) and (l)(2) rather than to (k)(1) and (k)(2); paragraph (l)(4) should have referred to paragraph (l)(3) rather than (k)(3); paragraph (l)(5) should have referred to paragraph (l)(4) rather than (k)(4); paragraph (n)(1) should have referred to paragraph (m) rather than (l); paragraph (r)(6) should have referred to paragraph (q) rather than (p); paragraph (t)(2)(ii) should have referred to paragraph (s) rather than (r); paragraph (t)(7)(iii) should have referred to paragraph (s) rather than (r); and paragraph (v)(2) should have referred to paragraph (t)(7)(i) rather than (s)(7)(i).

Corrections

In the proposed rule FR Doc. 02–31218, in the issue of December 12, 2002 (67 FR 76329), make the following corrections.

1. On page 76333, in the first column, under *F. Bid Scoring* the first sentence is corrected to read as follows:

''NMFS would calculate each bid score by dividing each bid amount by the value of each reduction vessel's documented crab harvest for crab program purposes (bid crab).''

2. On page 76336, in the third column, under *Q. Penalties for Prohibited Activities 4.,* the final sentence of this section is corrected to read as follows:

''For further details about the penalties, see this subpart's § 600.1017 and this proposed § 600.1018(v).''

3. § 600.1018 [*Corrected*]. Beginning on page 76341, paragraphs (k), (l)(4), (l)(5), (r)(6), (t)(2)(ii), (t)(7)(iii), (v)(2), and the first sentences of paragraphs (l)(3) and (n)(1) are corrected to read as follows:

§ 600.1018 Crab species program.

* * * * *

(k) *Determining bid score.* NMFS will determine each bid score by dividing each bid amount by the sum in paragraph (j)(2) of this section.

* * * * *

(l) *Determining reduction loan sub-amount—*

(1) * * *

(3) *Each fishery as a percentage of all fisheries.* NMFS will divide each of the sums in paragraph (l)(1) of this section by the sum in paragraph (l)(2) of this section.

* * * * *

(4) *Applying percentages to loan amount.* NMFS will multiply the reduction loan's full original principal amount by each of the yields in paragraph (l)(3) of this section; and

(5) *Loan sub-amount.* Each of the amounts resulting from the calculation in paragraph (l)(4) of this section will be

the reduction loan subamount that a reduction endorsement fishery must repay.

* * * * *

(n) *Invitation to bid*— (1) Notification. At the appropriate point after issuing the notification in paragraph (m) of this section, NMFS will publish the invitation to bid in the Federal Register notification further specified in § 600.1009(c) of this subpart.

* * * * *

(r) *Post-bidding referendum*—

(1) * * *

(6) *Notice that condition fulfilled.* If the referendum is successful, NMFS will notify accepted bidders, in the manner that § 600.1010(d)(6)(iii) of this subpart specifies, that a successful referendum has fulfilled the reduction contracts' successful post-bidding referendum condition specified in paragraph (q) of this section.

* * * * *

(t) *Reduction payment tender and disbursement*—

(1) * * *

(2) *Notification to the public.*

* * *

(ii) That NMFS intends, in accordance with the reduction contracts, to tender reduction payments in return for the actions specified in paragraph (s) of this section;

* * * * *

(7) *Effect of tender.*

(i) * * *

(iii) NMFS will fully exercise its reduction contract rights with respect to the reduction fishing interest by taking the actions specified in paragraph (s) of this section.

* * * * *

(v) *Fishing prohibition and penalties*—

(1) * * *

(2) *Prohibitions.* Concurrently with NMFS' tender of each reduction payment, and with the sole exception in paragraph (t)(7)(i) of this section, no person whatsoever may, and it is unlawful for any person to:

* * * * *

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

Dated: December 23, 2002.

Rebecca Lent,

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

[FR Doc. 02–32744 Filed 12–27–02; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 67, No. 250
Monday, December 30, 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

Agricultural Marketing Service

[Docket No. ST–0206]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request approval from Office of Management and Budget (OMB) for an extension of and revision to the currently approved information collection ''Application for Plant Variety Protection Certification and Objective Description of Variety.''

DATES: Comments on this notice must be received by February 28, 2003.

Additional Information or Comments: Contact Paul Zankowski, Commissioner, Plant Variety Protection Office (PVPO), Science and Technology, AMS, Room 401, National Agricultural Library (NAL), 10301 Baltimore Avenue, Beltsville, MD 20705; Telephone (301) 504–5518 and Fax (301) 504–5291.

SUPPLEMENTARY INFORMATION:

Title: Regulations Governing the Application for Plant Variety Protection Certificate and Reporting Requirements under the Plant Variety Protection Act.

OMB Number: 0581–0055.

Expiration Date of Approval: April 30, 2003.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The Plant Variety Protection Act (PVPA) (7 U.S.C. 2321 *et seq.*) was established ''To encourage the development of novel varieties of sexually reproduced plants and make them available to the public, providing protection available to those who breed, develop, or discover them, and thereby promote progress in agriculture in the public interest.''

The PVPA is a voluntary user funded program which grants intellectual property rights protection to breeders of new, distinct, uniform, and stable seed reproduced and tuber propagated plant varieties. To obtain these rights the applicant must provide information which shows the variety is eligible for protection and that it is indeed new, distinct, uniform, and stable as the law requires. Application forms, descriptive forms, and ownership forms are furnished to applicants to identify the information which is required to be furnished by the applicant in order to legally issue a certificate of protection (ownership). The certificate is based on claims of the breeder and cannot be issued on the basis of reports in publications not submitted by the applicant. Regulations implementing the PVPA appear at 7 CFR part 92.

Form ST–470, Application for Plant Variety Protection Certificate, Form ST–470 series, Objective Description of Variety (Exhibit C to Form ST–470P), and Form ST–470–E, Statement of Basis of Applicant's Ownership, are the basis by which the determination, by experts at PVPO, is made as to whether a new, distinct, uniform, and stable seed reproduced or tuber-propagated variety in fact exists and is entitled to protection.

The information received on applications, with certain exceptions, is required by law to remain confidential until the certificate is issued (7 U.S.C. 2426).

The information collection requirements in this request are essential to carry out the intent of the PVPA, to provide applicants with certificates of protection, to provide the respondents the type of service they request, and to administer the program.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .87 hours per response.

Respondents: Businesses or other for-profit, not-for-profit institutions, and Federal Government.

Estimated Number of Respondents: 129.

Estimated Number of Responses per Respondent: 11.45.

Estimated Total Annual Burden on Respondents: 1,282.97.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Paul Zankowski, Commissioner, Plant Variety Protection Office, Room 401, NAL Building, 10301 Baltimore Avenue, Beltsville, MD 20705. All comments received will be available for public inspection during regular business hours at the same address.

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

Dated: December 20, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–32807 Filed 12–27–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. LS–02–02]

United States Standards for Livestock and Meat Marketing Claims

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: These proposed minimum requirements for livestock and meat industry production/marketing claims, when adopted, will become the United States Standards for Livestock and Meat Marketing Claims. Some segments of the livestock and meat industries make claims to distinguish their products

from competing products and may request third-party verification by USDA to increase the credibility of their claims. Verification of such claims may be accomplished through examination of the product or through documentation and auditing of the production process. Specifically, USDA is proposing to establish minimum requirements for common production/marketing claims that may be used in voluntary USDA Certified or USDA Verified programs for the livestock and meat industries.

DATES: Comments must be received on or before March 31, 2003.

ADDRESSES: Written comments, suggestions for additional marketing claim standards, and other input may be submitted to Chief, Standardization Branch, Livestock and Seed Program, AMS, USDA, Room 2603–S, Stop 0254, 1400 Independence Avenue, SW., Washington, DC 20250–0254. Comments may also be sent by fax to (202) 720–1112, by electronic mail to: *marketingclaim@usda.gov* or filed via an on-line form through the AMS, Livestock and Seed Program, Standardization Branch Web site at: *http://www.ams.usda.gov/lsg/stand/claimcomment.htm.* Comments should refer to Docket No. LS–02–02. All comments received will be made available for public inspection at the above address during regular business hours (8 a.m.–4:30 p.m.) and will be posted on the Internet at: *http://www.ams.usda.gov/lsg/stand/claim.htm.* Copies of these proposed United States Standards for Livestock and Meat Marketing Claims are available through the above addresses or by accessing the Web site at: *http://www.ams.usda.gov/lsg/stand/st-pubs.htm.*

FOR FURTHER INFORMATION CONTACT: Chief, Standardization Branch, on 202–720–4486 or Cara L. Gerken, Marketing Specialist on 405–433–5637.

SUPPLEMENTARY INFORMATION: Section 203 (c) of the Agricultural Marketing Act of 1946, as amended, directs and authorizes the Secretary of Agriculture ''To develop and improve standards of quality, condition, quantity, grade, and packaging, and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices.'' USDA is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities. One way of achieving this objective is through the development and maintenance of voluntary standards by AMS.

Participants wishing to become USDA Verified for marketing claims based on these standards must provide the documentation and records necessary to verify the accuracy of the claims. Since the USDA Verified programs are specific to each participant, a standardized format for the documents and records will not be established.

AMS is proposing the adoption of new United States Standards for Livestock and Meat Marketing Claims, in accordance with procedures published in the August 13, 1997, **Federal Register** and that are contained in Part 36 of Title 7 of the Code of Federal Regulations (7 CFR Part 36).

Paperwork Reduction Act

This notice codifies industry consensus standards which have been used in ''USDA Process Verified'' programs under the Quality Systems Certification Program (QSCP). The QSCP is included in the current services of the Meat Grading and Certification Branch in 7 CFR Part 54.4 (63 FR 72102, Dec. 31, 1998). The information collection reporting requirements for those services were approved under Office of Management and Budget (OMB) Control No. 0581–0124, dated June 2, 2000.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the recordkeeping requirements and burden for the Livestock and Meat Marketing Claims Standards will be detailed in another anticipated rulemaking that will establish a new part in the Code of Federal Regulations for a Quality System Verification Program under the LS Program's Audit, Review, and Compliance Branch. AMS intends to have these recordkeeping burden requirements become a part of OMB Control No. 0581–0183. The Livestock and Meat Marketing Claims Standards recordkeeping burden will be incorporated when a request for a revision to and extension of OMB Control No. 0581–0183 is submitted to the Office of Management and Budget.

Background

Since the late 1970's, some livestock and meat industry companies and individual producers have sought USDA services to increase the value of their products (live animals or meat products) by distinguishing them from competing commodity products. Advertising and promotions, which often highlight production and marketing practices, are examples of the methods companies and individuals have utilized to ''set their products apart.''

Since 1978 the Livestock and Seed (LS) Program has provided certification for a number of claims related to product traits of beef, pork, and lamb carcasses, with or without accompanying claims for breed. Validity was added to the claims because the product was ''USDA Certified''. Since 1996 the LS Program has offered a verification service to verify claims that cannot be ascertained by direct examination of the product. This verification program allows participants to declare ''USDA Verified'' for one or more system attributes such as feeding practices, or other pre- and post-harvest processes. Participants must have a documented quality management program covering all aspects of their system and must submit to periodic audits by AMS.

As multiple organizations began to seek USDA verification of the same or similar production practices, the LS Program determined it would be beneficial to establish minimum standards for common production/marketing claims. Certification service requests, along with information obtained during the administration of USDA Verified programs, led the LS Program to develop these proposed United States Standards for Livestock and Meat Marketing Claims. Standardization of these marketing and production claims will permit marketers and purchasers of these products to make informed decisions by using common trade language.

Many product labels that include these marketing claims must be submitted to the Food Safety and Inspection Service (FSIS), Labeling and Consumer Protection Staff (LCPS), for evaluation prior to use. LCPS is USDA's policy authority on domestic and imported meat, poultry, and egg product labeling, standards, and ingredients. Therefore, the LS Program and LCPS have cooperatively developed these marketing claim standards. Participants whose products or processes do not meet these minimum requirements will not be recognized as USDA Certified or USDA Verified by AMS, and LCPS will not approve labels citing certification of such claims. In addition, LCPS will refer to these standards as guidelines for approval of labels making such marketing claims.

The proposed marketing claim standards may be used in conjunction with existing regulations or voluntary USDA grade standards in USDA Certified and USDA Verified programs. Minimum breed claim criteria shall be established by national breed associations. Since National Pedigreed Livestock Council (NPLC) is the only

multi-species organization for livestock breed associations, AMS will refer to NPLC members as the designated national breed association. Breed associations that are not members of NPLC may petition AMS for the purpose of establishing a national breed claim program. If a national breed association does not have minimum breed claim criteria, breed claims must be traceable to a parent registered with the national breed association.

Based on LS Program experience with USDA Certified and USDA Verified programs, research into standard practices and procedures, and requests from the livestock and meat industries, AMS identified the need to establish minimum standards for marketing and production claims. In addition to relying on their own expertise, LS Program marketing specialists obtained input from a number of individual experts in government, industry, and academia while drafting these proposed standards and their corresponding thresholds.

AMS is seeking public comment on the following proposed United States Standards for Livestock and Meat Marketing Claims. New participants in USDA Certified or USDA Verified programs will be required to adhere to the United States Standards for Livestock and Meat Marketing Claims immediately. A current participant in USDA Certified or USDA Verified programs, whose system does not comply with these standards, will have 60 days from the final publication of these standards to bring their system into compliance. If a participant fails to bring their system into compliance, AMS will withdraw its USDA Certified or USDA Verified approval and notify LCPS that the basis for their label approval is no longer valid. USDA Certified or USDA Verified program participants who are notified their programs will be withdrawn may submit a written appeal, within 30 days of program withdrawal notification, to the Deputy Administrator, Livestock and Seed Program, AMS. The Deputy Administrator will respond promptly with a written decision which will be final. Unless otherwise noted, these standards apply to cattle, sheep, swine, their carcasses, and meat products.

United States Standards for Livestock and Meat Marketing Claims

Claims Relating to Live Animal Production

Antibiotic Claims—Background: To reduce the risk of antibiotic residues, the Food and Drug Administration (FDA) requires withdrawal of antibiotics from animals for a specified period prior to harvest. Existing antibiotic-residue testing technology can detect residues that exceed the FDA's minimum thresholds. These tests do not have the sensitivity to verify ''antibiotic-free'' or that no antibiotics were ever administered. After an antibiotic is administered for treatment, the body slowly depletes the traceable residue. ''Antibiotic-free'' marketing claims are not allowed by LCPS; however, LCPS will allow ''no detectable antibiotic residue'' claims if the product is tested and the science-based test protocol is provided to LCPS. Since some consumers prefer meat products from animals that have not been fed and/or treated with antibiotics and some producers are willing to provide additional assurances of compliance with regulatory requirements, other limited product claims regarding antibiotic treatments are allowed by LCPS. When such antibiotic claims are made, they must be supported by feed formulations, pharmaceutical invoices, or other appropriate documentation, that verifies animals have not received antibiotics in feed or water and whether they have been treated for illness. Procedures for handling sick animals must be documented.

Claim and Standard:

• No antibiotics used, or Raised without antibiotics. —Livestock have *never* received antibiotics from birth to harvest.

• No subtherapeutic antibiotics added, or Not fed antibiotics. '' Livestock are not fed subtherapeutic levels of antibiotics. They may receive treatment for illness provided the approved FDA withdrawal period is observed.

• No detectable antibiotic residue (analyzed by ''method x'').—LCPS requires additional information on the label that clearly informs the consumer/purchaser that the animal may have been treated with antibiotics. Livestock may receive antibiotics during the production phase, provided:

(1) All antibiotics are withdrawn at least 30 days beyond the minimum FDA withdrawal requirement (*e.g.*, if the FDA minimum withdrawal period is 10 days, the minimum withdrawal period for the United States Standard for Livestock and Meat Marketing Claims would be at least 40 days); and,

(2) Livestock and meat products contain no detectible antibiotic residue as verified by statistical sampling analysis using a science-based testing protocol. The specific test protocol and sensitivity of that method must be disclosed (''method x'').

Breed Claims.—Claims for breed of livestock must meet criteria established by an AMS-recognized U.S. breed association for the referenced breed. If the breed association does not establish criteria for this claim, animals must be traceable to a parent registered with a breed association.

Free Range Claims—Background: These claims relate to the practice of allowing livestock to have continuous and unconfined access to pasture throughout their life cycle. Producers must verify how livestock are cared for during normal and inclement weather conditions, birthing, or other conditions that would merit special protection. Since some consumers prefer products from animals that have been raised using these production practices, producers may seek to improve their returns by appealing to such market niches.

Claim and Standard:

• Free Range, Free Roaming, or Pasture Raised. '' Livestock that have had continuous and unconfined access to pasture throughout their life cycle, including:

Cattle *—Shall never be confined to a feedlot.

Sheep *—Shall never be confined to a feedlot.

Swine *—Shall have continuous access to pasture for at least 80% of their production cycle.

* FSIS requires product labels from red meat species with these claims also include the following further qualifying statement: ''Free Range—Never Confined to Feedlot.''

Geographic Location Claims—Background: Producers, processors, and retail/foodservice operators may want to differentiate their products by identifying the geographic region where the product was produced. References to individual States, countries, or specific or general geographic areas (*e.g.*, Dakotas, Western) will constitute geographic location claims.

Claim and Standard:

• Location of Raising (*e.g.*, ''Mid-Western Raised Lamb'' or ''Raised in Montana'').—The livestock are raised/grown in the specified geographic location from birth to harvest.

• Location of Finishing (*e.g.*, ''Rocky Mountain Fed Lamb'' or ''Nebraska Fed Beef'').—The livestock are fed/finished in the specified geographic location for at least the last 100 days prior to harvest.

Grain Fed Claims—Background: Livestock are finished on high concentrate rations (grain feeding) to enhance meat palatability. A high concentrate grain ration is any cereal plant product that meets or exceeds 60

Mega calories (Mcal) Net Energy for gain (NEg) per 100 pounds of ration dry matter (1996 NRC for cattle, 1998 NRC for swine).

Claim and Standard:

• Grain Fed (*e.g.*, Corn Fed, if corn is the primary ingredient).—

Cattle—

(1) Average grain consumption must equal 50% or more of the ration;

(2) NEg must average at least 60 Mcal per 100 pounds of ration dry matter;

(3) Dry Matter Intake (DMI) during the finishing phase must be at least equal to: ((Cattle shrunk weight at the beginning of the finishing phase × 0.014) + 10 pounds). DMI tolerance cannot be less than 10% of this formula; and,

(4) Minimum number of days on feed is 100 days for slaughter steers and heifers and 30 days for cows.

Lambs—

(1) Average grain consumption must equal 50% or more of the ration; and,

(2) Minimum number of days on feed for slaughter lambs is 50 days.

Swine—

(1) Average grain consumption must equal: (a) 45% or more of the nursery phase (pig weight: 15–65 pounds) ration; and, (b) 65% or more of the finishing phase (pig weight: 65–300 pounds) ration.

(2) Minimum number of days on feed for slaughter hogs is 60 days.

Grass Fed Claims—Background: This claim refers to the feeding regimen for livestock raised on grass, green or range pasture, or forage throughout their life cycle, with only limited supplemental grain feeding allowed. Since it is necessary to assure the animal's well being at all times, limited supplementation is allowed during adverse environmental conditions. Grass feeding usually results in products containing lower levels of external and internal fat (including marbling) than grain-fed livestock products.

Claim and Standard:

• Grass Fed.—Grass, green or range pasture, or forage shall be 80% or more of the primary energy source throughout the animal's life cycle.

Hormone Claims—Background: Hormones * are synthetic or naturally occurring compounds which have been shown to improve gain and feed efficiency, stimulate growth, and/or control reproductive activity. Since all plants and animals produce hormones, a ''hormone-free'' plant or meat product is a misnomer and a ''hormone-free'' marketing claim cannot be made. However, since some consumers prefer meat products from animals that have not received supplemental hormones and some markets restrict the sale of hormone-treated products, the following claims and standards will be recognized.

Claim and Standard:

• No supplemental hormones * used, Raised without supplemental hormones*, or No added hormones*.—The livestock have *never* received supplemental hormones from birth to harvest.

• No hormones* administered during finishing.—The livestock have not received supplemental hormones during the feeding/finishing period.

* The terms ''hormone,'' ''growth promotant,'' ''growth stimulant,'' and ''implant'' are used interchangeably.

Livestock Identification Claims—Background: Livestock identification is used to establish ownership, ancestry, pedigree, or age; to trace origin of livestock; or to manage herd health, artificial insemination, and performance testing programs. Livestock identification from birth or a stated point of production through retail product outlets may also address consumer requests for more information about the characteristics of products they buy and increase returns to producers.

Claim and Standard:

• Source Verified.—Must include the following:

(1) Method of livestock identification;

(2) Location(s) where livestock are born, raised, fed, harvested, and processed; and,

(3) Identification of the producer(s).

• Individual Animal Identification.—Must fulfill the Source Verified requirements and also have unique, individual animal identification. The American Information Number (AIN) system or other numbering scheme that provides for unique identification of animals and verification of program claims may be used.

Preconditioning Claims—Background: Preconditioning of animals by livestock producers can yield advantages in the livestock raising process by reducing animal stress, mortality rates, shrinkage, and the transition time required to start animals on feed.

Claim and Standard:

• Preconditioned for ''x'' days (where ''x'' is the number of days prior to sale/shipping).—Animals for which a preconditioning claim is made must receive the following treatments (as appropriate) at least 45 days prior to their sale/shipment:

(1) Dehorning (when applicable);

(2) Castration (if male);

(3) Vaccinations;

(4) Treatment for control of parasites;

(5) Weaning; and,

(6) Training to eat and drink from feed and water bunks.

Vitamin E Claims—Background: Inclusion of Vitamin E in feed rations, in the form of alpha-tocopheryl acetate, has been shown to improve product color and case life. Promotion of Vitamin E use is limited to livestock producers, packers, and wholesalers. Retail-marketing claims, such as ''Vitamin E fed'' or ''Vitamin E enhanced,'' are not allowed by FSIS because consumers do not receive a supplemental level of Vitamin E by consuming Vitamin E-fed beef. Animal identification, reviewing feed rations and records, and testing feed samples and muscle tissue samples may be verification elements to support this claim.

Claim and Standard:

• Cattle have been fed supplemental levels of Vitamin E. (Promotion of Vitamin E use is limited to livestock producers, packers, and wholesalers.)—(1) Minimum of 50,000 International Units (IU)/head during feeding period (IU tolerance = ±15%); (2) Minimum feeding period of 30 days; and, (3) Minimum carcass alpha-tocopheryl acetate concentration from the neck muscle (rectus capiti dorsalis major) not less than 3.2 micrograms (µg) alpha-tocopheryl acetate/gram (g) of tissue. (Alpha-tocopheryl acetate concentration tolerance = ±15%).

Claims Relating to Product (Meat) Characteristics

Aged Meat Claims—Background: Aging is the process by which meat (carcasses or cuts) is held at a controlled temperature for a specified period, beginning at the time of harvest, to allow enzymatic activity to degrade complex proteins and promote the development of flavor and tenderness. When product is ''dry aged'' humidity control is also a critical element of the aging process.

Claim and Standard:

• *Aged Meat Products.*—Type of aging and length of postmortem aging (in days) must be specified. The actual number of days aged and type of aging (dry or wet) may also appear on the retail label.

Beef.—Must be wet aged for a minimum of 21 days or dry aged for a minimum of 35 days.

Electrical Stimulation Claims—Background: Electrical stimulation improves muscle tenderness by minimizing cold shortening, increasing enzyme activation at higher carcass temperatures (thereby accelerating the aging process), and by physical disruption of muscle fibers through extreme muscle contractions. It further results in an accelerated rate of

postmortem pH decline as well as an accelerated onset of rigor mortis.

Claim and Standard:

• Electrically Stimulated Beef.—The electrical stimulation applied to the carcass must meet the following minimum requirements:

(1) The cross product of voltage and amperage (voltage multiplied by amperage) must be ≥ 500; and,

(2) Consist of at least three cycles with a minimum pulse of ≥ 1.5 seconds ''on'' and ≥ 1.0 second ''off.''

Tenderness Claims—Background: Although individual perceptions vary, for most consumers increased tenderness and juiciness, as well as flavor intensity, contribute to an increase in overall palatability. Of all the palatability attributes, tenderness is the most critical to consumers. Results of objective measurements (*e.g.*, mechanical measures, such as Warner-Bratzler Shear [WBS] or Instron tests) or subjective evaluations (*e.g.*, taste panel scores) can be used to develop quantitative ranking systems which provide a relative level or degree of tenderness. Factors such as degree of doneness, physical size of a sample, and orientation of muscle fibers (among others) can dramatically affect the results of tenderness evaluations. Therefore, specific details of evaluation techniques and conditions used to establish tenderness claims must be fully documented.

Claim and Standard:

• ''Company X's'' Tender ''Species.''—A tenderness management system must include at least 3 of the following controlled elements and must be statistically verified ($P \leq 0.05$) to meet an objective tenderness evaluation of a WBS score ≤ 4.0 kg, using a ½ inch (1.27 cm) core, when cooked to 160°F (71°C).* The objective tenderness evaluation must be revalidated on an annual basis.

Controlled Elements: (1) Genetics; (2) Age of livestock; (3) Feeding management; (4) Electrical stimulation; (5) Aging; (6) Ingredients added to enhance tenderness; (7) Instrument assessment (*e.g.*, validated carcass sorting system, pH values, etc.); or, (8) Mechanical (*e.g.*, blade tenderization, etc.).

* Protocol shall be as established in the 1995 edition of the American Meat Science Association's Research Guidelines for Cookery, Sensory Evaluation, and Instrumental Tenderness Measurements of Fresh Meat. (Available from the National Cattlemen's Beef Association, Centennial, CO.)

Dated: December 20, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–32806 Filed 12–27–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Farm Service Agency

Information Collection

AGENCY: Commodity Credit Corporation; Farm Service Agency, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Commodity Credit Corporation (CCC) and the Farm Service Agency (FSA) are seeking comments from all interested individuals and organizations on the reinstatement and revision of previously approved information collections with respect to the acreage report for the Non-Insured Crop Disaster Assistance Program (NAP) and the Tobacco Program, payers' requests for identifying numbers, the tobacco marketing quota referenda and receiving station information reporting, assignments of payments and joint payment authorizations, the Lamb Meat Adjustment Assistant Program and designation of burley tobacco sales and program payment applications. Comments are also requested on extension and revision of a currently approved information collection with respect to tobacco farm reconstitutions. These information collections are needed to administer FSA's programs.

DATES: Comments on this notice must be received on or before February 28, 2003, to be assured consideration. Comments received after that date will be considered to the extent practicable. Comments should reference the OMB number and title of the information collection to which they pertain.

ADDRESSES: Comments should be sent to Tom Witzig, Director, Regulatory Review and Foreign Investment Disclosure Group, Economic and Policy Analysis Staff, Farm Service Agency, STOP 0540, 1400 Independence Avenue, SW., Washington, DC 20250–0540, (202) 205–5851; e-mail *Tom_Witzig@wdc.fsa.usda.gov* and to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. All comments will become a matter of public record. For further information, contact Tom Witzig at the address listed above.

SUPPLEMENTARY INFORMATION:

Title: Report of Acreage for the Non-Insured Crop Disaster Assistance Program and the Tobacco Program.

OMB Number: 0560–0004.

Type of Request: Reinstatement with revision of a previously approved information collection.

Abstract: Crop and acreage information is collected from producers to determine eligibility for the Non-Insured Crop Disaster Assistance Program (NAP) and the Tobacco Program. NAP provides financial assistance to eligible producers affected by natural disasters. NAP assistance is available for crops for which federal crop insurance is not available. NAP operates under the regulations at 7 CFR part 1437. The tobacco programs establish marketing quotas for individual farms that directly control the amount of tobacco that a producer may sell and operate under the regulations at 7 CFR part 1464.

Respondents: Farmers who produce eligible crops under NAP and tobacco farmers.

Estimated Annual Number of Respondents: 772,000.

Estimated Annual Number of Forms per person: 1.5.

Estimated Average Time to Respond: .95 hours.

Estimated Total Annual Burden Hours: 1,094,513.

Title: Payers' Request for Identifying Number.

OMB Number: 0560–0121.

Type of Request: Reinstatement of a previously approved information collection.

Abstract: This collection of information is needed to obtain a Social Security, employer identification or IRS–assigned number from persons who receive CCC or FSA program payments who do not already have an identifying number on file with FSA. Such persons are required by the Internal Revenue to furnish identifying numbers to payers required to report such payments to the Internal Revenue Service. The form used for collecting the information is prepared by FSA and sent to the payee for completion with a self-addressed, postage-paid return envelope.

Respondents: Persons receiving payments from FSA.

Estimated Annual Number of Respondents: 250.

Estimated Annual Number of Responses Per Person: 1.

Estimated Average Time to Respond: 5 minutes.

Estimated Total Annual Burden Hours: 20.83 hours.

Title: Tobacco Marketing Quota Referenda and Receiving Station Information Reporting.

OMB Number: 0560–0182.

Type of Request: Reinstatement with revision of a previously approved information collection.

Abstract: Referenda are required by statute to be held every three years for each type of tobacco subject to marketing quotas to determine if quotas are to be in effect for the succeeding three years. The collection of information for the referenda consists of the ballots, which may also include other, tobacco-related questions required by Congress to solicit producers' opinions about other aspects of the tobacco program or to allow them to vote on some program provisions in some States. The referenda are operated under the regulations at 7 part 717. The information collected from receiving stations consists of receiving station registration and purchase information needed to ensure that tobacco marking quotas are effective. The regulations governing the receiving stations are at 7 CFR parts 723 and 1464.

Respondents: Tobacco producers and receiving stations.

Estimated Annual Number of Respondents: 325,000.

Estimated Annual Number of Responses Per Person: 1.

Estimated Average Time to Respond: 53 minutes.

Estimated Total Annual Burden Hours: 290,000.

Title: Assignments of Payments and Joint Payment Authorizations.

OMB Number: 0560–0183.

Type of Request: Reinstatement with revisions of a previously approved information collection.

Abstract: When the recipient of a CCC or FSA payment chooses to assign a payment to another party or have the payment made jointly with another party, the other party must be identified. This is a free service that is available upon request by the program payee. The regulations for assignment of payments are at 7 CFR part 1404.

Respondents: Persons receiving payments from CCC or FSA.

Estimated Annual Number of Respondents: 70,900.

Estimated Annual Number of Responses Per Person: 1.

Estimated Average Time to Respond: 10 minutes.

Estimated Total Annual Burden Hours: 11,816.

Title: Lamb Meat Adjustment Assistance Program.

OMB Number: 0560–0205.

Type of Request: Reinstatement of a previously approved information collection.

Abstract: This information collection is needed to obtain information from program participants on their sheep and lamb operations. The information is used to establish eligibility and determine payment amounts. The program is operated under the regulations at 7 CFR part 784.

Respondents: Sheep and lamb producers.

Estimated Annual Number of Respondents: 60,000.

Estimated Number of Responses Per Person: 5.05.

Estimated Average Time to Respond: 1.16 hours.

Estimated Total Annual Burden Hours: 351,257.

Title: Designation of Burley Tobacco Sales and Program Payment Applications.

OMB Number: 0560–0217.

Type of Request: Reinstatement of a previously approved information collection.

Abstract: This collection of information is needed to allow USDA to assign tobacco graders as needed to auction warehouses in order to grade tobacco that is delivered for sale. Information is collected on where burley tobacco producers intend to sell their tobacco and program applicant information for all kinds of tobacco, which is used to determine eligibility for benefits. The program is operated under the regulations at 7 CFR part 1464.

Respondents: Burley tobacco producers.

Estimated Annual Number of Respondents: 150,800.

Estimated Annual Number of Responses Per Person: 1.

Estimated Average Time to Respond: 1.25 hours.

Estimated Total Annual Burden Hours: 188,500 hours.

Title: Tobacco Farm Reconstitutions.

OMB Number: 0560–0025.

Expiration Date: March 31, 2003.

Type of Request: Extension with revision of a currently approved information collection.

Abstract: The reconstitution process is required when a producer wishes to increase acreage attributed to the farm from leases, change farm acreage records as a result of a sale of any part of a farm, combine a farm with another farm or divide a farm into multiple farming operations. The FSA country committee must approve or disapprove all proposed farm reconstitutions. The information is necessary to determine farmland, cropland, and changes to quotas or allotments resulting from combinations or divisions of farming operations.

Respondents: Tobacco farm owners and operators.

Estimated Annual Number of Respondents: 7,154.

Estimated Annual Number of Responses Per Person: 1.

Estimated Average Time to Respond: 45 minutes.

Estimated Total Annual Burden Hours: 5,365 hours.

Comments are invited on each of the information collections in this notice regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden, including the validity of the methodology and assumption used: (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission for OMB approval.

Signed in Washington, DC on December 20, 2002.

James R. Little,

Administrator, Farm Service Agency, and Executive Vice-President, Commodity Credit Corporation.

[FR Doc. 02–32804 Filed 12–27–02; 8:45 am]

BILLING CODE 3410–05–M

DEPARTMENT OF AGRICULTURE

Forest Service

Martin Basin Rangeland Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Santa Rosa Ranger District, Humboldt-Toiyabe National Forest will prepare an environmental impact statement (EIS) on a proposal to authorize continued livestock grazing within the Martin Basin Rangeland Project area. The analysis will determine if a change in management direction for livestock grazing is needed to move existing resource conditions within the Martin Basin Rangeland Project area towards desired conditions. The allotments within the project areas

include Martin Basin, Indian, West Side Flat Creek, Buffalo, Bradshaw, Buttermild, Granite Peak and Rebel Creek. These allotments are located within the Quinn River Watershed and North Fork Little Humboldt River Watershed in Humboldt County, Nevada.

DATES: Comments concerning the scope of the analysis must be received by February 28, 2003. The draft environmental impact statement is expected July 2003 and the final environmental impact statement is expected September 2003.

ADDRESSES: Send written comments to District Ranger, Santa Rosa Ranger District, 1200 East Winnemucca Blvd., Winnemucca, Nevada 89445.

FOR FURTHER INFORMATION CONTACT: For further information, mail correspondence to or contact Steven Williams, Project Coordinator, at Santa Rosa Ranger District, 1200 East Winnemucca Blvd., Winnemucca, Nevada 89445. The telephone number is 775–623–5025, extension 112. E-mail address is *swilliams01@fs.fed.us.*

Purpose and Need for Action

There is a need to maintain or improve the condition of riparian resources and maintain or improve the overall health of the rangeland in the Martin Basin Rangeland Project area. The purpose of this project is to determine the management direction for livestock grazing needed to move existing resource conditions within the project area towards desired conditions.

Proposed Action

The Santa Rosa Ranger District, Humboldt-Toiyabe Nation Forest, is proposing to authorize continued cattle grazing in the Martin Basin Rangeland Project area under updated grazing management direction in order to move existing rangeland resource conditions within the project area toward desired condition. The updated direction will be incorporated in attendant grazing permits and allotment management plans to guide grazing management within the project area during the coming decade, or until amendments are warranted based on changed condition or monitoring.

Possible Alternatives

In addition to the proposed action we have tentatively identified two additional alternatives that will be analyzed in the EIS.

(1) No Act Alternative: This would be continuation of the current grazing management.

(2) No Grazing Alternative: This would be not issuing new grazing permits when existing permits expire.

Responsible Official

Jose Noriega, District Ranger, Santa Rosa Ranger District, 1200 East Winnemucca Blvd., Winnemucca, Nevada 89445

Nature of Decision To Be Made

Based on the environmental analysis on the EIS the District Ranger will decide whether or not to continue grazing on the allotment within the Martin Basin project area in accordance with the standards in the proposed action or as modified by additional mitigation measures and monitoring requirements.

Scoping Process

The Forest Service will use a mailing of information to interested parties. Public involvement will be ongoing throughout the analysis process and at certain times public input will be specifically requested. There are currently no scoping meetings planned.

Preliminary Issues

The following are some potential issues identified through internal Forest Service scoping based on our experience with similar projects. The list is not considered all-inclusive, but should be viewed as a starting point. We are asking you to help us further refine the issues and identify other issues or concerns relevant to the proposed project.

- Continued livestock grazing has the potential to adversely affect water quality in the Quinn River/Blackrock Basin and the Humboldt River Basin.
- Continued livestock grazing has the potential to adversely affect habitat for Lahontan Cutthroat trout a Federally listed species found in the Quinn River/Blackrock Basin and the Humboldt Basin.
- Continued livestock grazing has the potential to adversely affect heritage resources within the project area.
- Continued livestock grazing has the potential to adversely affect vegetation, which may result in a decline in the long-term productivity of the land base.
- Continued livestock grazing is currently affecting the health of some aspen stands.
- Continued livestock grazing affects trails, trailheads, and dispersed recreation sites.
- Continued livestock grazing has the potential to adversely affect wilderness values.

Comment Requested

This notice of intent initiates the scoping process which guides the development of the environmental impact statement. Submit comments stating your concerns and issues that are relevant to the proposed project. Comments will be used to help establish the scope or studies and analysis for the environmental impact statement.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register.**

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers's position and contentions. *Vermont Yankee Nuclear Power Corp* v. *NRDC*, 435 U.S. 519, 533 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Hertages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these courts rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental

Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: December 20, 2002.

Jose Noriega,

District Ranger.

[FR Doc. 02–32861 Filed 12–27–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Payette National Forest, Idaho, Upper West Fork Weiser Vegetation Project

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service published a Notice of Intent to prepare an environmental impact statement (EIS) for the West Fork Weiser Watershed Projects in the **Federal Register** on March 11, 1999 (Vol. 64, No 47, pages 12150–12151). A revised Notice of Intent is being issued due to two major changes (Forest Service Handbook 1909.15 part 21.2):

1. It has been more than six months since filing the original Notice of Intent; and

2. There has been a change in the proposed action and project area. The USDA Forest Service will prepare the Upper West Fork Weiser Vegetation Management Project EIS. The proposed action in the EIS is to manage timber stands to improve their health, species diversity and productivity. Additionally, the proposed action is to obliterate roads and landings to meet the 1988 Payette National Forest Land and Resource management Plan standard for Total Soil Resource Commitment (TSRC). The Payette National Forest invites written comments and suggestions on the scope of the analysis and the issues to address. The agency gives notice of the full National Environmental Policy Act (NEPA) analysis and decision-making process so that interested and affected people know how they may participate and contribute to the final decision.

DATES: Comments need to be received by February 7, 2003.

ADDRESSES: Send written comments to Kimberly A. Brandel, District Ranger, New Meadows Ranger District, Payette National Forest, P.O. Box J, New Meadows, Idaho, 83654.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action should be directed to Sylvia Clark, Interdisciplinary Team Leader, at the above address, phone (208) 347–0300.

SUPPLEMENTARY INFORMATION: The Upper West Fork Weiser project area is located in the Upper Lost Creek, East fork Lost Creek, West Branch of the Weiser River, and East Branch of the Weiser River sub-watersheds on the New Meadows Ranger District. It is about ten miles north and west of New Meadows, and approximately 22,434 acres in size. The purpose and need for this activity is to (1) Maintain and restore a diverse and sustainable landscape structure, (2) Restore species composition, stand structure, and stand density to more closely mimic historic conditions, and (3) Maintain and restore stand health, growth, and yield.

The proposed action includes a variety of activities to meet the purpose and need. (1) Harvest timber on approximately 845 acres, producing approximately 5.7 million board feet (MMBF), using tractor and skyline logging systems. The silvicultural methods used would be overstory removal, reserve shelterwood/seed tree and some commercial thin. (2) Salvage dead and dying timber killed by fir engraver beetle and other pests, or weakened due to light, water, or nutrient competition. (3) Restore approximately 216 acres of unproductive soil by obliterating roads, skid trails, and/or landings to meet the 1988 Forest Plan Standard for Total Soil Resource Commitment (TSCR). (4) Improve approximately 56 miles of road to provide access for timber activities. (5) Ensure desired species composition by planting and/or natural regeneration of fire-tolerant Douglas-fir, ponderosa pine, and western larch seedlings on 457 acres following timber harvest activities. (6) Treat harvest-generated fuels on approximately 809 acres. Treatments would include machine piling and burning (excavator piling would be used where slopes exceed 35 percent), broadcast burning, and/or yarding tops. (7) Fence regeneration units on slopes less than 35% in cattle allotment. (8) Monitor and treat noxious weeds.

Preliminary issues for this project include effects on water quality, soil productivity, wildlife habitat, recreation, access management, visual quality, and fish habitat.

A range of reasonable alternatives will be considered. The non-action alternative will serve as a baseline for comparison of alternatives. The proposed action will be considered along with additional alternatives developed that meet the purpose and need and address major issues identified during scoping. Alternatives may have different amounts, locations, and types of project activities.

Comments received in response to this notice, including names and addresses of those who comment, will be part of the project record and available for public review.

The Forest Service is seeking information and comments from other Federal, State, and local agencies; Tribal governments; organizations; and individuals who may be interested in or affected by the proposed action. This input will be used in preparation of the draft EIS.

A draft EIS will be prepared for comment. The draft EIS will be filed with the Environmental Protection Agency (EPA) and is anticipated to be available for public review by fall 2003. The comment period on the draft EIS will be 45 days. It is important that those interested in the management of the Payette National forest participate during this initial scoping period and during the 45-day draft EIS comment period.

The Forest Service believes, at this early state, it is important to five reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft EISs must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F. 2d 1016, 1002 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues

raised by the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

After the 45-day comment period ends, the Forest Service will analyze comments received and address them in the final EIS. The final EIS is scheduled to be completed in 2004. The Responsible Official is the Payette National Forest Supervisor. The decision will be documented, including the rationale for the decision, in a Record of Decision (ROD). The decision will be subject to review under the Forest Service Appeal Regulations at 36 CFR 215.

Dated: December 20, 2002.

Mark Madrid,

Forest Supervisor.

[FR Doc. 02–32862 Filed 12–27–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Payette National Forest, Idaho; Sloan-Kennally Timber Sale, Goose Creek Watershed Projects, Brown Creek Timber Sale, Middle Fork Weiser Vegetation Management Project; Little Weiser Vegetation Management Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare supplemental environmental impact statement.

SUMMARY: The USDA Forest Service will prepare five supplemental environmental impact statements (SEISs). The projects are: Sloan-Kennally Timber Sale, Goose Creek Watershed Projects, Brown Creek Timber Sale, Middle Fork Weiser Vegetation Management Project; Little Weiser Vegetation Management Project. The proposed actions in the original EISs are to harvest timber, conduct prescribe burns, manage roads, and implement related activities. The SEISs will provide additional information on the Forest-wide status of the pileated woodpecker on the Forest. The Payette National Forest invites written comments and suggestions on the scope of the analysis and the issues to address. The agency gives notice of the full National Environmental Policy Act (NEPA) analysis and decision-making process so that interested and affected people know how they may participate and contribute to the final decision.

DATES: Comments need to be received in writing by January 17, 2003.

ADDRESSES: Send written comments to Mark Madrid, Forest Supervisor, Payette National Forest, P.O. Box 1026, McCall ID 83638.

FOR FURTHER INFORMATION CONTACT: Questions about the proposal action should be directed to Curtis Spalding, Environmental Coordinator, at the above address, phone (208) 634–0796.

SUPPLEMENTARY INFORMATION: Payette National Forest completed Draft EISs (DEISs) and Final EISs (FEISs) for five projects between August 1998 and December 2001. The Forest Supervisor signed Record of Decisions (RODs) for each. Each project proceeded through the administrative appeal process (36 CFR 215) and was affirmed by the Deputy Regional Forester. In June 2002, the projects were named in a court complaint filed by the group Neighbors of Cuddy Mountain (Civ. 02–244–MJW) in District Court for the District of Idaho. After a series of hearings, on November 8, 2002, the Court ordered an injunction against the five projects based on the issue of old growth habitat retention.

Habitat and population monitoring has provided a body of data indicating the population trends of the pileated woodpecker on the Forest. The purpose of the supplemental environmental impact statements (SEISs) is to provide additional environmental analysis on the projects' compliance with the Forest Plan's old growth retention standard in light of the body of available data, to disclose that analysis to the public for review and comment, and to provide a basis for the original or new project decisions.

The preliminary issue for these SEISs is the effect of the proposed timber harvest on old growth habitat for pileated woodpecker, the management indicator for old growth habitat on the Payette National Forest.

A range of reasonable alternatives will be considered. The no-action alternative will serve as a baseline for comparison of alternatives. The proposed action will be considered along with additional alternative(s) needed to address major issues identified during scoping while meeting the meet the purpose and need of the projects defined in the original EISs.

Comments received in response to this notice, including names and addresses of those who comment, will be part of the project record and available for public review.

The Forest Service is seeking information and comments from other Federal, State, and local agencies; Tribal governments; organization; and individuals who may be interested in or affected by the proposals. This input will be used in preparation of the SEISs.

Comments will be appreciated throughout the analysis process. The draft SEISs will be filed with the Environmental Protection Agency (EPA) and are anticipated to be available for public review by January, 2003. The comment period on the draft SEISs will be 45 days. It is important that those interested in the management of the Payette National Forest participate at that time.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F. 2d 1016, 1002 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is important that those interested in this proposed action participation by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues raised by the proposed actions, comments on the draft environmental impact statements should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statements. Comments may also address the adequacy of the draft statements or the merits of the alternatives formulated and discussed in the statements. Reviewers may wish to refer to the Council on Environmental Quality

Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

After the 45-day comment period ends on the draft EIS, the Forest Service will analyze comments received and address them in the final supplemental EISs (FSEISs). The FSEISs are scheduled to be completed in April 2003. The Responsible Official is the Payette National Forest Supervisor. For each project, if different from the original decision, the new decision will be documented, including the rationale for the decision, in a Record of Decision (ROD). Any decision will be subject to review under the Forest Service Appeal Regulations at 36 CFR 215.

Dated: December 23, 2002.

Mark J. Madrid,

Forest Supervisor.

[FR Doc. 02–32957 Filed 12–27–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Interface Recreation Trails Project

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an environmental impact statement.

SUMMARY: This is a revision of the notice of intent published on November 22, 2000 (pages 76332–76333). This notice documents changes in the information in the previous notice of intent. The changes are: (1) A change in the responsible official from the District Ranger to the Forest Supervisor, and (2) A delay in filing the draft and final environmental impact statement.

The Forest Service intends to prepare an environmental impact statement (EIS) to disclose the environmental consequences of the proposed Interface Recreation Trails Project on the Calaveras Ranger District of the Stanislaus National Forest. The agency proposes to design a system of recreation routes, determine the uses that can occur on each route in the system, and develop measures to protect natural resources on approximately 8,700 acres on National Forest System lands. Hiking, horseback riding, mountain bike riding, off-highway vehicle riding, and highway licensed vehicle riding are the uses being considered in this analysis. The purpose of the proposal is to provide a variety of recreation opportunities for route users while protecting the natural resources, minimizing conflicts between recreationists and others.

DATES: The comment period for this analysis closed January 8, 2001. This is not a solicitation for comments. The draft environmental impact statement is expected February 2003 and the final environmental impact statement is expected June 2003.

ADDRESSES: Send written comments to Robert W. Griffith, District Ranger, Calaveras Ranger District, Stanislaus National Forest, USDA Forest Service, PO Box 500, Hathaway Pines, California, 95233.

FOR FURTHER INFORMATION CONTACT: Greg Casselberry, Planning Team Leader, telephone: (209) 795–1381, extension 321. Email: *gcasselberry@fs.fed.us.*

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The existing trail system in the Interface Area developed primarily as a result of users adopting old logging and mining roads, skid trails, fuel breaks, and abandoned water ditches for their trail use. Over time, users constructed additional trails to access new areas, avoid impassable sections of existing trails, form loops and connectors with other trails, and provide the desired variety of challenges and experiences.

Over the last 30 years, local residents, second homeowners, and their friends have used and enjoyed this system of routes for both non-motorized and motorize recreation. During the mid-1990s, the need for a designed trail system and a site-specific management analysis for the Interface Area became evident. Increased trails use, resource impacts on some trail segments, trail-user conflict, and complaints from residents such as those with homes near Forest Road 5N95Y or near trail system access points from subdivisions prompted the Forest Service to begin project-level analysis and planning in the area.

The purpose or goal in designing the recreation route system, designating uses, and developing resource protection measures is to provide a variety of recreation opportunities for all trail users, while protecting natural resources, minimizing conflicts between trail users and others.

Proposed Action

The proposed project is located in Calaveras County, California within the Calaveras Ranger District of the Stanislaus National Forest in portions of sections 1, 2, 11, 12, 13, 14, 23, 24, 26, T.4N., R.14E., a portion of section 18, T.4N., R.15E., portions of sections 13, 24, 25, 26, 35, 36, T.5N., R.14E., and portions of sections 7, 8, 17, 18, 19, 20, 29, 30, T.5N., R.15E., MDB&M. It is adjacent to the western boundary of the communities of Hathaway Pines, Avery, Arnold, and White Pines.

Under the current proposal being analyzed, non-motorized and motorized recreation use (shared use) will continue to be allowed on 19.5 miles of existing trails and roads. 16.6 miles of existing trails and roads will be designated and available for non-motorized recreation use only. 17.4 miles of existing roads will be routes for highway-licensed vehicles only. There will be 10.0 miles of multiple use routes and 10.7 miles of non-motorized trails constructed. 26.5 miles of existing trails and roads will be closed. Five gates will be closed to public motorized traffic. One mile of Forest Road 5N95Y will be chipsealed. Parking areas will be established on Forest Road 5N52, and County Road 323 to access the trail system. A low-water crossing and approach will be constructed at Slick Rock Crossing. Street legal vehicles only zones that are a minimum of ¼ mile wide will be established adjacent to subdivisions. A permanent public easement for the segment of the trail that crosses private land located in the SW¼ of the NE¼ of section 30, T.5N., R.15E. will be sought from the landowner. Regulatory orders will be developed to enforce trail use restrictions, trail closures, street legal zone restrictions, and gate closures.

Possible Alternatives

A range of alternatives to the proposed action will be considered. The alternatives will be designed to provide different ways to address and respond to significant issues and to fulfill the purpose and need for action. A reasonable range of alternatives will be evaluated and reasons given for eliminating some alternatives from detailed study. A no action alternative is required. Under the no action alternative, the recreation route system, recreation route uses, and Forest Service management practices would continue unchanged, just as they are today.

Responsible Official

The Forest Supervisor, Stanislaus National Forest, 19777 Greenley Road, Sonora, California, 95370–5909 is the Responsible Official who will decide what actions are to be implemented to provide a variety of recreation opportunities for route users within the project area. He will document his decisions and rationale in a Record of Decision.

Nature of Decision To Be Made

The decision to be made is whether to implement the proposed action as described above, to meet the purpose and need for action through some other combination of activities, or take no action at this time.

Scoping Process

This revised notice of intent is not a solicitation for public comment. The comment period for this analysis closed January 8, 2001 and no additional comments will be considered until the draft environmental impact statement is available for public review. The scoping process was used to identify potential issues related to the proposed action, significant issues to be analyzed in depth, alternatives to the proposed action, and potential environmental effects of the proposed action and its alternatives.

Preliminary Issues

Three preliminary issues have been identified: (1) Disturbances by human presence and noise on the trails and roads may adversely impact wildlife species, (2) sounds of motorized vehicles on the trails and roads may have a negative impact on adjacent landowners, and (3) opportunities for recreation may be affected by the trail and road mileage available as well as by the uses allowed on each route.

Comment Requested

This Revised Notice of Intent is not a solicitation for public comment. The comment period for this analysis closed January 8, 2001 and no additional commnets will be considered until the draft environmental impact statement is made available for public review.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21

Dated: December 20, 2002.

Glenn Gottschall,

Acting Forest Supervisor—Stanislaus National Forest.

[FR Doc. 02–32808 Filed 12–27–02; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Ketchikan Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ketchikan Resource Advisory Committee will meet in Ketchikan, Alaska, January 22, 2003. The purpose of the meeting is to provide orientation to Advisory Committee members, and to discuss potential projects under the Secure Rural Schools and Community Self-Determination Act of 2000.

DATES: The meeting will be held January 22, 2003.

ADDRESSES: The meeting will be held at the Southeast Alaska Discovery Center Learning Center (back entrance), 50 Main Street, Ketchikan, Alaska. Send written comments to Ketchikan Resource Advisory Committee, c/o District Ranger, USDA Forest Service, 3031 Tongass Ave., Ketchikan, AK 99901, or electronically to *jingersoll@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Jerry Ingersoll, District Ranger, Ketchikan-Misty Fiords Ranger District, Tongass National Forest, (907) 228–4100.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by January 21 will have the opportunity to address the Committee at those sessions.

Dated: December 16, 2002.

Larry Meshew,

Acting Forest Supervisor.

[FR Doc. 02–32824 Filed 12–27–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Tuolumne County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Tuolumne County Resource Advisory Committee will meet on January 27, 2003 at the City of Sonora Fire Department, in Sonora, California. The purpose of the meeting is to receive project proponent updates on status of Round 1 funded projects, and review remaining unapproved round 1 and 2 project submittals to determine future status.

DATES: The meeting will be held January 27, 2003, from 12 p.m. to 3 p.m.

ADDRESSES: The meeting will be held at the City of Sonora Fire Department located at 201 South Shepherd Street, in Sonora, California (CA 95370).

FOR FURTHER INFORMATION CONTACT: Pat Kaunert, Committee Coordinator, USDA, Stanislaus National Forest, 19777 Greenley Road, Sonora, CA 95370 (209) 532–3671; E-mail *pkaunert@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Round

1 project status update reports; (2) Replacement member update; (3) Review remaining Round 1 and 2 project proposal to determine future status; (4) Review and vote on one new project submittal; (5) Determine due date for Round 3 project proposals; (6) Determine purpose and dates of future meetings. This meeting is open to the public.

Dated: December 23, 2002.

Patrick D. Kaunert,

Acting Forest Supervisor.

[FR Doc. 02–32842 Filed 12–27–02; 8:45 am]

BILLING CODE 3410–ED–M

DEPARTMENT OF AGRICULTURE

Forest Service

Rogue/Umpqua Resource Advisory Committee (RAC); Meeting

AGENCY: Forest Service, USDA Forest Service.

ACTION: Notice of meeting.

SUMMARY: The Rogue/Umpqua Resource Advisory Committee (RAC) will meet on Friday, February 7, 2003. The meeting is scheduled to begin at 2 p.m. and conclude at 3 p.m., with possibility of continuing until 4 p.m. The meeting will be held via telephone conference call. People are welcome to attend the call in person at the Umpqua National Forest Headquarters at 2900 NW Stewart Parkway in Roseburg or the Rogue River National Forest Headquarters at 333 W. 8th Street in Medford. The agenda includes: (1) Roll call to determine quorum, (2) Redirecting $204,000 to reforestation work resulting from fires in 2002, and (3) Public Forum. The Public Forum is scheduled to begin at 2:45 p.m. Time allotted for individual presentations will be limited to 3–4 minutes. Written comments are encouraged and may be submitted prior to the February 7th meeting by sending them to Designate Federal Official Jim Caplan at the address given below.

FOR FURTHER INFORMATION CONTACT: For more information regarding this meeting, contact Designated Federal Official Jim Caplan; Umpqua National Forest; PO Box 1008, Roseburg, Oregon 97470; (541) 957–3203.

Dated: December 23, 2002.

Paul Matter,

Acting Deputy Forest Supervisor, Umpqua National Forest.

[FR Doc. 02–32960 Filed 12–27–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by February 28, 2003.

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Program Development & Regulatory Analysis, Rural Utilities Service, USDA, 1400 Independence Ave., SW., STOP 1522, Room 4034 South Building, Washington, DC 20250–1522. Telephone: (202) 720–0736. FAX: (202) 720–4120.

SUPPLEMENTARY INFORMATION:

Title: 7 CFR Part 1755, Telecommunications Standards and Specifications.

OMB Control Number: 0572–New.

Type of Request: New collection.

Abstract: Manufactures wishing to sell their products to RUS borrowers, request RUS consideration for acceptance of their products and submit data demonstrating their products' compliance with RUS specifications. Compliance with RUS specifications and standards is demonstrated to a large extent via presentation of laboratory tests results and other informational data upon which the determination of acceptability can be made. RUS evaluates this data to determine that the quality of the products is acceptable and that their use will not jeopardize loan security. In the telecommunications program, because of the complex and highly technical nature of equipment, services and system architectures, RUS also requires a manufacturer to demonstrate successful product use in a working telecommunications system.

RUS Bulletin 345–2, establishes Agency policy that materials and equipment purchased by RUS telecommunications borrowers or accepted as contractor-furnished material, must conform to RUS standards and specifications where they have been established and, if included in RUS IP 344–2, ''List of Materials Acceptable for Use on Telecommunications Systems of RUS Borrowers'' (List of Materials), must be selected from that list or must have received technical acceptance from RUS.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 20 hour per response.

Respondents: Business or other for-profit and non-profit institutions.

Estimated Number of Respondents: 49.

Estimated Number of Responses per Respondent: 2.

Estimate Total Annual Burden on Respondents: 2,580 hours.

Copies of this information collection can be obtained from Dawn Wolfgang, Program Development and Regulatory Analysis, Rural Utilities Service at (202) 720–0812. Comments are invited on (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumption used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques on other forms of information technology.

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

Dated: December 23, 2002.

Curtis M. Anderson,

Deputy Administrator as Acting Administrator, Rural Utilities Service.

[FR Doc. 02–32825 Filed 12–27–02; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by February 28, 2003.

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Program Development & Regulatory Analysis, Rural Utilities Service, USDA, 1400 Independence Ave., SW., STOP 1522, Room 4034 South Building, Washington, DC 20250–1522. Telephone: (202) 720–0736. FAX: (202) 720–4120.

SUPPLEMENTARY INFORMATION:

Title: 7 CFR Part 1753, Telecommunications System Construction Policies and Procedures.

OMB Control Number: 0572–0059.

Type of Request: Reinstatement of a previously approved collection for which approval has expired.

Abstract: In order to facilitate the programmatic interest of the RE Act, and, in order to assure that loans made or guaranteed by RUS are adequately secured, RUS, as a secured lender, has established certain forms for materials, equipment and construction of electric and telecommunications systems. The use of standard forms, construction contracts, and procurement procedures helps assure RUS that appropriate standards and specifications are maintained, RUS' loan security is not adversely affected; and the loan and loan guarantee funds are used effectively and for the intended purposes.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1 hour per response.

Respondents: Business or other for-profit and non-profit institutions.

Estimated Number of Respondents: 150.

Estimated Number of Responses per Respondent: 1.

Estimate Total Annual Burden on Respondents: 3,011 hours.

Copies of this information collection can be obtained from Dawn Wolfgang, Program Development and Regulatory Analysis, Rural Utilities Service at (202) 720–0812. Comments are invited on (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumption used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques on other forms of information technology.

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

Dated: December 23, 2002.

Curtis M. Anderson,

Deputy Administrator as Acting Administrator, Rural Utilities Service.

[FR Doc. 02–32826 Filed 12–27–02; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by February 28, 2003.

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Program Development & Regulatory Analysis, Rural Utilities Service, USDA, 1400 Independence Ave., SW., STOP 1522, Room 4034 South Building, Washington, DC 20250–1522. Telephone: (202) 720–0736. FAX: (202) 720–4120.

SUPPLEMENTARY INFORMATION:

Title: Telecommunications Field Trials.

OMB Control Number: 0572-New.

Type of Request: New collection.

Abstract: Title 7 CFR 1755.3 prescribes the conditions and provisions of a field trial. A field trial consists of limited filed installation of a qualifying product in closely monitored situations designed to determine, to RUS' satisfaction, the products effectiveness under actual field conditions. Field trials are used only as a means for determining, to RUS' satisfaction, the operational effectiveness of a new or revised product where such experience does not already exist. The field trial process allows manufacturers a means of immediate access to the RUS borrower market, allows RUS borrowers opportunity to immediately utilize advance products, and allows RUS a means to safely, in a controlled manner, obtain necessary information on technically advanced products which will address the products suitability for use in the harsh environment of rural America.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 4 hours per response.

Respondents: Business or other for-profit and non-profit institutions.

Estimated Number of Respondents: 6.

Estimated Number of Responses per Respondent: 2.

Estimate Total Annual Burden on Respondents: 56 hours.

Copies of this information collection can be obtained from Dawn Wolfgang, Program Development and Regulatory Analysis, Rural Utilities Service at (202) 720–0812. Comments are invited on (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumption used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques on other forms of information technology.

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

Dated: December 23, 2002.

Curtis M. Anderson,

Deputy Administrator as Acting Administrator, Rural Utilities Service.

[FR Doc. 02–32827 Filed 12–27–02; 8:45 am]

BILLING CODE 3410–15–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has scheduled its regular business meetings to take place in Washington, DC on Tuesday and Wednesday, January 14–15, 2003, at the times and location noted below.

DATES: The schedule of events is as follows:

Tuesday, January 14, 2003
11–12:30 p.m. Technical Programs Committee
2–5 p.m. Passenger Vessels Ad Hoc Committee (Closed Session)
Wednesday, January 15, 2003
9:30–10:30 a.m. Planning and Budget Committee
10:30–Noon Executive Committee
1:30–3:30 p.m. Board Committee

ADDRESSES: The meetings will be held at the Marriott at Metro Center Hotel, 775 12th Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meetings, please contact Lawrence W. Roffee, Executive Director, (202) 272-0001 (voice) and (202) 272–0082 (TTY).

SUPPLEMENTARY INFORMATION: At the Board meeting, the Access Board will consider the following agenda items.

Open Meeting
- Executive Director's Report
- Approval of the September 10, 2002 Board Meeting Minutes
- Technical Programs Committee Report
- Planning and Budget Committee Report
- Executive Committee Report

Closed Meeting
- Passenger Vessels Accessibility Guidelines

All meetings are accessible to persons with disabilities. Sign language interpreters and an assistive listening system are available at all meetings. Persons attending Board meetings are requested to refrain from using perfume, cologne, and other fragrances for the comfort of other participants.

James J. Raggio,

General Counsel.

[FR Doc. 02–32803 Filed 12–27–02; 8:45 am]

BILLING CODE 8150–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 120202A]

Small Takes of Marine Mammals Incidental to Specified Activities; Taking of Ringed and Bearded Seals Incidental to On-ice Seismic Activities

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

ACTION: Notice of receipt of application and proposed authorization for a small take exemption; request for comments.

SUMMARY: NMFS has received a request from ConocoPhillips Alaska Inc. (CPA) for an authorization to take small numbers of ringed and bearded seals by harassment incidental to conducting on-ice seismic operations in the Beaufort Sea during oil and gas exploration activities. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to authorize CPA to incidentally take, by harassment, small numbers of these two species in the above mentioned area during the winter of 2002/2003.

DATES: Comments and information must be received no later than January 29, 2003.

ADDRESSES: Comments on the application should be addressed to Donna Wieting, Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3225. A copy of the application, Environmental Assessment (EA), and/or a list of references used in this document may be obtained by writing to this address or by telephoning one of the contacts listed here.

FOR FURTHER INFORMATION CONTACT: Kenneth Hollingshead, Office of Protected Resources (301) 713–2322, ext. 128, or Bradley Smith, Alaska Region (907) 271–5006.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have no more than a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth.

On April 10, 1996 (61 FR 15884), NMFS published an interim rule establishing, among other things, procedures for issuing incidental harassment authorizations (IHAs) under section 101(a)(5)(D) of the MMPA for activities in Arctic waters. For additional information on the procedures to be followed for this authorization, please refer either to that document or to 50 CFR 216.107.

Description of the Activity

Background

Deep seismic surveys use the ''reflection'' method of data acquisition. Reflection seismic exploration is the process of gathering information about the subsurface of the earth by measuring acoustic (sound or seismic) waves, which are generated on or near the surface. Acoustic waves reflect at boundaries in the earth that are characterized by acoustic impedance contrasts. The acoustic impedance of a rock layer is its density multiplied by its acoustic velocity. Geologists and geophysicists commonly attribute different acoustic impedances to different rock characteristics. Seismic exploration uses a controlled energy source to generate acoustic waves that travel through the earth (including sea ice and water, as well as subsea geologic formations), and then uses ground sensors to record the reflected energy transmitted back to the surface. Energy that is directed into the ground takes on numerous forms. When acoustic energy is generated, compression (p) and shear (s) waves form and travel in and on the earth. The compression and shear waves are affected by the geological formations of the earth as they travel in it and may be reflected, refracted, diffracted or transmitted when they reach a boundary represented by an acoustic impedance contrast.

The basic components of a seismic survey include an energy source (either acoustic or vibratory), which generates a seismic signal; hydrophones or geophones, which receive the reflected signal; and electronic equipment to amplify and record the signal. The number and placement of sensors, the energy sources, the spacing and placement of energy input locations, and the specific techniques of recording reflected energy are broadly grouped as ''parameters'' of a given exploration program.

In modern reflection seismology, many sensors are used to record each energy input event. The number of sensors in use for each event varies widely according to the type of survey being conducted and the recording equipment available. Common numbers of groups of sensors are 240, 480, and 1040, and some new recording instruments may use as many as 4000 groups of sensors at the same time. The sensors are normally placed in one or more long lines at specified intervals. In North America the common group

placement intervals are multiples of 55 feet (17 meters), 110 feet (33.5 meters) and 220 feet (67 meters).

Vibroseis

Vibroseis seismic operations use large trucks with vibrators that systematically put variable frequency energy into the earth. At least 1.2 m (4 ft) of sea ice is required to support heavy vehicles used to transport equipment offshore for exploration activities. These ice conditions generally exist from 1 January until 31 May in the Beaufort Sea. The exploration techniques are most commonly used on landfast ice, but they can be used in areas of stable offshore ice. Several vehicles are normally associated with a typical vibroseis operation. One or two vehicles with survey crews move ahead of the operation and mark the energy input points. Crews with rubber-tire or rubber-track vehicles often require trail clearance with bulldozers for adequate access to and within the site. Crews with rubber-tracked vehicles are typically limited by heavy snow cover, and may require trail clearance beforehand.

A typical wintertime exploration seismic crew consists of 40–110 personnel. Roughly 75 percent of the personnel routinely work on the active seismic crew, with approximately 50 percent of those working in vehicles and the remainder outside laying and retrieving geophones and cable.

With the vibroseis technique, activity on the surveyed seismic line begins with the placement of sensors. All sensors are connected to the recording vehicle by multi-pair cable sections. The vibrators move to the beginning of the line, and recording begins. The vibrators move along a source line, which will be at some angle to a sensor line. The vibrators begin vibrating in synchrony via a simultaneous radio signal to all vehicles.

In a typical survey, each vibrator will vibrate four times at each location. The entire formation of vibrators subsequently moves forward to the next energy input point (e.g., 67 m (220 ft) in most applications) and repeat the process. In a typical 16- to 18–hour day, 4 to 10 linear miles (6 to 16 km) in 2D seismic operations and 15 to 40 linear miles (24 to 64 km) in a 3D seismic operation are conducted. A detailed description of the work proposed for 2003 is contained in this document and in the application which is available upon request (see **ADDRESSES**).

Summary of the Request

CPA is requesting an IHA for the taking of ringed seals (*Phoca hispida*) and bearded seals (*Erignathus barbatus*) for a period of 5 months beginning January 1 (upon the expiration of the existing regulations covering the Alaskan North Slope on 31 December 2002 (see 63 FR 5277, February 2, 1998) and ending on about May 31, 2003). On-ice seismic operations are ordinarily confined to this five-month period since this is the period when ice is sufficiently thick (4 - 5 ft; 1.2 - 1.5 m) to safely support the equipment.

The geographic region of activity in 2003 encompasses a 846–square mile (2,190 km2) area extending from approximately Cape Halkett on the west to Oliktok Point on the east and to approximately 4–20 nm (7.4 - 37 km) offshore the coast. Water depths in most (≤ 60 percent) of the area are less than 10 ft (3 m), but drop to 30 ft (9 m) along the northern fringe of the region of activity. Few seals inhabit water less than 10 ft (3 m) during winter, since water typically freezes to or near the bottom at this depth or what water is available supports few food resources (Miller *et al.*, 1998 and Link *et al.*, 1999).

Description of Habitat and Marine Mammals Affected by the Activity

A detailed description of the Beaufort Sea ecosystem can be found in several documents (Corps of Engineers, 1999; NMFS, 1999; Minerals Management Service (MMS), 1992, 1996) and is not repeated here.

Marine Mammals

The Beaufort/Chukchi Seas support a diverse assemblage of marine mammals, including bowhead whales (*Balaena mysticetus*), gray whales (*Eschrichtius robustus*), beluga (*Delphinapterus leucas*), ringed seals, spotted seals (*Phoca largha*) and bearded seals. Descriptions of the biology and distribution of these species and of others can be found in NMFS (1998, 1999), Western Geophysical (2000) and several other documents (Corps of Engineers, 1999; Lentfer, 1988; MMS, 1992, 1996; Angliss et al. (2001)). Angliss *et al.* (2001) is available online at:*http://www.nmfs.noaa.gov/prot__res/PR2/#Stock__Assessment__Program/sars.htmlStock Assessment Reports.*

Ringed and to a lesser degree bearded seals could be affected by on-ice seismic activities. These species as well as other marine mammal species in the Beaufort Sea appear to have stable to increasing populations, which is a condition indicative of a healthy ecosystem. Polar bears, which prey on these species, are believed to be stable or increasing in numbers in the Beaufort Sea (U.S. Fish and Wildlife Service (USFWS), 2000 a, b). Similarly, the most recent estimate of bowhead whales shows the population has steadily increased annually at a growth rate of 3.2–3.3 percent to 9,860 (7,700–12,600) animals (International Whaling Commission, 2002). These increases are occurring in concert with subsistence harvest of these species including a five-year harvest quota of 255 bowheads. The status of these marine mammal populations reflects the high quality of the habitat, which supports abundant and diverse prey populations.

Ringed seals are year-round residents in the Beaufort Sea. They are the most abundant and widely distributed species of marine mammal in the Beaufort Sea (Frost *et al.*, 1988). The world-wide population is estimated at 6 to 7 million (Stirling and Calvert, 1979). The Alaska stock of the Bering-Chukchi-Beaufort Sea area is roughly estimated at between 1 to 1.5 (Frost, 1985) to 3.3 to 3.6 million seals (Frost *et al.*, 1988). Although there are no recent population estimates in the Beaufort Sea, Bengston *et al.* (2000) estimated ringed seal abundance from Barrow south to Shismaref in a portion of the Chukchi Sea to be 245,048 animals from aerial surveys flown in 1999. In Angliss *et al.* (2001), marine mammal scientists state that there are at least that many ringed seals in the Beaufort Sea. Frost *et al.* (1999) reported that observed densities within the area of industrial activity along the Beaufort Sea coast were generally similar between 1985–87 and 1996–98, suggesting that the regional population has been relatively stable during this 13–year period of industrial activity.

During winter and spring, ringed seals inhabit landfast ice and offshore pack ice. Seal densities are highest on stable landfast ice but significant numbers of ringed seals also occur in pack ice (Wiig *et al.*, 1999). Seals congregate at holes and along cracks or deformations in the ice (Frost et al., 1999). Breathing holes are established in landfast ice as the ice forms in autumn and maintained by seals throughout the winter. Adult ringed seals maintain an average of 3.4 holes per seal (Hammill and Smith, 1989). Some holes may be abandoned as winter advances probably in order for seals to conserve energy by maintaining fewer holes (Brueggeman and Grialou, 2001). As snow accumulates, ringed seals excavate lairs in snowdrifts surrounding their breathing holes, which they use for resting and for the birth and nursing of their single pups in late March to May (McLaren, 1958; Smith and Stirling, 1975; Kelly and Quakenbush, 1990). Pups have been observed to enter the water, dive to over

10 m (32.8 ft), and return to the lair as early as 10 days after birth (Brendan Kelly, personal communication, June 2002), suggesting pups can survive the cold water temperatures at a very early age. Mating occurs in late April and May. From mid-May through July, ringed seals haul out in the open air at holes and along cracks to bask in the sun and molt.

The seasonal distribution of ringed seals in the Beaufort Sea is affected by a number of factors but a consistent pattern of seal use has been documented since monitoring began over 20 years ago by using aerial surveys. Seal densities have historically been substantially lower in the western than the eastern part of the Beaufort Sea (Burns and Kelly, 1982; Kelly, 1988). Frost *et al.* (1999) reported consistently lower ringed seal densities in the western versus eastern sectors they surveyed in the Beaufort Sea during 1996, 1997, and 1998. The relatively low densities appear to be related to much of the area occurring between the shore and the barrier islands, which is generally shallow. This area of historically low ringed seal density is also the focus for much of the recent on-ice seismic surveys.

The estimated number of ringed seals likely to be in the 846–square mile (2,190 km^2) activity area is less than 3,900 animals. This estimate is based on a density of 1.73 seals per km^2, which was derived from the most current aerial surveys of the region. Frost and Lowry (1999) reported an observed density of 0.61 ringed seals per km^2 on the fast ice from aerial surveys conducted in spring 1997 of an area (Sector B2) overlapping the activity area, which is in the range of densities (0.28–0.66) reported for the Northstar project from 1997 to 2001 (Moulton *et al.*, 2001). This value (0.61) was adjusted to account for seals hauled out but not sighted by observers (x 1.22, based on Frost *et al.* (1988)) and seals not hauled out during the surveys (x 2.33, based on Kelly and Quakenbush (1990)) to obtain the density of 1.73 seals/km^2. This estimate covered an area from the coast to about 2–20 miles beyond the activity area, and it assumed that habitat conditions were uniform and, therefore, it was not adjusted for water depth. Since a high proportion (≤ 60 percent) of the activity area is within water less than 3 m (9.8 ft) deep, which Moulton *et al.* (2001) reported for Northstar supported about five times fewer seals (0.12 0.13 seals/km^2) than the 0.61 seals reported by Frost and Lowry, the actual number of ringed seals is probably closer to slightly more than half of the 3,900 seals or about 2,000 seals. This estimate is calculated as follows: (1) 1,314 km^2 x 0.13 x 1.22 x 2.33 = 486 seals in area having water depths of 0–3 meter (60 percent) in activity area; (2) 876 km^2 x 0.61 x 1.22 x 2.33 = 1,519 seals in area having water depths over 3 meters (40 percent) in activity area; and (3) combining the two numbers gives an estimate of 2,005 seals or approximately 2,000 for the entire activity area. Observed densities of ringed seals reported over 15 years ago in the region of the activity area from 1985 through 1987 (0.85, 1.09, and 1.11 seals per km2) were not used in this analysis, since an estimate was available within the last five years (Frost and Lowry, 1999).

The bearded seal inhabits the Bering, Chukchi, and Beaufort seas (Burns and Frost, 1979). Numbers are considerably higher in the Bering and Chukchi seas, particularly during winter and early spring. Early estimates of bearded seals in the Bering and Chukchi seas range from 250,000 to 300,000 (Popov, 1976; Burns, 1981). Reliable estimates of bearded seal abundance in Alaska waters are unavailable. Since there is no evidence of a decline in the population, the population is presumed to be healthy. Bearded seals are generally associated with pack ice and only rarely use shorefast ice (Burns and Harbo, 1972). Bearded seals occasionally have been observed maintaining breathing holes in annual ice and even hauling out from holes used by ringed seals (Mansfield, 1967; Stirling and Smith, 1977). However, since bearded seals are normally found in broken ice that is unstable for on-ice seismic operation, bearded seals will be rarely encountered during seismic operations.

There are no reliable estimates for bearded seals in the Beaufort Sea or in the activity area (Angliss et al., 2001), but recent surveys show that few bearded seals inhabit the activity area during December through May. An indication of their low numbers is provided by the results of aerial surveys conducted east of the activity area near the Northstar and Liberty development sites. Three to 18 bearded seals were observed in these areas compared to 1,911 to 2,251 ringed seals in the spring of 1999 through 2001 (Moulton et al., 2001; Moulton and Elliott 2000; Moulton *et al.*, 2000). Similarly small numbers of bearded seals would be expected to occur in the activity area, where habitat is even less favorable because of the high proportion of shallow water area.

Potential Effects on Marine Mammals

NMFS and CPA anticipate that only small numbers of ringed seals and, if encountered, very small numbers of bearded seals will be affected. Any takes that occur would result from short-term disturbances by noise and physical activity associated with on-ice seismic operations. While operations have the potential to disturb and temporarily displace some seals, any impacts will likely be confined to small numbers of seals in the immediate vicinity of the activities.

Burns and Kelly (1982) concluded that displacement of ringed seals in close proximity (within 150 m (492 ft)) to seismic lines does occur, and ringed seal pupping in shorefast ice habitats within this distance of an on-ice shot line in favorable ringed seal habitat are likely to be disturbed by vibroseis operations. However, considering (1) the limited area of seismic surveys, (2)

the non-random distribution of ringed seals, (3) avoidance by seismic operator of optimal seal habitat (i.e., areas of extensive pressure ridging and snow accumulation) due to safety and operational constraints,(4) occurrence of most of the on-ice seismic surveys in shallow and near shore waters where ringed seal densities are low, (5) the relatively large size of the ringed seal population in the Beaufort Sea and throughout Alaska, and (6) the lack of evidence of on-ice seismic activity negatively affecting the reproductive viability or distribution of the ringed seal population, the disturbance is not likely to have any effect on the ringed or bearded seal populations as a whole.

Aerial survey data collected from 1985 to 1987 and 1997 indicate that ringed seal densities in the fast ice of the region of the activity area as well as among different section of the Beaufort Sea are highly variable among years (Frost *et al.*, 1999). The reported inter-annual variability in overall average density during these years in the region of the activity area was 0.61 to 1.11 seals per km^2. Based on an estimated rate of temporary displacement determined by Burns (1981) of 0.6 ringed seals per nm^2 (0.52 per mile) of area subjected to seismic activity, a maximum of 832 seals could be displaced from 1,600 mi (2,575 km) of seismic surveys assuming a uniform distribution. However, since the distribution is not uniform and most of the activity area is marginal habitat for ringed seals, considerably fewer seals would likely be temporarily displaced by the seismic operations. Furthermore, the proposed seismic operations will be concentrated in 143 mi^2 (378 km^2) or about 17 percent of the 846 mi^2 (2,190 km^2) activity area. Consequently, a more accurate maximum limit of the potential take of ringed seals by the proposed seismic operations is 340 (17 percent x 2000)

seals, which would be considerably higher than any incidental take of seals in birthing lairs.

Pup mortality could occur if any of these animals were nursing and displacement was protracted. However, due to mitigation measures undertaken by the industry and because it is highly unlikely that a nursing female would abandon her pup given the normal levels of disturbance from the proposed activities and the typical movement patterns of ringed seal pups among different holes as reported by Lydersen and Hammill (1993), pup mortality is unlikely. Similarly, Kelly and Quakenbush (1990) observed that radio-tagged seals used as many as four lairs spaced as far as 3,437 m (11,276 ft) apart, with mean distances for males equaling 1,997 m (6,552 ft) and for females 634 m (2,080 ft). In addition, seals have multiple breathing holes. Pups may use more holes than adults (mean 8.7), but the holes are generally closer together (Lydersen and Hammill, 1993). Holes have been found as far apart as 0.9 km (0.56 mi). This pattern of use indicates that adult seals and pups can move away from seismic activities, particularly since the seismic equipment does not remain in any specific area for a prolonged time. Given the small proportion (<1 percent) of the population potentially disturbed by the proposed activity, impacts are expected to be negligible for the overall ringed and also bearded seal populations.

Masking effects on pinniped vocalizations and other natural sounds are expected to be limited. Although pulse repetition rates will be high during vibroseis surveys, the source levels of those pulses will be considerably lower than during open-water seismic surveys. This will considerably reduce the potential for masking.

Potential Effects on Subsistence

Residents of the village of Nuiqsut are the primary subsistence users in the activity area. The subsistence harvest during winter and spring is primarily ringed seals, but during the open-water period both ringed and bearded seals are taken. Nuiqsut hunters may hunt year round; however, in more recent years most of the harvest has been in open water instead of the more difficult hunting of seals at holes and lairs (McLaren, 1958; Nelson, 1969). The most important area for Nuiqsut hunters is off the Colville River Delta, between Fish Creek and Pingok Island, which corresponds to approximately the eastern half to the activity area. Seal hunting occurs in this area by snow machine before spring break-up and by boat during summer. Subsistence patterns are reflected in harvest data collected in 1992 where Nuiqsut hunters harvested 22 of 24 ringed seals and all 16 bearded seals during the open water season from July to October (Fuller and George, 1997). Only a small number of ringed seals was harvested during the winter to early spring period, which corresponds to the time of the proposed on-ice seismic operations.

Based on harvest patterns and other factors, on-ice seismic operations in the activity area are not expected to have an unmitigable adverse impact on subsistence uses of ringed and bearded seals because:

(1) Operations would end before spring breakup, after which subsistence hunters harvest most of their seals.

(2) Operations would temporarily displace relatively few seals, since most of the habitat in the activity area is marginal to poor and supports relatively low densities of seals during winter. Displaced seals would likely move a short distance and remain in the area for potential harvest by native hunters (Frost and Lowry, 1988; Kelly e3, 1988).

(3) The area where seismic operations would be conducted is small compared to the large Beaufort Sea subsistence hunting area associated with the extremely wide distribution of ringed seals.

In order to ensure the least practicable adverse impact on the species and the subsistence use of ringed seals, all activities will be conducted as far as practicable from any observed ringed seal structure, and crews will be required to avoid hunters and the locations of any seals being hunted in the activity area, whenever possible. Finally, the applicant will consult with subsistence hunters of Nuiqsut and provide the community, the North Slope Borough, and the Inupiat Community of the North Slope with information about its planned activities (timing and extent) before initiating any on-ice seismic activities.

Mitigation

Similar to work in previous years, NMFS expects the following mitigation will be undertaken by the applicant to ensure that any taking will be at the lowest level practicable. All activities will be required to be conducted in a manner that minimizes adverse effects on ringed and bearded seals and their habitat. Activities must be conducted as far as practicable from any observed ringed seals or ringed seal lair. For example, no energy source may be placed over an observed ringed seal lair and only vibrator-type energy-source equipment will be used. Seismic crews will receive training so that they can recognize potential ringed seal lairs and adjust their seismic operations. Furthermore, if seismic operations go beyond March 20, 2003 in waters deeper than 3 m (9.8 ft), a survey using trained dogs will be completed to identify active seal holes/ birthing lairs or hole/ lair habitats so they can be avoided by seismic operations to the greatest extent practicable. If trained dogs are not available, then potential habitat will be identified by trained marine mammal biologists based on the characteristics of the ice (i.e., deformation, cracks, etc.).

Monitoring and Reporting

Ringed seal pupping occurs in lairs from late March to mid-to-late April (Smith and Hammill, 1981). Prior to commencing on-ice seismic surveys after March 20th , a survey using experienced field personnel and trained dogs will be conducted to identify potential seal structures along the planned on-ice seismic transmission routes. The seal structure survey will be conducted before selection of precise transit routes to ensure that seals, particularly pups, are not injured by equipment. The locations of all seal structures will be recorded by Global Positioning System (GPS), staked, and flagged with surveyor's tape. Surveys will be conducted 150 m (492 ft) to each side of the transit routes. Actual width of route may vary depending on wind speed and direction, which strongly influence the efficiency and effectiveness of dogs locating seal structures. Survey will only be conducted in the portions of the activity area where water depths exceed 3 m (9.8 ft). Few, if any, seals inhabit ice-covered waters below 3 m (9.8 ft) due to water freezing to the bottom or poor prey availability caused by the limited amount of ice-free water.

The level of take, while anticipated to be negligible, will be assessed by conducting a second seal structure survey immediately after the end of the seismic surveys. A single on-ice survey will be conducted by biologists on snowmachines using a GPS to relocate and determine the status of seal structures located during the initial survey. The status (active vs. inactive) of each structure will be determined to assess the level of incidental take by seismic operations. The number of active seal structures abandoned between the initial survey and the final survey will be the basis for enumerating take. If dogs are not available for the initial survey, take will be determined by using observed densities of seal on ice reported by Moulton *et al.* (2001) for the Northstar project, which is

approximately 20 nm (37 km) from the eastern edge of the proposed activity area.

In the event that seismic surveys can be completed in that portion of the activity area deeper than 3 m (9.8 ft) before mid-March, no field surveys would be conducted of seal structures. Under this scenario, surveys would be completed before pups are born and disturbance would be negligible. Therefore, take estimates would be determined for only that portion of the activity area exposed to seismic surveys after March 20, which would be in water 3 m (9.8 ft) or less deep. Take for this area would be estimated by using the observed density (13/100 km2) reported by Moulton *et al.* (2001) for water depths between 0 to 3 m (0 to 9.8 ft) in the Northstar project area, which is the only source of a density estimate stratified by water depth for the Beaufort Sea. This would be an overestimation requiring a substantial downward adjustment to reflect the actual take of seals using lairs, since few if any of the structures in these water depths would be used for birthing, and Moulton *et al.* (2001) estimate includes all seals.

This monitoring program was reviewed at the fall 2002 on-ice meeting sponsored by the National Marine Mammal Laboratory, NMFS in Seattle and found acceptable.

An annual report must be submitted to NMFS within 90 days of completing the year's activities.

National Environmental Policy Act (NEPA)

As a result of the information provided in EAs prepared in 1993 and 1998 for winter seismic activities, NOAA concluded that implementation of either the preferred alternative or other alternatives identified in the EA would not have a significant impact on the human environment. Therefore, an Environmental Impact Statement was not prepared. Accordingly, because the proposed action discussed in this document is not substantially different from the 1992 and 1998 actions, and because a reference search has indicated that no significant new scientific information or analyses have been developed in the past several years significant enough to warrant new NEPA documentation, this action is categorically excluded from further review under NOAA Administrative Order 216–6. A copy of the 1998 EA and FONSI is available upon request (see **ADDRESSES**).

Endangered Species Act (ESA)

NMFS has determined that no species listed as threatened or endangered under the ESA will be affected by issuing an authorization under section 101(a)(5)(D) of the MMPA.

Preliminary Determinations

The anticipated impact of winter seismic activities on the species or stock of ringed and bearded seals is expected to be negligible for the following reasons:

(1) The activity area supports a small proportion (<1 percent) of the ringed seal populations in the Beaufort Sea;

(2) Most of the winter-run seismic lines will be on ice over shallow water where ringed seals are absent or present in very low abundance. Over 60 percent of the activity area is near shore and/or in water less than 3 m (9.8 ft) deep, which is generally considered poor seal habitat. Moulton *et al.* (2001) reported that only 6 percent of 660 ringed seals observed on ice in the Northstar project area were in water between 0 to 3 m (0 to 9.8 ft)deep.

(3) Seismic operators will avoid moderate and large pressure ridges, where seal and pupping lairs are likely to be most numerous, for reasons of safety and because of normal operational constraints;

(4) Many of the on-ice seismic lines and connecting ice roads will be laid out and explored during January and February when many ringed seals are still transient and considerably before the spring pupping season;

(5) The sounds from energy produced by vibrators used during on-ice seismic programs typically are at frequencies well below those used by ringed seals to communicate (1000 Hz). Thus, ringed seal hearing is not likely to be very good at those frequencies and seismic sounds are not likely to have strong masking effects on ringed seal calls. This effect is further moderated by the quiet intervals between seismic energy transmissions.

(6) There has been no major displacement of seals away from on-ice seismic operations (Frost and Lowry, 1988). Further confirmation of this lack of major response to industrial activity is illustrated by the fact that there has been no major displacement of seals near the Northstar Project. Studies at Northstar have shown a continued presence of ringed seals throughout winter and creation of new seal structures (Williams *et al.* 2001).

(7) Although seals may abandon structures near seismic activity, studies have not demonstrated a cause and effect relationship between abandonment and seismic activity or biologically significant impact on ringed seals. Studies by Williams *et al.* (2001), Kelley *et al.* (1986, 1988) and Kelly and Quakenbush (1990) have shown that abandonment of holes and lairs and establishment or re-occupancy of new ones is an ongoing natural occurrence, with or without human presence. Link *et al.* (1999) compared ringed seal densities between areas with and without vibroseis activity and found densities were highly variable within each area and inconsistent between areas (densities were lower for 5 days, equal for 1 day, and higher for 1 day in vibroseis area), suggesting other factors beyond the seismic activity likely influenced seal use patterns. Consequently, a wide variety of natural factors influence this patterns of seal use including time of day, weather, season, ice deformation, ice thickness, accumulation of snow, food availability and predators as well as ring seal behavior and populations dynamics.

In winter, bearded seals are restricted to cracks, broken ice, and other openings in the ice. On-ice seismic operations avoid those areas for safety reasons. Therefore, any exposure of bearded seals to on-ice seismic operations would be limited to distant and transient exposure. Bearded seals exposed to a distant on-ice seismic operation might dive into the water. Consequently, no significant effects on individual bearded seals or their population are expected, and the number of individuals that might be temporarily disturbed would be very low.

As a result, CPA believes the effects of on-ice seismic are expected to be limited to short-term and localized behavioral changes involving relatively small numbers of seals. As NMFS came to a similar finding in the EA prepared in 1998 for on-ice seismic activity in the Beaufort Sea, NMFS has preliminarily determined that these changes in behavior are expected to be negligible (NMFS, 1998). Therefore, the potential effects of the proposed on-ice seismic operations during 2003 are unlikely to result in more than small numbers of seals being affected, have no more than a negligible impact on ringed and bearded seal stocks and not have an unmitigable adverse impact on subsistence uses of these two species.

Information Solicited

NMFS requests interested persons to submit comments, and information, concerning this request (see **ADDRESSES**).

Dated: December 19, 2002.

Laurie K. Allen,

Acting Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–32846 Filed 12–27–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 122302C]

New England Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Research Steering Committee, Groundfish Oversight Committee and Social Science Advisory Committee in January, 2003 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meetings will be held between January 14–24, 2003. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held in Wakefield, Mansfield, and Weston, MA. See **SUPPLEMENTARY INFORMATION** for specific locations.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Agendas

Tuesday, January 14, 2003, 9:30 a.m. Research Steering Committee Meeting.

Location: Sheraton Colonial, One Audubon Road, Wakefield, MA 01880; telephone: (781) 245–9300.

The committee will receive an update on the status of current projects, recent contract awards and funding for the NOAA Fisheries Cooperative Research Partners Initiative, including progress on the development of a Request for Proposals concerning fisheries habitat research. They will discuss the development of procedures for tracking cooperative research projects, evaluation of final reports, and particularly the integration of results into the management process. There will be discussion of the status of the experimental fishing permit program, if time allows.

Wednesday, January 22, 2003, 9:30 a.m. Groundfish Oversight Committee Meeting.

Location: Holiday Inn, 31 Hampshire Street, Mansfield, MA 02048; telephone: (508) 339–2200.

The Groundfish Oversight Committee will meet to consider a number of issues related to the development of Amendment 13 to the Northeast Multispecies Fishery Management Plan (FMP). They will review timelines for continued development of the amendment and will plan the actions that must be taken in order to meet a May 1, 2004 implementation date. This review will include a discussion of the analysis of different rebuilding time periods and the alternatives that will be considered under each alternative. This discussion may include development of recommendations to the Council to eliminate management alternatives from further consideration. The Committee will also work on additional details for the total allowable catch alternatives and the implementation of a resource sharing understanding with Canada for transboundary stocks of cod, haddock, and yellowtail. The Committee will review information on bycatch of groundfish in a proposed whiting grate fishery and will develop a recommendation to the Council for Framework 38, the action that will implement that fishery. Finally, the Committee may develop suggestions for a days at sea (DAS) leasing program that the Council may ask the NMFS to implement in advance of the adoption of Amendment 13.

Friday, January 24, 2003, 10 a.m. Social Science Advisory Committee Meeting.

Location: Weston Public Library, 87 School Street, Weston, MA 02493; telephone: (781) 893–3312.

The committee will meet to discuss how to assist the Council in the development of amendments to the Monkfish and Groundfish FMPs. They will also discuss and possibly develop comments on the Scallop Draft Supplementary Environmental Impact Statement; elect a Chair, Vice Chair and discuss organizational issues.

Although non-emergency issues not contained in these agendas may come before this group for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice 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 final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: December 24, 2002.

John H. Dunnigan,

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

[FR Doc. 02–32951 Filed 12–27–02; 9:30 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 120902B]

Marine Mammals; File No. 848–1335

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

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that The Honolulu Laboratory, Southwest Fisheries Science Center, 2570 Dole Street, Honolulu, Hawaii 96822–2396 (Dr. George Antonelis, Jr., Principal Investigator), has been issued an amendment to scientific research Permit No. 848–1335–09 to extend the expiration date through May 31, 2003.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376;

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018; and

Protected Species Program Coordinator, Pacific Islands Area Office, NMFS, 1601 Kapiolani Blvd., Rm, 1110, Honolulu, HI 96814–4700; phone (808)973–2935; fax (808)973–2941).

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of § 216.39 of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the provisions of § 222.306 of the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Issuance of this amendment, as required by the ESA was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this permit; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: December 23, 2002.

Jill Lewandowski,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–32847 Filed 12–27–02; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of an Import Limit and a Sublimit for Certain Man-Made Fiber Textile Products Produced or Manufactured in Belarus

December 23, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the commissioner of customs establishing a limit and a sublimit.

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs Web site at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Bilateral Textile Memorandum of Understanding dated February 17, 2000, as extended on December 20, 2002, between the Governments of the United States and Belarus establishes a limit and a sublimit for Category 622 and Sub-Category 622–L, respectively, for the period January 1, 2003 through January 31, 2003.

This limit and sublimit may be revised if Belarus becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Belarus.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the limit and sublimit. A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Information regarding the availability of the 2003 CORRELATION will be published in the **Federal Register** at a later date.

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 23, 2002.

Commissioner of Customs, Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; you are directed to prohibit, effective on January 1, 2003, entry into the United States for consumption and withdrawal from warehouse for consumption of glass fiber fabric products in Category 622, produced or manufactured in Belarus and exported during the one-month period beginning on January 1, 2003 and extending through January 31, 2003, in excess of 1,163,280 square meters of which not more than 101,155 square meters shall be in Category 622–L [1]

Products in the above category and sub-category exported during 2002 shall be charged to the applicable category limit and sublimit for that year (see directive dated October 19, 2001) to the extent of any unfilled balance. In the event the limit and sublimit established for that period have been exhausted by previous entries, such products shall be charged to the limit and sublimit set forth in this directive.

The limit and sublimit set forth above are subject to adjustment pursuant to the current bilateral agreement between the Governments of the United States and Belarus.

This limit and sublimit may be revised if Belarus becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Belarus.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–32820 Filed 12–27–02; 8:45 am]

BILLING CODE 3510–DR–P

[1] Category 622–L: only HTS numbers 7019.51.9010, 7019.52.4010, 7019.52.9010, 7019.59.4010, and 7019.59.9010.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Denial of Participation in the Special Access Program

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs suspending participation in the Special Access Program.

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Richard Stetson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Committee for the Implementation of Textile Agreements (CITA) has determined that Fieldston Clothes, Inc. has violated the requirements for participation in the Special Access Program and has suspended Fieldston Clothes, Inc. from participation in the Program for the one-year period, January 1, 2003 through December 31, 2003.

Through the letter to the Commissioner of Customs published below, CITA directs the Commissioner to prohibit entry of products under the Special Access Program by or on behalf of Fieldston Clothes, Inc. during the period from January 1, 2003 through December 31, 2003, and to prohibit entry by or on behalf of Fieldston Clothes, Inc. under the Special Access

Program of products manufactured from fabric exported from the United States during that period.

Requirements for participation in the Special Access Program are available in **Federal Register** notice 63 FR 16474, published on April 3, 1998.

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements,

Commissioner of Customs, Department of the Treasury, Washington, DC 20229.

Dear Commissioner: The purpose of this directive is to notify you that the Committee for the Implementation of Textile Agreements has suspended Fieldston Clothes, Inc. from participation in the Special Access Program for the period from January 1, through December 31, 2003. You are therefore directed to prohibit entry of products under the Special Access Program by or on behalf of Fieldston Clothes, Inc. during the period from January 1, 2003 through December 31, 2003. You are further directed to prohibit entry of products under the Special Access Program by or on behalf of Fieldston Clothes, Inc. manufactured from fabric exported from the United States during the period from January 1, 2003 through December 31, 2003.

Sincerely,

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–32950 Filed 12–27–02; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Air University Board of Visitors; Notice of Meeting

AGENCY: Department of the Air Force, (DoD).

ACTION: Notice of meeting.

SUMMARY: The Air Force Institute of Technology Subcommittee of the Air University Board of Visitors will hold an open meeting on 16–18 March 2003, with the first business session beginning at 0830 (five seats available). The purpose of the meeting is to give the board an opportunity to review Air Force Institute of Technology's educational programs and to present to the Commandant a report of their findings and recommendations concerning these programs.

DATES: 16–18 March 2003.

ADDRESSES: Commandant's Conference Room, Building 642, Wright-Patterson Air Force Base, Ohio.

FOR FURTHER INFORMATION CONTACT: Ms. Beverly Houtz in the Directorate of Resources, Air Force Institute of Technology, (937) 255–8400 x 3630.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 02–32822 Filed 12–27–02; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF DEFENSE

Department of the Air Force

Air University Board of Visitors; Notice of Meeting

AGENCY: Department of the Air Force, (DoD).

ACTION: Notice of meeting.

SUMMARY: The Air University Board of Visitors will hold an open meeting on 13–16 April 2003, with the first business session beginning at 0830 (five seats available). The purpose of the meeting is to give the board an opportunity to review Air University's educational programs and to present to the Commandant, Secretary of the Air Force and Chief of Staff of the Air Force a report of their findings and recommendations concerning these programs.

DATES: 13–16 April 2003.

ADDRESSES: Commandant's Conference Room, Building 800, Maxwell Air Force Base, Alabama.

FOR FURTHER INFORMATION CONTACT: Dr. Dorothy Reed, Director of Academic Affairs, Air University (334) 953–5159.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 02–32823 Filed 12–27–02; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Collection; Comment Request

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by February 28, 2003.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to Department of the Army, Operations & Plans Officer Mortuary Affairs and Casualty Support Division, PERSCOM, 200 Stovall Street, Hoffman I, (ATTN: Major Joseph M. Girski), Alexandria, VA 22332–0300. Consideration will be given to all comments received within 60 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Department of the Army Reports Clearance Officer at (703) 695–5509.

Title, Form Number, and OMB Number: Disposition of Remains—Reimbursable Basis and Request for Payment of Funeral and/or Interment Expense; DD Forms 2065 and 1375; OMB Number 0704–0030.

Needs and Uses: DD Form 2065 records disposition instructions and costs for preparation and final disposition of remains, DD Form 1375 provides next-of-kin an instrument to apply for reimbursement of funeral\interment expenses. This information is used to adjudicate claims for reimbursement of these expenses.

Affected Public: Individuals Or Households.

Annual Burden Hours: 425.

Number of Respondents: 2,450.

Responses Per Respondent: 1.

Average Burden Per Response: 20 minutes (DD 2065); 10 minutes (DD 1375) minutes.

Frequency: On Occasion.

SUPPLEMENTARY INFORMATION: The above forms are initially prepared by military authorities and presented to the next-of-kin or sponsor to fill-in the reimbursable costs or desired disposition of remains. Without the information on these forms the government would not be able to respond to the survivor's wishes or justify its expenses in handling the deceased. Also available at government expense is transportation of the remains

to a port of entry in the United States is authorized.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–32810 Filed 12–27–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Collection; Comment Request

AGENCY: Department of the Army, DOD.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by February 28, 2003.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the U.S. Total Army Personnel Command, Officer Personnel Management Directorate, 200 Stovall Street, Alexandria, VA 22332–0314, ATTN: TAPC–OPD–C (Annette Bush). Consideration will be given to all comments received within 60 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Department of the Army Reports Clearance Officer at (703) 695–5509.

Title, Associated Form, and OMB Number: Application and Agreement For Establishment of a National Defense Cadet Agreement; DA Form 3126–1; OMB Control Number 0702–0110.

Needs and Uses: Educational institutions desiring to host a National Defense Cadet Corps Unit (NDCC) may apply by using a DA Form 3126–1. The DA Form 3126–1 documents the agreement and becomes a contract signed by both the secondary institution and the U.S. Government. This form provides information on the school's facilities and states specific conditions if a NDCC unit is placed at the institution. The data provided on the applications is used to determine which school will be selected.

Affected Public: State, Local, or Tribal Government; Not-for-Profit Institutions.

Annual Burden Hours: 35.

Number of Respondents: 35.

Responses Per Respondent: 1.

Average Burden Per Response: 1 hour.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION: The DA Form 3126–1 is initiated by the school desiring to host a unit and is countersigned by a representative of the Secretary of the Army. The contract is necessary to establish a mutual agreement between the secondary institution and the U.S. Government. The Commanding General, U.S. Total Army Personnel Command, is responsible for administering the JROTC program and overall policy. Region commanders are responsible for operating and administering the JROTC training conducted within the areas.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–32813 Filed 12–27–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Collection; Comment Request

AGENCY: Department of the Army, DOD.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by February 25, 2003.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Office of the Deputy Assistant Secretary of the Army for Defense Exports and Cooperation, ATTN: SAAL–MP (Mr. Paul Villare), 1777 N. Kent Street, Suite 8200, Arlington, VA 22209. Consideration will be given to all comments received within 60 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Department of the Army Reports Clearance Officer at (703) 695–5509.

Title, Associated Form, and OMB Number: International Military Student Information, DD Form 2339, OMB Control Number 0702\0064.

Needs and Uses: The DD Form 2339 is required in support of international military students who are attending training in the United States with the Military Departments as part of the security assistance training program. The DD Form 2339 is utilized in gathering information on the international student prior to his/her arrival in the United States in order that civilian and military sponsors can be assigned to assist the student during his/her training.

Affected Public: Individual or Households.

Annual Burden Hours: 90.

Number of Respondents: 3,000.

Responses Per Respondent: 1.

Average Burden Per Response: 15 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION: The International Military Student Information (IMSI) is utilized by the military departments and pertains only to non U.S. citizens who are members of a foreign army that have been designated by their government to attend training at a military facility. The IMSI is utilized by the gaining organization to provide background information on the individual in order that a military and civilian sponsor may

be assigned to assist the individual during his/her stay in the United States.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–32814 Filed 12–27–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Collection; Comment Request

AGENCY: Department of the Army, DOD.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automatic collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by February 28, 2003.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to U.S. Army ROTC Cadet Command, ATTN: ATCC–01 (Elaine Krzanowski), 55 Patch Road, Building 56, Fort Monroe, VA 23651–1052. Consideration will be given to all comments received within 60 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Department of the Army Reports Clearance Officer at (703) 695–5509.

Title: Army ROTC Referral Information, ROTC Form 155–R, OMB Control Number 0702–0111.

Needs and Uses: The Army ROTC Program produces approximately 75 percent of the newly commissioned officers for the U.S. Army. The Army ROTC must have the ability to attract quality men and women who will pursue college degrees. Currently, there are 13 recruiting Teams (Goldminers) located in various places across the United States aiding in this cause. Their mission is to refer quality high school students to colleges and universities offering Army ROTC. Goldminers, two officer personnel, will collect ROTC Referral information at a high school campus and document it on ROTC Cadet Command Form 155–R.

Affected Public: Individuals or Households.

Annual Burden Hours: 4,075.

Number of Respondents: 16,300.

Responses Per Respondent: 1.

Average Burden Per Response: 15 minutes.

Frequency: On Occasion.

SUPPLEMENTARY INFORMATION: The purpose of the information is to provide prospect referral data to a Professor of Military Science to contact individuals who have expressed an interest in Army ROTC. If Goldminers did not collect referral information, we would suffer a negative impact on the recruiting effort and subsequent commissioning of new officers for the U.S. Army.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–32815 Filed 12–27–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of Non-Exclusive, Exclusive License or Partially Exclusive Licensing of U.S. Patent Apparatus for Lifting or Pulling a Load

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR Part 404.6, announcement is made of the availability for licensing of U.S. Patent No. US 6,488,267 B1 entitled ''Apparatus for Lifting or Pulling a Load'' issued December 3, 2002. This patent has been assigned to the United States Government as represented by the Secretary of the Army.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Rosenkrans at U.S. Army Soldier and Biological Chemical Command, Kansas Street, Natick, MA 01760, Phone; (508) 233–4928 or E-mail: *Robert.Rosenkrans@natick.army.mil.*

SUPPLEMENTARY INFORMATION: Any licenses granted shall comply with 35 U.S.C. 209 and 37 CFR part 404.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–32809 Filed 12–27–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Intention To Grant Exclusive Patent License on a Federally Owned Invention

AGENCY: Department of the Army, DOD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.7, announcement is made of the intention to grant an exclusive patent license for U.S. Patent Number 5,665,970, entitled, ''Directional Radiation Detector and Imager,'' that was issued to Kronenberg et al. on September 9, 1997. The United States Government, as represented by the Secretary of the Army, has rights in this invention. Accordingly, under the authority of Section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Pub. L. 99–502) and sections 207 and 209 of Title 35, United States Code, the Department of the Army, as represented by the U.S. Army Communications-Electronics Command, Fort Monmouth, NJ, intends to grant an exclusive patent license for U.S. Patent Number 5,665,970 to Canberra Industries Inc.

ADDRESSES: Commander, U.S. Army, Communications-Electronics Command, ATTN: AMSEL–LG–L (Mr. George B. Tereschuk), Fort Monmouth, New Jersey 07703–5010.

FOR FURTHER INFORMATION CONTACT: Mr. George B. Tereschuk, Patent Attorney, U.S. Army (732) 532–9795.

SUPPLEMENTARY INFORMATION: U.S. Patent Number 5,665,970, filed on July 3, 1996, entitled, ''Directional Radiation Detector and Imager,'' was issued to Kronenberg et al. on September 9, 1997. This U.S. Patent was assigned to the United States of America, as represented by the Secretary of the Army, and provides a new type of radiation sensor and radiation imager that is formed by sandwiching two materials having different atomic numbers (Z) around a radiation detector, such as scintillator or Geiger-Mueller type radiation counters, or solid state radiation detectors, such as those made of silicon. Pursuant to 35 U.S.C. 209(e) any interested party may file written comments or objections to

this intended exclusive patent license at the above address. Written comments or objections must be filed within fifteen (15) days from the date of the publication of this notice in the **Federal Register.**

George B. Tereschuk,

Patent Attorney, Intellectual Property Law Division.

[FR Doc. 02–32817 Filed 12–27–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Intent To Grant an Exclusive License of a U.S. Government-Owned Patent

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(I)(i), announcement is made of the intent to grant an exclusive, royalty-bearing, revocable license to U.S. patent number 6,387,665 issued May 14, 2002 entitled ''Method of Making a Vaccine for Anthrax,'' and U.S. patent number 6,316,006 issued November 13, 2001 entitled ''Asporogenic B. Anthracis Expression System'' to VaxGen, Inc. with its principal place of business at 1000 Marina Blvd., Suite 200, Brisbane, Ca 94005. The exclusive field of use will be in field of preventive vaccines against anthrax infection.

DATES: File written objections by January 14, 2003.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: Anyone wishing to object to the grant of this license can file written objections along with supporting evidence, if any, within 15 days from the date of this publication. Written objections are to be filed with the Command Judge Advocate (see **ADDRESSES**).

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–32812 Filed 12–27–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare a Supplemental Draft Environmental Impact Statement for the Port of the Americas Port Complex

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The Port of the Americas (the applicant) is proposing the development of a transshipment port facility. The proposal included the development of hubs at one or more sites on the south coast of Puerto Rico, in the Municipalities of Ponce, Peñuelas, and Guayanilla. The proposed terminals would need section 10 of the Rivers and Harbors Act, section 404 of the Clean Water Act permits and section 103 of the Marine Protection, Research and Sanctuaries Act at one or more of the sites.

FOR FURTHER INFORMATION CONTACT: Edwin E. Muñiz, (787) 729–6905/6944, Chief, Antilles Regulatory Section, U.S. Army Corps of Engineers, 400 Fernandez Juncos Avenue, San Juan, Puerto Rico 00901.

SUPPLEMENTARY INFORMATION: On August 28, 2001, the Corps of Engineers published a Notice of Intent to prepare a Draft Environmental Impact Statement (DEIS) for the Las Americas Transshipment Port Complex being proposed by the Puerto Rico Infrastructure Financing Authority (AFI) acronym in Spanish, the original applicant. On September 20, 2002, the Corps issued the Notice of Availability of the DEIS for the Proposed Port of the Americas. In the DEIS, the applicant's preferred alternative consisted in the development of terminals at the Guayanilla and Ponce harbors to accommodate Post-Panamax vessels. In the Guayanilla-Peñuelas area, this alternative would include the following:

- Construction of a new pier with a maximum length of 6,000 feet, with support facilities capable of handling as many as four Post-Panamax vessels;
- Discharge of fill material in approximately 110 acres of shallow navigable waters, including approximately 12 acres of mangrove coastal wetlands in the Punta Gotay area, for the development of loading-unloading storage areas and other support facilities;
- Development for value-added activities of as much as 300 acres of a parcel owned by Union Carbide in Peñuelas adjoining Punta Guayanilla;
- Development and/or improvements to other infrastructure within the Guayanilla-Peñuelas area to operate the terminal efficiently, including water, sewers, power, highways and communication services.

In Ponce, the Applicant's Preferred Alternative would include:

- Expansion of the existing transshipment pier to a maximum length of about 3,610 feet to allow simultaneous handling of as many as two Post-Panamax vessels;
- Immediate dredging of the navigation channel and berthing areas to a minimum depth of 45 feet and a maximum of 53 feet to allow the navigation of Post-Panamax vessels;
- Disposal of part of the dredged material at the EPA designated offshore disposal site south of Ponce, while reclaiming for beneficial use for either the fill at the Guayanilla Harbor or fill at uplands in the vicinity;
- Development of approximately 132 acres of upland adjacent to the port for value-added activities.

The applicant (Port of the Americas) notified the Corps of Engineers of their decision to modify their preferred alternative as follows:

a. The elimination of the proposed fill in the Guayanilla Harbor;

b. The reduction in length of the proposed pier in the Guayanilla Harbor to a maximum length of 3,000 feet to service Panamax vessels; and

c. The proposal to fill approximately 70 acres of waters of the U.S. at the Ponce harbor adjacent to the proposed expansion of pier number 8.

Because the proposed changes are significant changes to what was previously proposed, a Supplemental Draft Environmental Impact Statement (S–DEIS) for the Port of the Americas Port Complex will be prepared.

Pursuant to section 10 of the Rivers and Harbors Act structures the Corps of Engineers has regulatory authority over structures and/or work in or affecting navigable waters of the United States. Under section 404 of the Clean Water Act, the Corps of Engineers has regulatory authority to permit the discharge of dredged or fill material into wetlands and other waters of the United States. Also, under section 103 of the Marine Protection, Research and Sanctuaries Act, the Corps of Engineers has regulatory authority over the transportation of dredged material for the purpose of dumping it in ocean waters at dumping sites designated under 40 CFR part 228. The guidelines pursuant to section 404(b) of the act require that impacts to the aquatic environment be avoided and minimized to the extent practicable. Permit

applications for the transportation of dredged material for the purpose of dumping it in ocean waters will be evaluated to determine whether the proposed dumping will unreasonably degrade or endanger human health, welfare, amenities, or the marine environment, ecological systems or economic potentialities.

In determining whether to issue a permit, the Corps must also comply with other requirements including, but not limited to, the Endangered Species Act, the National Environmental Policy Act, the Coastal Zone Management Act, the Magnunson-Stevens Fishery Conservation and Management Act Section 401 of the Clean Water Act, and other applicable Federal laws. Modifying land for new uses also involves zoning, land use planning, water management, and other regulatory/planning requirements at the local, Commonwealth, and Federal level.

Issues: During the scoping process for the preparation of the DEIS, several issues of relevance associated with the development of the PTA were identified. These issues were evaluated in detail in the DEIS for each of the alternatives considered, including the no-action alternative. Each issue was evaluated in terms of a list of measurement indicators to complete a thorough evaluation of the environmental impacts associated with each issue. The following issues were evaluated in detail as part of this DEIS; Fish and Wildlife Resources; Marine Resources/Special Aquatic Sites; Essential Fish Habitat; Threatened or Endangered Species; Ecologically Sensitive Areas; Wetlands, Coastal Zone; Flooding, Water and Sediment Quality; Air Quality; Cultural Resources; Socio-Economic Impacts; Hazardous, Toxic, and Radioactive Wastes; Dredging and Disposal of Dredged Material; Navigation; Infrastructure; Marine Currents; and Noise. The DEIS evaluated the potential direct, indirect, and cumulative environmental consequences. As a result of the comments provided by the resource agencies in reviewing the DEIS, the new applicant's preferred alternative is being developed. The same issues identified in the scoping process for the DEIS will be considered in the S–DEIS. However, the Corps of Engineers will consider any additional scoping issues provided to us.

Scoping: On October 31, 2002, the Corps of Engineers and the applicant met with Federal and Commonwealth resources agencies to discuss the alternative to discharge fill in Ponce. As result of the comments provided by the resource agencies in reviewing the DEIS, the new applicant's preferred alternative is being developed. The Corps of Engineers may hold additional scoping meeting(s) with Federal and State Agencies. At this time, there are no plans for a public scoping meeting. If a public scoping meeting is held by the Corps of Engineers, it will be announced. In addition Federal, State and local agencies, as well as interested private organizations and individuals are encouraged to suggest additional issues not listed above for consideration to submit comments.

Public Involvement: We invite the participation of affected Federal, State, and local agencies, and other interested private organizations and individuals that have additional issues not listed above to submit written comments to the information contact provided in this notice no later than 30 days from the date of this notice.

Coordination: The proposed action is being coordinated with a number of Federal, Commonwealth, and local agencies including but not limited to the following: U.S. Fish and Wildlife Service, National Marine Fisheries Service, U.S. Environmental Protection Agency, U.S. Coast Guard, Puerto Rico Department of Natural and Environmental Resources, Puerto Rico Environmental Quality Board, Puerto Rico Planning Board, Puerto Rico State Historic Preservation Officer, and other agencies as previously identified in scoping, public involvement, and agency coordination.

Other Environmental Review and Consultation: The proposed action would involve evaluation for compliance with guidelines pursuant to section 404(b) of the Clean Water Act, public interest review, application for Water Quality Certification pursuant to section 401 of the Clean Water Act, and determination of Coastal Zone Management Act consistency.

S–DEIS Preparation: We estimate that the S–DEIS will be available to the public on or about March 14, 2003.

Dated: December 17, 2002.

John R. Hall,

Chief, Regulatory Division.

[FR Doc. 02–32816 Filed 12–27–02; 8:45 am]

BILLING CODE 3710–AJ–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Grant of Exclusive or Partially Exclusive Licenses

AGENCY: Department of the Army, U.S. Corps of Engineers, DoD.

ACTION: Notice.

SUMMARY: The Department of the Army, U.S. Army Corps of Engineers, announces the general availability of exclusive, or partially exclusive licenses for the pending patents listed under **SUPPLEMENTARY INFORMATION.** Any license granted shall comply with 35 U.S.C. 209 and 37 CFR Part 404.

ADDRESSES: Humphreys Engineer Center Support Activity, Office of Counsel, 7701 Telegraph Road, Alexandria, VA 22315–3860.

DATES: Applications for an exclusive or partially exclusive license may be submitted at any time from the date of this notice. However, no exclusive or partially exclusive license shall be granted until March 31, 2003.

FOR FURTHER INFORMATION CONTACT: Patricia L. Howland, (703) 428–6672.

SUPPLEMENTARY INFORMATION:

1. *Title:* System and Method for Remotely Monitoring an Interface Between Dissimilar Materials. A system for efficiently and cost effectively monitoring the status of the interface between two dissimilar media is provided. In a preferred embodiment, the system uses principles applied from the theory of time domain reflectometry (TDR), together with novel circuitry and low cost narrow band telemetry, to provide real time monitoring on a continuous basis, as needed. The circuitry involved permits operation of the system without relying on relative values of signal amplitude while employing a novel feedback function that sets the pulse repetition frequency instantaneously to permit an optimum data collection rate as well as a separate measure of the status based on the system operating parameters. It has particular application to real time monitoring and alerting to the effect of scour events in waterways.

Serial No.: 09/879,001.

Date: 6/13/2001.

2. *Title:* Natural Cue Surface Bypass Collector. A method that employs natural hydraulic cues to guide migrating fish, in particular juvenile fish, to bypass channels to circumvent barriers to their downstream migration, such as booms, weirs, dams, hydroelectric powerhouses, and sluice gates. The flow entering into the turbines of the powerhouse are slightly modified to create a hydraulic gradient in the strain rate hydraulic variables that guides fish to the entrance of a surface bypass collector.

Serial No.: 10/045,381.

Date: 1/15/2002.

3. *Title:* Mycoherbicidal Compositions and Methods of Preparing and Using the

Same. A more environmentally safe measure to control aquatic weeds is also cost-efficient and relies on biological agents in the form of mycoherbicides. Mycoherbicides are typically formulated with one or more fungal pathogens or metabolites, or both thereof with herbicidal activity. The fungal pathogens are typically specific to infecting a certain spectrum of plant types, thus providing useful targeted delivery. It would be an advance in the art of bioherbicides to develop a mycoherbicidal composition, which may be applied either in wet or dry form, comprising an effective population control agent efficacious against a broad range of aquatic weeds including hydrilla. It would be a further advance in the art to develop a mycoherbicidal composition with enhanced biological viability and stability, specifically comprising a fungal pathogen as the population control agent that is extremely desiccant-tolerant, is capable of germinating both sporogenically and vegetatively, and is highly efficacious against hydrilla and other aquatic weeds, while being easy and relatively inexpensive to prepare and to use. It would also be desirable to provide a method of preparing such fungal pathogens in the form of a micro sclerotium that can efficiently and effectively maximize the biomass production thereof.

Serial No.: 10/138,579.

Date: 5/6/2002.

4. *Title:* Mapping Patterns of Movement Based on the Aggregation of Spatial Information Contained in Wireless Transmissions. Time-tagged coordinates from session-unique transmissions of wireless devices are collected routinely and stored for later analysis. From this data, one may derive a sequence of wireless device operation from which attributes may be ascertained. Sequences are accumulated until a dense aggregate pattern is formed over a geographic area. Aggregate data is sorted into ranges representing speed of movement and then converted to pixels representing cells in an aggregate matrix. Heavily weighted values are assigned to cells that represent a location within a pre-specified spatial error about a data point. Lower values are assigned to cells representing paths, or corridors, connecting these better-identified locations. As more transmission sessions are added to the matrix, the largest weight values cluster as individual cells representing a most likely path. Thus precise topographic attributes may be derived based on these spatial clusters, overlapping paths connecting them, or combinations thereof.

Serial No.: 10/206,757.

Date: 7/29/2002.

5. *Title:* Multi-purpose Mat and Method of Deploying Thereof. Multipurpose panels having L-shaped tabs are interconnected using durable connectors to form a multipurpose mat that facilitates mobility over otherwise unstable terrain. In one embodiment, four-sided panels are fabricated from laminations of fiberglass-reinforced plastic (FRP) with radiused rectangular holes machined in each of two adjacent edges and a recessed L-shaped tab formed along opposing adjacent edges. The connectors are fabricated from corrosion resistant metal and assembled to precise specifications prior to insertion in the rectangular holes machined in pre-specified types of panel. Top and bottom plates of durable connectors are fabricated from 6061–T6 aluminum stock. A threaded bolt used to tie the plates together, to which a liquid threadlocker is applied, is fabricated from a steel alloy suitable for use with aluminum. Two specifically fabricated tools, a spacer guide and an alignment tool, may be used to optimize installation. These also may be fabricated from 6061–T6 aluminum stock.

Serial No.: 10/211,515.

Date: 8/5/2002.

6. *Title:* System and Method for Automated Alerting to Geospatial Anomalies. An inexpensive system and reliable method for detecting spatial anomalies in real time detects hidden anomalies efficiently and safely. In a preferred embodiment, an FM–CW radar front-end communicates with a personal computer incorporating specific filter and processing circuitry, including an AID converter and a DSP. A target volume is illuminated from just above its top surface and return signals processed using the PC as programmed with a purpose-built algorithm. Data are down-converted to audio frequencies for ease in handling using inexpensive audio frequency circuitry. For use in avoiding bridged (hidden) crevasses during operation in snowfields, a version is mounted on a long boom extending from the front of the platform on which it is installed, typically a lead vehicle of a convoy. Heretofore, expensive systems requiring full-time monitoring by an operator were the only safe and reliable solution to insure safe traversal of snowfields.

Serial No.: 10/256,182.

Date: 9/27/2002.

7. *Title:* Motion Detection and Alerting System. A compact, autonomous motion detecting and alerting system alerts to the movement of objects of interest. Mounted on an environmentally sealed PC board are a transceiver such as a CW radar front-end, connectors, signal processors and a communications device. The system provides early warning of movement of an ice sheet or rubble field via the communication device that may be a cellular telephone. This system is mounted proximate the target surface under observation, oriented at pre-specified offset angles both laterally and in elevation. The target is illuminated and energy reflected therefrom is mixed with a portion of the transmitted signal to produce a difference frequency signal that is processed to establish existence of motion within a pre-specified velocity range. Upon verification of motion, notification is sent to a responsible authority. An autonomous or semi-autonomous power source and integral power management function may be incorporated on the same PC board.

Serial No.: 10/255,763.

Date: 9/27/2002.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–32811 Filed 12–27–02; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are available for licensing by the Department of the Navy. U.S. Patent No. 5,264,722 entitled ''Nanochannel Glass Matrix Used in Making Mesoscopic Structures'', Navy Case No. 74,224 and U.S. Patent 6,185,961 entitled ''Nanopost Arrays and Process for Making Same'', Navy Case No. 78,923

ADDRESSES: Requests for copies of the patent cited should be directed to the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Catherine M. Cotell, Ph.D., Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone (202) 767–7230. Due to temporary U.S.

Postal Service delays, please fax (202) 404–7920, e-mail: *cotell@nrl.navy.mil* or use courier delivery to expedite response.

Authority: 35 U.S.C. 207, 37 CFR Part 404.

Dated: December 18, 2002.

R.E. Vincent II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–32961 Filed 12–27–02; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 28, 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 23, 2002.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: New.

Title: Federal Perkins Loan Program Master Promissory Note.

Frequency: On Occasion; Annually.

Affected Public: Individuals or household; Businesses or other for-profit; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 690,000. Burden Hours: 345,000.

Abstract: The promissory note is the means by which a Federal Perkins Loan borrower promises to repay his or her loan.

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. 02–32928 Filed 12–27–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Direct Grant and Fellowship Programs

AGENCY: Department of Education

ACTION: Notice reopening application deadline dates for certain direct grant and fellowship programs.

SUMMARY: The Secretary reopens the deadline dates for the submission of applications by certain applicants (see **ELIGIBILITY**) under certain direct grant and fellowship programs. All of the affected competitions are among those under which the Secretary is making new awards for fiscal year (FY) 2003. The Secretary takes this action to allow more time for the preparation and submission of applications by potential applicants adversely affected by severe weather conditions resulting from the typhoon in Guam and the severe ice storm in North Carolina. The reopenings are intended to help these potential applicants compete fairly with other applicants under these programs.

Note: One of the affected programs or competitions is administered by the Department's Office of Elementary and Secondary Education and two are administered by the Office of Postsecondary Education. You can find information related to each of these competitions under the ''List of Programs Affected'' in this notice.

ELIGIBILITY: The reopening of deadline dates in this notice applies to you if you are a potential applicant from Guam which was severely affected by the recent typhoon or if you are a potential applicant in an area of North Carolina that the President has declared a disaster area as a result of the severe ice storm. In the case of the Jacob K. Javits Fellowship Program, the reopening of the deadline date applies to you if you live in or attend an institution of higher education in one of these areas. These areas include the following:

State/territory	County
North Carolina	Alamance, Alexander, Anson, Burke, Cabarrus, Catawba, Chatham, Cleveland, Davidson, Durham, Edgecombe, Forsyth, Franklin, Gaston, Ganville, Guilford, Halifax, Harnett, Iredell, Lee, Lincoln, McDowell, Mecklenburg, Montgomery, Moore, Nash, Orange, Person, Randolph, Rowan, Rutherford, Stanly, Union, Vance, and Wake.
Guam	

DATES: The new deadline date for transmitting applications under each competition is listed with that competition.

If the program in which you are interested is subject to Executive Order 12372, the deadline date for the transmittal of State process recommendations by State Single Points of Contact (SPOCs) and comments by other interested parties remains as originally posted.

ADDRESSES: The address and telephone number for obtaining applications for, or information about, an individual program are in the application notice for that program. We have listed the date and **Federal Register** citation of the application notice for each program.

If you use a telecommunications device for the deaf (TDD), you may call the TDD number, if any, listed in the individual application notice. If we have not listed a TDD number, you may

call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

If you are an individual with a disability, you may obtain a copy of this notice in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the individual application notices.

If you want to transmit a recommendation or comment under Executive Order 12372, you can find the latest list and addresses of individual SPOCs on the Web site of the Office of Management and Budget at the following address: *http://www.whitehouse.gov/omb/grants*

SUPPLEMENTARY INFORMATION: The following is specific information about each of the programs or competitions covered by this notice:

BILLING CODE 4000–01–U

BILLING CODE 4000-01-C

LIST OF PROGRAMS AFFECTED

CFDA No. and Name	Publication Date and Federal Register Cite	Original Deadline Date for Applications	Revised Deadline Date for Applications
Office of Elementary and Secondary Education			
84.256A Territories and Freely Associated States Educational Grant Program	10/9/2002 (67 FR 62961)	12/9/02	1/10/03
Office of Postsecondary Education			
84.170A Jacob K. Javits Fellowship Program	10/11/02 (66 FR 63395)	12/11/02	1/10/03
84.047A Upward Bound Program	9/20/02 (66 FR 59275)	12/13/02	1/10/03

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: *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*

Dated: December 24, 2002.

Jack Martin,

Chief Financial Officer.

[FR Doc. 02–32840 Filed 12–27–02; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

Office of English Language Acquisition

[CFDA No.: 84.365C]

Native American and Alaska Native Children in School Program; Notice inviting applications for New Awards for Fiscal Year (FY) 2003

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions needed to apply for a grant under this program.

Purpose of Program: The purpose of the program is to provide grants that support language instruction educational programs for limited English proficient children from Native American, Alaska Native, Native Hawaiian and Native American Pacific Islander backgrounds. Projects that are designed for children who are learning and studying Native American languages shall have, as a project outcome, increases in English proficiency and a second language.

Eligible Applicants: The following entities, which operate elementary, secondary, and postsecondary schools primarily for Native American children (including Alaska Native children), are eligible applicants under this program: Indian tribes; tribally sanctioned educational authorities; Native Hawaiian or Native American Pacific Islander native language educational organizations; elementary schools or secondary schools that are operated or funded by the Bureau of Indian Affairs (BIA), or a consortium of such schools; elementary schools or secondary schools operated under a contract with or grant from the BIA in consortium with another such school or a tribal or community organization; and elementary schools or secondary schools operated by the BIA and an institution of higher education, in consortium with elementary schools or secondary schools operated under a contract with or a grant from the BIA or a tribal or community organization.

Note. Any eligible entity that receives Federal financial assistance under this program is not eligible to receive a subgrant under section 3114 of Title III of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (Pub. L. 107–110).

(Eligible applicants seeking to apply for funds as a consortium should read and follow the regulations in 34 CFR 75.127–75.129, which apply to group applications.)

Deadline for Transmittal of Applications: February 14, 2003.

Deadline for Intergovernmental Review: March 14, 2003.

Estimated Available Funds: $4.1 million.

Estimated Range of Awards: $175,000–$300,000.

Estimated Average Size of Awards: $200,000.

Estimated Number of Awards: 20.

Note: The Department is not bound by any estimates in this notice.

Project Period: 48 months.

Mandatory Page Limit for the Application Narrative: The narrative is the section of the application where you address the selection criteria used by reviewers in evaluating your application. You must limit the narrative to the equivalent of no more than 35 pages, using the following standards:

(1) A page is 8.5′ × 11′, on one side only with 1′ margins at the top, bottom, and both sides.

(2) 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 Application for Federal Education Assistance Form (ED 424); the Budget Information Form (ED 524) and attached itemization of costs; the other application forms and attachments to those forms; the assurances and certifications; the text of the selection criteria; or the one-page abstract and table of contents described below. The page limit applies only to item 14 in the Checklist for Applicants provided below.

We will reject your application if—you apply these standards and exceed the page limit; or you apply other standards and exceed the equivalent of the page limit.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79 (Part 79, does not apply to assistance to Federally recognized Indian tribes), 80, 81, 82, 85, 86, 97, 98, and 99.

Description of Program: The statutory authority for this program, and the application requirements that apply to this competition, are set out in Subpart 1 of Part A of Title III of the Elementary and Secondary Education Act as amended by the No Child Left Behind Act of 2001 (Pub. L. 107–110).

Grants awarded under this program are to be used to develop high levels of academic attainment in English among limited English proficient children, and to promote parental and community participation in language instruction educational programs. Grants are intended for language instruction educational projects that are carefully designed, well-implemented and rigorously evaluated.

Projects may include teacher training, curriculum development, and evaluation and assessment to support the core program of student instruction and parental/community participation. Student instruction may comprise preschool, elementary, secondary, and postsecondary levels, or combinations of these.

Selection Criteria: We use the following selection criteria in 34 CFR 75.210 and sections 3115 and 3128 of the Act to evaluate applications for new grants under this competition:

The maximum score for all of these criteria is 100 points.

The maximum score for each criterion is indicated in parentheses.

(a) *Project activities.* (22 points) The Secretary reviews each application to determine how well the applicant proposes to carry out activities that will:

(i) Increase the English proficiency of limited English proficient children by providing high-quality language instruction educational programs that are based on scientifically based

research demonstrating the effectiveness of the programs in increasing English proficiency and student academic achievement in the core academic subjects; and

(ii) At the applicant's option, provide instructional programs designed for children who are learning and studying Native American languages shall have, as a project outcome, increases in English proficiency and a second language.

(iii) Provide high-quality professional development to classroom teachers (including teachers in classroom settings that are not the settings of language instruction educational programs), principals, administrators, and other school or community-based organizational personnel, that is—

(A) Designed to improve the instruction and assessment of limited English proficient children;

(B) Designed to enhance the ability of such teachers to understand and use curricula, assessment measures, and instruction strategies for limited English proficient children;

(C) Based on scientifically based research demonstrating the effectiveness of the professional development in increasing children's English proficiency or substantially increasing the subject matter knowledge, teaching knowledge, and teaching skills of such teachers; and

(D) Of sufficient intensity and duration to have a positive and lasting impact on the teachers' performance in the classroom (excluding activities such as one-day or short-term workshops and conferences unless the activity is a component of an established comprehensive professional development program for an individual teacher).

(iv) At the applicant's option, provide instruction, teacher training, curriculum development, evaluation, and assessment designed for Native American children learning and studying Native American languages.

(b) *Need for project.* (4 points)

(1) The Secretary considers the need for the proposed project.

(2) In determining the need for the proposed project, the Secretary considers the extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

(c) *Quality of the project design.* (20 points) (1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(ii) 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.

(iii) The extent to which the design of the proposed project includes a thorough, high-quality review of the relevant literature, a high-quality plan for project implementation, and the use of appropriate methodological tools to ensure successful achievement of project objectives.

(iv) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance.

(v) The extent to which the proposed project is part of a comprehensive effort to improve teaching and learning and support rigorous academic standards for students.

(vi) The extent to which the proposed project encourages parental involvement.

(d) *Quality of project personnel.* (6 points) (1) The Secretary considers the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers 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.

(3) In addition, the Secretary considers the following factors:

(i) The qualifications, including relevant training and experience, of key project personnel.

(ii) The qualifications, including relevant training and experience, of project consultants or subcontractors.

(e) *Adequacy of resources.* (6 points) (1) The Secretary considers the adequacy of resources for the proposed project.

(2) In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(f) *Quality of the management plan.* (20 points) (1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(ii) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project.

(iii) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(g) *Quality of the project evaluation.* (22 points)

(1) The Secretary considers the quality of the evaluation to be conducted of the proposed project. s

(2) In determining the quality of the evaluation, the Secretary considers of the following factors:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(ii) The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies.

(iii) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(iv) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79. Note that in Part 79, Intergovernmental Review does not apply to assistance to federally recognized Indian tribes.

One of the objectives of the Executive order is to foster an inter-governmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and

review of proposed Federal financial assistance.

If you are an applicant, you must contact the appropriate State Single Point of Contact (SPOC) to find out about, and to comply with, the State's process under Executive Order 12372. If you propose to perform activities in more than one State, you should immediately contact the SPOC for each of those States and follow the procedure established in each state under the Executive order. If you want to know the name and address of any SPOC, see the official latest SPOC list on the Web site of the Office of Management and Budget at the following address: *http://www.whitehouse.gov/omb/grants/spoc.html.*

In States that have not established a process or chosen a program or review, State, area-wide, regional and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a SPOC and any comments from State, area-wide, regional, and local entitles must be mailed or hand-delivered by the date indicated in this application notice to the following address: The Secretary, E.O. 12372—CFDA # 84.365C, U.S. Department of Education, room 7E200, 400 Maryland Avenue, SW., Washington, DC 20202–0125.

We will determine proof of mailing under 34 CFR 75.102 (Deadline date for applications). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, D.C. time) on the date indicated in this notice.

Please note that the above address is not the same address as the one to which the applicant submits its completed application. *Do not send applications to the above address.*

Application Instructions and Forms

The appendix to this notice contains forms and instructions, a statement regarding estimated public reporting burden, a notice to applicants regarding compliance with section 427 of the General Education Provisions Act, various assurances and certifications. Please organize the parts and additional materials in the following order:

a. Instructions for Application Narrative.

b. Additional Guidance.

c. Estimated Public Reporting Burden.

d. Notice to All Applicants GEPA–427 Requirements (OMB No. 1801–0004).

e. Checklist for Applicants.

f. Application for Federal Education Assistance (ED 424) and instructions.

g. Budget Information—Non-Construction Programs (ED 524) and instructions.

h. Group Application Certification.

i. Student Data.

j. Project Documentation.

k. Assurances—Non-Construction Programs (SF 424B) and instructions.

l. Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013) and instructions.

m. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014) and instructions.

Note: ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department.

n. Disclosure of Lobbying Activities (SF LLL) (if applicable) and instructions.

You may submit information on a photocopy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. We will not award grants unless we have received a completed application form.

All applicants must submit ONE original signed application, including ink signatures on all forms and assurances, and TWO copies of the application. Please mark each application as ''original'' or ''copy''. No grant may be awarded unless a completed application has been received.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document 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 this application notice.

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 toll free at 1–800–293–6498; 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 the GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

FOR FURTHER INFORMATION CONTACT: Samuel Lopez, Office of English Language Acquisition, U.S. Department of Education,400 Maryland Avenue, SW. Room MES 5605, Washington, DC 20202–6400. Telephone: 202–401–1427, or via the Internet: *samuel.lopez@ed.gov.*

If you use telecommunications device fro the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Instructions for Transmittal of Applications

If you want to apply for a grant and be considered for funding, you must meet the following deadline requirements:

(a) *If You Send Your Application by Mail:* You must mail the original and two copies of the application on or before the deadline date. Mail your application to: U.S. Department of Education, Application Control Center, Attention: CFDA # 84.365C, 7th & D Street, SW, Room 3671, Regional Office Building 3, Washington, DC 20202–4725.

You must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

If you mail an application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Note: Due to recent disruptions to normal mail delivery, the Department encourages you to consider using an alternative delivery method (for example, a commercial carrier, such as Federal express or United Parcel Service; U.S. Postal Service Express Mail; or a courier service) to transmit your application for this competition. If you use an alternative delivery method, please obtain the appropriate proof of mailing under this section (a) ''If You Send Your Application by Mail,'' then follow the instructions in section (b) ''If you Deliver Your Application by Hand.''

(b) *If You Submit Your Application Electronically:*

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 Native American and Alaska Native Children in School Program—CFDA # 84.365C is one of the programs included in the pilot project. If you are an applicant under the Native American and Alaska Native Children in School Program, 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 Native American and Alaska Native Children in School Program 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 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 Native American and Alaska Native Children in School Program 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: Applicants who choose to submit an electronic application, must mail a paper copy of the Application for Federal Education Assistance Form (ED 424) and the Group Application Certification form 1885–0551, with original signatures, to the address that appears under section *Checklist for Applicants.*

(c) *If You Deliver Your Application by Hand*

You or your courier must hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: CFDA # 84.365C, Room 3671, Regional Office Building 3, 7th and D Streets, SW., Washington, DC. 20202–4725.

The Application Control Center accepts application deliveries daily between 8:00 a.m. and 4:30 p.m. (Washington, DC time), except Saturdays, Sundays, and Federal holidays. The Center accepts application deliveries through the D Street entrance only. A person delivering an application must show identification to enter the building.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

(2) If you send your application by mail or deliver it by hand or by a courier service, the Application Control Center will mail a Grant Application Receipt Acknowledgment to you. If you do not receive the notification of application receipt within 15 days from the date of mailing the application, you should call the U.S. Department of Education Application Control Center at (202) 708–9493.

(3) If your application is late, we will notify you that we will not consider the application.

(4) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the Application for Federal Education Assistance (ED Form 424; (exp. 11–30–2004)) the CFDA number—and suffix letter # 84.365C of the, if any—of the competition under which you are submitting your application.

Program Authority: 20 U.S.C. 6821(c), 6822.

Dated: December 23, 2002.

Maria Hernandez Ferrier,

Director, Office of English Language Acquisition, Language Enhancement, and Academic Achievement for Limited English Proficient Students.

Estimated Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is OMB No. 1885–0551 (Expiration Date: 10/31/05).

The time required to complete this information collection is estimated to average 80 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to: U.S. Department of Education, Washington, DC 20202–4651.

If you have comments or concerns regarding the status of your individual submission of this form, write directly to: Office of English Language Acquisition, Language Enhancement, and Academic Achievement for Limited English Proficient Students, U.S. Department of Education, 400 Maryland Avenue, SW., Room (5605), Switzer Building, Washington, DC 20202–6510.

Instructions for Application Narrative

Before preparing the Application Narrative you should read carefully the description of the program and the selection criteria we use to evaluate applications. The narrative should—

Begin with a 1 page single-spaced abstract that is, a summary of your proposed project that includes; a short description of the project design, project objectives, activities the project proposes to address, the name of the institutions with which you have entered into consortia arrangements, if applicable; information that is helpful in determining the status as an eligible entity as listed under Title III, Part A, Subpart 1, Section 3112(a), Native American and Alaska Native Children in School Program of the No Child Left Behind Act. Eligibility status information may include a memorandum of agreement or proof of tribally sanctioned status obtained from a duly authorized educational organization or authority serving Native American students, (such attachment would not be counted against the page limit).

Selection Criteria

The narrative should address fully all aspects of the selection criteria in the order listed and should give detailed information regarding each criterion. Do not simply paraphrase the criteria. Do not include resumes or curriculum vitae for project personnel; provide position descriptions instead. Do not include bibliographies, letters of support, or appendices in your application.

Table of Contents

The application should include a table of contents listing the various parts of the narrative in the order of the selection criteria. Be sure that the table includes the page numbers where the parts of the narrative are found.

Budget

Requested budget level for years 2–4 should not exceed the requested budget level for year 1. Budget line items must support the goals and objectives of the proposed project and must be directly related to the instructional design and all other project components. A separate budget summary and cost itemization must be provided.

Final Application Preparation

Use the Checklist for Applicants to verify that your application is complete. Submit three copies of the application, including an original copy containing an original signature for each form requiring the signature of the authorized representative. Do not use elaborate bindings or covers. The application package must be mailed or hand-delivered to the Application Control Center (ACC) and postmarked by the deadline date.

Checklist for Applicants

The following forms and other items must be included in the application in the order listed below:

1. Application for Federal Education Assistance Form (ED 424).

2. Group Application Certification Form (if applicable).

Note: Applicants who choose to submit an electronic application, must mail a paper copy of the Application for Federal Education Assistance Form (ED 424) and the Group Application Certification form 1885–0551, with original signatures, to: U.S. Department of Education, Application Control Center, Attention: CFDA # 84.365C, 7th & D Street, SW., Room 3671, Regional Office Building 3, Washington, DC 20202–4725.

3. Budget Information Form (ED 524).

4. Itemization of costs for each budget year.

5. Student Data Form.

6. Assurances—Non-Construction Programs Form (SF 424B).

7. Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements Form (ED 80–0013).

8. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions Form (ED 80–0014) (if applicable).

9. Disclosure of Lobbying Activities Form (SF LLL).

10. Information that addresses section 427 of the General Education Provisions Act. (See the form below entitled Notice to All Applicants.)

11. One-page abstract.

12. Table of Contents.

13. Application narrative, not to exceed 35 pages.

14. One original and two copies of the application for transmittal to the Education Department's Application Control Center.

Non-Regulatory Guidance

Purpose of the Program

Q: *What is the purpose of the English Language Acquisition, Language Enhancement, and Academic Achievement Act for Limited English Proficient Students of Title III of the Elementary and Secondary Education Act as amended by the No Child Left Behind Act of 2001?*

A: The purpose of Title III is to ensure that limited English proficient (LEP) students develop English proficiency and meet the same academic content and academic achievement standards that other children are expected to meet. Schools use these funds to implement language instruction programs designed to achieve the purpose of the grants. The Office of English Language Acquisition, Language Enhancement, and Academic Achievement for Limited English Proficient Students (OELA) will hold grantees accountable for increasing the English proficiency and core academic content knowledge of LEP students.

Q: *May projects funded under this program support the teaching and studying of Native American Languages?*

A: Projects funded under this program may support the teaching and studying of Native American Languages, but must have, as a project outcome, increase in proficiency in English.

Q: *What instructional programs are grantees required to provide?*

A: Grantees under this program are required to provide high quality language instruction educational programs that are based on scientifically based research demonstrating effectiveness in increasing English

proficiency and student academic achievement in the core academic subjects. A grantee must select one or more methods of instruction to be used in the programs and activities and provide evidence that the programs chosen are based on scientific research in teaching LEP students.

Q: *Does a grantee have flexibility in selecting the method of instruction to be used to assist LEP students to attain English proficiency and academic achievement?*

A: A grantee may select one or more methods of instruction to be used in assisting LEP students to attain English proficiency and student academic achievement. However, the language instruction curriculum used must be tied to scientifically based research on teaching LEP students and must have demonstrated effectiveness.

Q: *Are students who participate in the Native American and Alaska Native Children in School Program required to meet State academic content and student academic achievement standards?*

A: Students who are enrolled in schools that are subject to meet State academic content and student academic achievement standards, are expected to meet those standards. Students in schools that are subject to standards other than State standards are expected to meet the same standards as all children in their school are expected to meet.

Q: *Are public schools, which serve Native American children eligible to apply under the Native American and Alaska Native Children in School Program?*

A: Public elementary or secondary schools operated predominantly for Native American children are eligible to apply under the Native American and Alaska Native Children in School Program if the school is tribally sanctioned or is operated under a contract from the Bureau of Indian Affairs, or has secured a grant or funds from the Bureau of Indian Affairs, such as a grant under the Johnson O'Malley Act.

Role of Parents

Q: *How is the role of parents of LEP students addressed in the Title III legislation?*

A: Each grantee using funds provided under this title to provide a language instruction educational program must implement an effective means of outreach to parents of limited English proficient children to inform such parents of how they can be involved in the education of their children, and be active participants in assisting their children to learn English, to achieve at high levels in core academic subjects, and to meet the same challenging State academic content and student academic achievement standards as all children are expected to meet.

Q: *What is the length of time that a grantee has to inform parents that their child has been identified for participation in a language instruction educational program for limited English proficient (LEP) students?*

A: Grantees shall inform parent(s) that their child has been identified for participation in a language instruction educational program for LEPs not later than 30 days after the beginning of the school year. For a child who enters school after the beginning of the school year, grantees shall inform parent(s) within 2 weeks of the child's placement in such a program.

Q: *What kind of information must a grantee provide parents regarding their child's participation in a language instruction educational program for LEPs?*

A: Grantees shall provide parents (1) the reasons for identifying their child as being limited English proficient and the need to place him/her in a language instruction educational program for LEPs; (2) the child's level of English proficiency, including how the level was assessed and the status of the child's academic achievement; (3) the method of instruction that will be used in the program, including a description of other alternative programs; (4) how the program will meet the educational strengths and needs of the child; (5) how the program will help the child learn English and meet academic achievement standards; (6) the program exit requirements, including the expected rate of transition and the expected rate of graduation from secondary school; (7) how a program will meet the objectives of an individualized education program for a child with a disability; and (8) information pertaining to parental rights as prescribed by law.

Q: *Does the parent have the right to refuse placement of their child in a language instruction educational program?*

A: The grantee must provide parents with the required information under Section 3302 of ESEA Title III (parental notification). Parents have a right to have their child removed from such a program. The parents also have the right to choose another program or method of instruction, if available.

Professional Development

Q: *What professional development activities are grantees encouraged to provide for teachers, administrators and others involved in language instruction educational programs?*

A: Grantees are encouraged to provide high-quality professional development to classroom teachers (including teachers in classroom settings that are not the setting of language instruction educational programs), principals, administrators, and other school- or community-based organizational personnel that is:

- Designed to improve the instruction and assessment of LEP students;
- Designed to enhance the ability of such teachers to understand and use curricula, assessment measures, and instruction strategies for LEP children;
- Based on scientifically based research demonstrating the effectiveness of the professional development in increasing children's English proficiency, or substantially increasing the subject matter knowledge, teaching knowledge, and teaching skills of teachers; and
- Of sufficient intensity and duration to have a positive and lasting impact on the teachers' performance in the classroom (excluding activities such as one-day or short-term workshops and conferences unless the activity is a component of an established comprehensive professional development program for an individual teacher).

Local Reporting Requirements

Q: *What are the reporting requirements for grantees that receive a Title III, Native American and Alaskan Native Children in School grant?*

A: Grantees under the Native American and Alaska Native Children in School Program must provide to the Secretary an annual performance report for continuation award purposes, and a final performance report (34 CFR 80.40(a)(1)–(4), (d), and (e) and 34 CFR 80.41). These reports must contain information regarding each objective. If possible quantified results should be reported depending on the content of the objective. An explanation is needed when an objective target for that performance year is not met. Disclosure must include a statement of the action to be taken or contemplated and any assistance needed to resolve the situation. Budgetary information in the form of a line item budget and budget narrative must also accompany the report (34 CFR 80.40(b)(2)(iii)).

Definitions

Q: *How do you define ''language instruction educational program?''*

A: ''Language instruction educational program'' means an instruction course

in which LEP students are placed for the purpose of developing and attaining English proficiency, while meeting challenging State academic content and student academic achievement standards. A language instruction educational program may make use of both English and a child's native language to enable the child to develop and attain English proficiency. Programs may include the participation of English proficient children in addition to LEP students if such a program enables participating students to become proficient in English and a second language.

Q: *What is the definition of ''Native American'' and ''Native American Language?''*

A: The terms ''Native American'' and ''Native American Language'' are defined, under Section 3301(9) of ESEA to have the same meaning as those terms have under Section 103 of the Native American Languages Act. Under that Act, these terms are defined as follows. ''Native American'' means an Indian, Native Hawaiian, or Native American Pacific Islander. ''Native American language'' means the historical, traditional language spoken by Native Americans.

Q: *What does the term ''Indian tribe'' mean?*

A: ''Indian tribe'' means any Indian tribe, band, nation, or other organized group or community, including any Native village or Regional Corporation or Village Corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. (ESEA Section 3301 (7)).

Q: *What is a ''Native Hawaiian or Native American Pacific Islander Educational Organization?''*

A: ''Native Hawaiian or Native American Pacific Islander native language educational organization'' means a nonprofit organization with—

(A) a majority of its governing board and employees consisting of fluent speakers of the traditional Native American languages used in the organization's educational programs; and

(B) not less than 5 years successful experience in providing educational services in traditional Native American languages. (ESEA Section 3301 (10)).

Q: *What is a tribally sanctioned education authority?*

A: The term ''tribally sanctioned educational authority'' means—

(A) Any department or division of education operating within the administrative structure of the duly constituted governing body of an Indian tribe; and

(B) Any nonprofit institution or organization that is—(i) chartered by the governing body of an Indian tribe to operate a school described in section 3112(a) or otherwise to oversee the delivery of educational services to members of the tribe; and (ii) approved by the Secretary for the purpose of carrying out programs under subpart 1 of part A for individuals served by a school described in section 3112(a). (ESEA Section 3301 (15)).

[FR Doc. 02–32841 Filed 12–27–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Docket No. EA–274]

Application To Export Electric Energy; Wisconsin Public Service Corporation

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Wisconsin Public Service Corporation (WPSC) has applied for authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before January 29, 2003.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Xavier Puslowski (Program Office) 202–586–4708 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16U.S.C. 824a(e)).

On November 28, 2002, the Office of Fossil Energy (FE) of the Department of Energy (DOE) received an application from WPSC to transmit electric energy from the United States to Canada. WPSC is an investor-owned electric utility having its principal place of business in Green Bay, Wisconsin. WPSC is a wholly-owned subsidiary of WPS Resources and is engaged in the generation, distribution and sale of electric energy.

The electric energy to be sold by WPSC will be excess to its native load or purchased from generators, power marketers or Federal power marketing agencies. WPSC proposes to arrange for the delivery of electric energy to Canada over the existing international transmission facilities presently owned by Basin Electric Power Cooperative, Bonneville Power Administration, Citizens Utilities Co., International Transmission Company, Eastern Maine Electric Cooperative, Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power and Light Inc., Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power, and Vermont Electric Transmission Company. The construction, operation, maintenance, and connection of each of the international transmission facilities to be utilized by WPSC, as more fully described in the application, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters: Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the WPSC application to export electric energy to Canada should be clearly marked with Docket EA–274. Additional copies are to be filed directly with William L. Bourbonnais, Manager, Rates and Economic Evaluation, Wisconsin Public Service Corporation, 700 North Adams Street, PO Box 19001, Green Bay, WI 54307–9001 *And* David Martin Connelly, Esquire, Bruder, Gentile & Marcoux, L.L.P., 1100 New York Avenue, NW., Suite 510 East, Washington, DC 20005–3934.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at *http://www.fe.doe.gov*. Upon reaching the

Fossil Energy Home page, select ''Regulatory'' Programs,'' then ''Electricity Regulation,'' and then ''Pending Proceedings'' from the options menus.

Issued in Washington, DC, on December 24, 2002.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 02–32911 Filed 12–27–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Intent To Prepare an Environmental Impact Statement and To Conduct Public Scoping Meetings, and Notice of Floodplain and Wetlands Involvement for Remediation of the Moab Uranium Mill Tailings Site in Grand County, UT

AGENCY: U.S. Department of Energy.

ACTION: Notice of Intent to prepare an Environmental Impact Statement and to conduct public scoping meetings; correction.

SUMMARY: The Department of Energy published a document in the **Federal Register** of December 20, 2002, announcing its intent to prepare an Environmental Impact Statement to assess the potential environmental impacts of actions that would remediate contaminated soils, tailings, and ground water at the Moab Uranium Mill, Tailings Site, Grand County, Utah, and contaminated soils in adjacent public and private properties near the Moab Project Site. The document contained an incorrect e-mail address.

FOR FURTHER INFORMATION CONTACT: Mr. Joel Berwick, Moab Project Manager, U.S. Department of Energy, Grand Junction Office, (970) 248–6020.

Correction

In the **Federal Register** of December 20, 2002, in FR Doc. 02–32126, on page 77969, please make the following correction:

On page 77969, under the heading **ADDRESSES,** the second paragraph should read: In addition to providing comments at the public scoping meetings, interested parties are invited to record their comments, ask questions concerning the EIS, or request to be placed on the EIS mailing list or document distribution list by leaving a message on the toll-free EIS Hotline 1–800–637–4575, or e-mail at *moabcomments@gjo.doe.gov* The hotline will have instructions on how to record comments and requests.

Issued in Washington, DC, this 20th day of December, 2002.

Beverly A Cook,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 02–32910 Filed 12–27–02; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–29–000]

Columbia Gas Transmission Corporation; Notice of Application

December 23, 2002.

Take notice that on December 17, 2002, Columbia Gas Transmission Corporation (Columbia), 12801 Fair Lakes Parkway, Fairfax, Virginia 22030–0146, filed an application pursuant to sections 7(b) and 7(c) of the Natural gas Act (NGA) and part 157 of the Commission's regulations, for a certificate of public convenience and necessity for a limited blanket certificate to perform certain specific activities at its Victory storage field in Marshall and Wetzel Counties, West Virginia, all as more fully set forth in the application on file with the Commission and open to public inspection. 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 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.

Columbia states that on September 18, 2002, Consolidated Coal Company and McElroy Coal Company (collectively referred to as McElroy) and Columbia executed a settlement agreement relating to the continued operation of the victory storage field in tandem with coal mining operations. It is stated that the settlement agreement is structured to allow McElroy continuous access for its coal mining operation while ensuring a preservation of current storage field deliverability, in a cost effective manner, for Columbia and its customers. In addition, it is stated that as a result of the sequential drill-and-plug approach adopted by the parties for maintaining deliverability, mining activities through Victory should progress more safely.

Columbia states that once mining within the Victory storage field commences, it will frequently be required to act within time frames that do not permit seeking advance Commission authorization each time an active injection/withdrawal well must be plugged to accommodate mining, or a replacement injection/withdrawal well must be drilled to preserve existing deliverability. In order to avoid the need for repeatedly seeking expedited decisions on matters requiring NGA section 7 authority, Columbia requests a limited blanket certificate for authorization to drill replacement injection/withdrawal wells, and abandon existing injection/withdrawal wells, and a flexible time frame for meeting the normal environmental reporting requirements associated with such activities.

Columbia maintains that the settlement agreement with McElroy insulates Columbia and its customers from the costs associated with abandoning existing injection/withdrawal or observation wells and drilling replacement injection/withdrawal or observation wells. Columbia avers that its customers will incur no significant costs in conjunction with replacing existing wells and ancillary equipment with replacement wells and equipment while preserving existing capacity and deliverability from the Victory storage field. Columbia states that it would seek rolled-in rate treatment for the minor non-reimbursed costs which will be incurred with respect to well abandonment and replacement activities in Victory. Columbia states that McElroy would pay for up to 750 feet of well line to connect each replacement well and Columbia would pay for any footage of well line over 750 feet. Columbia further states that for pipelines impacted by mining, Columbia would receive a reimbursement of 50 percent of the costs associated with mitigating impact on pipelines in Victory which are 12-inch or greater in diameter when such pipelines are schedule to be, or are, mined under during the months of December, January, February or March of any year while the settlement agreement is in effect. Under such a scenario, Columbia states that it would seek to roll-in to its rates the portion of pipeline costs not reimbursed by McElroy.

Any questions regarding this application should be directed to counsel for Columbia, Fredric J. George, Columbia Gas Transmission Corporation, P.O. Box 1273, Charleston, West Virginia 25325–1273, at (304) 357–2359, fax (304) 357–3206.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to

obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.214 or 385.211) and the regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made in the proceeding. with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

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.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Comment Date: January 13, 2003.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–32874 Filed 12–27–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95–408–048]

Columbia Gas Transmission Corporation; Notice of Compliance Filing

December 24, 2002.

Take notice that on December 17, 2002, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets bearing a proposed effective date of January 1, 2003:

Sixty-first Revised Sheet No. 25
Sixty-first Revised Sheet No. 26
Sixty-first Revised Sheet No. 27
Twenty-seventh Revised Sheet No. 30A

Columbia states that this filing is being submitted pursuant to Stipulation I, Article I, section E, True-up Mechanism, of the settlement (settlement) in Docket No. RP95–408 *et al.*, approved by the Commission on April 17, 1997 (79 FERC ¶61,044 (1997)). Under the approved section of the settlement, Columbia is required to true-up its collections pursuant to the settlement component for 12-month periods commencing November 1, 1996, and ending October 31, 2004. The sixth 12-month period (period VI) ended October 31, 2002. Columbia is making this true-up filing in compliance with the settlement to return a net over-recovery of $3,079,361 for period VI, which includes interest and the true-up of the period V settlement component adjustment, through an adjustment to the settlement component of the base rates for the period January 1, 2003, through October 31, 2003.

Columbia states that copies of its filing have been mailed to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: December 30, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–32973 Filed 12–27–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–319–003 and RP00–598–003]

Discovery Gas Transmission LLC; Notice of Compliance Filing

December 24, 2002.

Take notice that on December 19, 2002, Discovery Gas Transmission LLC (Discovery) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariffs sheets, to be effective September 1, 2002:

Second Revised Sheet No. 101, Second Revised Sheet No. 130
Second Revised Sheet No. 134, Second Revised Sheet No. 135
First Revised Sheet No. 136, Original Sheet No. 136A
First Revised Sheet No. 137, Second Revised Sheet No. 145
Third Revised Sheet No. 146, Third Revised Sheet No. 150
Third Revised Sheet No. 151, Second Revised Sheet No. 162
Seventh Revised Sheet No. 196, Original Sheet No. 197
Sheet Nos. 198–199, Second Revised Sheet No. 260

Discovery states that the filing is being made in compliance with two letter orders issued by the Commission the above-captioned proceeding on December 12, 2002.

Discovery further states that copies of the filing have been mailed to each of its customers, interested State Commissions and other interested persons.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: December 31, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–32966 Filed 12–27–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–486–002]

Cove Point LNG Limited Partnership; Notice of Compliance Filing

December 24, 2002.

Take notice that on December 19, 2002, Cove Point LNG Limited Partnership (Cove Point) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, First Revised Sheet No. 0; First Revised Sheet No. 136; and First Revised Sheet No. 137.

Cove Point states that its filing serves two purposes: (1) Compliance with Order No. 637 and the Commission order in Docket No. RP00–486 by filing previously approved tariff sheets that were inadvertently not filed; and (2) adoption of a new initial sheet changing the contact person for Cove Point to reflect its current ownership by Dominion Resources, Inc. Cove Point proposes an effective date of December 20, 2002, for the previously approved sheets and of January 19, 2003, for new Sheet No. 0.

Cove Point states that copies have been served upon its customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: December 31, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–32967 Filed 12–27–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–24–000]

Tennessee Gas Pipeline Company; Notice of Request Under Blanket Authorization

December 23, 2002.

Take notice that on December 11, 2002, Tennessee Gas Pipeline Company (Tennessee), 9 E. Greenway Plaza, Houston, Texas 77046, filed in Docket No. CP03–24–000 a request pursuant to sections 157.205 and 157.211(a)(2) of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate a new delivery point, located in Hickman County, Tennessee, to serve an end-user, under Tennessee's blanket certificate issued in Docket No. CP82–413–000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request.

Tennessee requests authorization to construct and operate the facilities to serve the State of Tennessee Department of Corrections (State). Tennessee states that it would use the facilities to transport up to 353 Dth of natural gas per day under open-access transportation agreements. Tennessee estimates the cost of the proposed facilities to be $53,800 which would be reimbursed by the State. Tennessee states further that the proposal would have no significant effect on Tennessee's peak day and annual deliveries, and service to State through the new delivery point would be accomplished without detriment to Tennessee's other existing customers.

Tennessee indicates that it will comply with all of the environmental requirements of section 157.206(b) of the Commission's Regulations prior to the construction of the new point of delivery.

Any questions regarding the application should be directed to Jay V. Allen, 9 E Greenway Plaza, Houston,

Texas 77046, (832) 676–5589 or Thomas G. Joyce, Certificates Manager, at: (832) 676–3299.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: January 10, 2003.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–32871 Filed 12–27–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–21–000]

In the Matter of Southern Natural Gas Company; Notice of Application

December 23, 2002.

Take notice that on December 10, 2002, Southern Natural Gas Company (Southern) P.O. Box 2563, Birmingham, Alabama 35202–2563, filed an abbreviated application pursuant to section 7(b) of the Natural Gas Act, as amended, and sections 157.7 and 157.14 of the Commission's regulations for authorization to abandon the storage services, previously authorized in Docket No. CP79–374 (12 FERC § 61,194), rendered under Southern's CSS–1 and CSS–2 Rate Schedules on behalf of Atlanta Gas Light Company, City of LaGrange, Georgia, and Albany Water, Gas and Light Commission, effective as of the end of the gas day of March 31, 2003. The application is on file with the Commission and open to public inspection.

Southern states that it has provided off-system storage service on behalf of these customers pursuant to its Rate Schedules CSS–1 and CSS–2 under Volume No. 2A of its FERC Gas Tariff. Since Southern was unable to arrange for a storage service on its own system, it arranged with ANR Storage Company to make available to Southern storage which enabled Southern to provide the storage service called for in the Stipulation and Agreement approved in Opinion No. 786. In addition, in order to arrange for the delivery to and redelivery from ANR Storage Company of volumes to be stored, Southern entered into transportation agreements with ANR Pipeline Company. Southern provided this storage service to its customers on a 50-day and 100-day basis under Rate Schedules CSS–1 and CSS–2, respectively, pursuant to storage service agreements dated as of June 1, 1979. All three of these customers have given Southern notice to terminate the referenced storage services at the end of the primary term of March 31, 2003.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 13, 2003, file with the Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or protest in accordance with the requirements of the Commission's rules of practice and procedure, 18 CFR 385.211 or 385.214, and the regulations under the Natural Gas Act, 18 CFR 157.10. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein or if the Commission on its own review of the matter finds that a grant of the subject authorization is required by the public convenience and necessity. If a motion for leave to intervene is timely filed or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Southern to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–32868 Filed 12–27–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–209–000]

Florida Gas Transmission Company; Notice of Filing of Anual Report

December 24, 2002.

Take notice that on December 20, 2002,Florida Gas Transmission Company (FGT) tendered for filing, pursuant to section 19.1 of the General Terms and Conditions (GTC) of its FERC Gas Tariff, Third Revised Volume No. 1, schedules detailing certain information related to its Cash-Out Mechanism, Fuel Resolution Mechanism and Balancing Tools charges for the accounting months October 2001 through September 2002. No tariff changes are proposed.

FGT states that it has recorded excess revenues of $3,144,160 during the current Settlement Period, which when combined with the $7,227,130 net deficiency carried forward from the preceding settlement period and interest of $290,282, result in a cumulative net cost balance of $4,373,252 as of September 30, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed on or before December 31, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference

Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–32970 Filed 12–27–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–074]

Natural Gas Pipeline Company of America; Notice of Negotiated Rate

December 24, 2002.

Take notice that on December 18, 2002, Natural Gas Pipeline Company of America (Natural) tendered for filing to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, First Revised Sheet No. 26W.02, effective December 18, 2002.

Natural states that the purpose of this filing is to implement a permanent release of firm storage capacity under an existing negotiated rate transaction entered into by Natural and Dynegy Marketing and Trade under Natural's Rate Schedule NSS pursuant to section 49 of the General Terms and Conditions of Natural's Tariff.

Natural states that copies of the filing are being mailed to all parties set out on the Commission's official service list in Docket No. RP99–176.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Intervention Date: December 31, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–32975 Filed 12–27–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–23–000]

In the Matter of Southern Natural Gas Company and ANR Pipeline Company; Notice of Application

December 23, 2002.

Take notice that on December 10, 2002, Southern Natural Gas Company (Southern) P.O. Box 2563, Birmingham, Alabama 35202–2563, and ANR Pipeline Company (ANR), P. O. Box 2511, Houston, Texas 77252, filed an abbreviated joint application pursuant to section 7(b) of the Natural Gas Act, as amended, and sections 157.7 and 157.14 of the Commission's regulations for authorization to abandon the transportation services, previously authorized in Docket No. CP79–498 (12 FERC § 61,194), rendered under ANR's X–115 and X–116 Rate Schedules on behalf of Southern effective as of March 31, 2002. The application is on file with the Commission and open to public inspection.

ANR states that it has provided firm transportation service on behalf of Southern pursuant to ANR's Rate Schedules X–115 and X–116 whereby Southern delivers to ANR in the summer months up to 57,514 Mcf per day of natural gas at an existing point of interconnection between the pipeline systems of ANR and Southern in St Mary, Parish, Louisiana (the Shadyside Delivery Point) where ANR would then transport and redeliver thermally equivalent volumes to Great Lakes Gas Transmission Company at Farwell, Clare County, Michigan, for subsequent redelivery to ANR Storage Company. During the winter heating period, ANR would transport and redeliver thermally equivalent volumes of gas which it received from Great Lakes at Farwell to Southern at Shadyside at a daily rate of up to 173,476 Mcf. Such service was provided pursuant to agreements dated January 31, 1979, and February 1, 1979, respectively, for which the primary term will expire March 31, 2003. Since Southern requested termination of the service under ANR's X–115 and X–116 Rates Schedules, ANR has requested that the abandonment of Rate Schedules X–115 and X–116 be effective March 31, 2003.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 13, 2003, file with the Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene or protest in accordance with the requirements of the Commission's rules of practice and procedure, 18 CFR 385.211 or 385.214, and the regulations under the Natural Gas Act, 18 CFR 157.10. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein or if the Commission on its own review of the matter finds that a grant of the subject authorization is required by the public convenience and necessity. If a motion for leave to intervene is timely filed or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be

unnecessary for Southern or ANR to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–32870 Filed 12–27–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–207–000]

Florida Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

December 24, 2002.

Take notice that on December 18, 2002, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, effective January 1, 2003:

Fifty-Seventh Revised Sheet No. 8A
Forty-Ninth Revised Sheet No. 8A.01
Forty-Ninth Revised Sheet No. 8A.02
Seventh Revised Sheet No. 8A.04
Fifty-Second Revised Sheet No. 8B
Forty-Fifth Revised Sheet No. 8B.01
Second Revised Sheet No. 8B.02

FGT states that in Docket No. RP02–513–000 filed on August 29, 2002, it filed to establish a Base Fuel Reimbursement Charge Percentage (Base FRCP) of 3.01 % to become effective for the six-month winter period beginning October 1, 2002. Subsequently, on November 19, 2002, in Docket No. RP03–80–000, FGT filed a flex adjustment of (0.26%) to be effective December 1, 2002, which, when combined with a Base FRCP of 3.01% resulted in an Effective Fuel Reimbursement Charge Percentage (Effective FRCP) of 2.75%. FGT states that in the instant filing, it is filing a flex adjustment of (0.24%) to be effective January 1, 2003, which, when combined with the current Effective FRCP of 2.75%, results in a new Effective FRCP of 2.51%.

FGT states that this filing is necessary because it is currently experiencing lower fuel usage than is being recovered in the Effective FRCP of 2.75%. Decreasing the Effective FRCP will reduce FGT's overrecovery of fuel and reduce the unit fuel surcharge in the next winter period.

FGT states that the tariff sheets listed above are being filed pursuant to section 27.A.2.b of the general terms and conditions of FGT's Tariff, which provides for flex adjustments to the Base FRCP. Pursuant to the terms of section 27.A.2.b, a flex adjustment shall become effective without prior FERC approval provided that such flex adjustment does not exceed 0.50%, is effective at the beginning of a month, is posted on FGT's EBB at least five working days prior to the nomination deadline, and is filed no more than 60 and at least seven days before the proposed effective date. The instant filing comports with these provisions and FGT has posted notice of the flex adjustment prior to the instant filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Intervention Date: December 31, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–32968 Filed 12–27–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–22–000]

In the Matter of Southern Natural Gas Company and ANR Storage Company; Notice of Application

December 23, 2002.

Take notice that on December 10, 2002, Southern Natural Gas Company (Southern) P.O. Box 2563, Birmingham, Alabama 35202–2563, and ANR Storage Company (ANR), P. O. Box 2511, Houston, Texas 77252, filed an abbreviated joint application pursuant to section 7(b) of the Natural Gas Act, as amended, and sections 157.7 and 157.14 of the Commission's regulations for authorization to abandon the storage services, previously authorized in Docket No. CP79–416 (12 FERC '' 61,194), rendered under ANR's X–9 and X–10 Rate Schedules on behalf of Southern effective as of March 31, 2002. The application is on file with the Commission and open to public inspection.

ANR states that it has provided storage service on behalf of Southern pursuant to ANR's Rate Schedules X–9 and X–10 and pursuant to the terms of storage service agreements (the ''Agreements'') dated January 31, 1979, and February 1, 1979, respectively. This service involves ANR making storage available to Southern pursuant to storage agreements whereby ANR will store during the summer periods up to 11,503,000 Mcf of natural gas and during the winter periods will make equivalent volumes of gas available for redelivery to Southern. The January 31 agreement provided for a 50-day storage service of up to 5,881,900 Mcf of gas while the February 1 agreement provided for a 100-day storage service of up to 5,620,800 Mcf of gas. The Agreements provided that Southern could elect to defer redelivery, from one contract year to the next, of all or any part of the volumes stored. Since Southern requested termination of the service under ANR's X–9 and X–10 Rates Schedules, ANR has requested that the abandonment of Rate Schedules X–9 and X–10 be effective March 31, 2003.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 31, 2002, file with the Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene or protest in accordance with the requirements of the Commission's rules of practice and procedure, 18 CFR

385.211 or 385.214, and the regulations under the Natural Gas Act, 18 CFR 157.10. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein or if the Commission on its own review of the matter finds that a grant of the subject authorization is required by the public convenience and necessity. If a motion for leave to intervene is timely filed or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Southern or ANR to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–32869 Filed 12–27–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–25–000]

Transcontinental Gas Pipe Line Corporation; Notice of Application

December 23, 2002.

Take notice that on December 13, 2002, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed an application in Docket No. CP03–25–000 pursuant to section 7(c) of the Natural Gas Act (NGA) and part 157(A) of the Federal Energy Regulatory Commission's Regulations (Commission), for a certificate of public convenience and necessity authorizing Transco's construction and operation of certain facilities at Compressor Station No. 60 (Station 60) in East Feliciana Parish, Louisiana to comply with the Clean Air Act Amendments of 1990, all as more fully set forth in the application which is on file with the Commission and open to public inspection. Copies of this filing are on file with 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 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.

Transco states that the Clean Air Act Amendments of 1990 and state implementation plans require certain reductions of NO_X (oxides of nitrogen) air emissions at certain of Transco's compressor stations. Accordingly, during the past few years and over the next few years Transco has installed and plans to install certain facilities at these stations to achieve the required reductions of NO_X. Transco states that it plans to install these facilities pursuant to its blanket facilities certificate (18 CFR 157.208) issued in Docket No. CP82–426 when it is authorized to do so (either under automatic or prior notice authorization, depending on the estimated dollar amount). However, at the stations where the estimated total cost of installing these facilities is more than $21 million, Transco states that it is not authorized to perform such work pursuant to its blanket facilities certificate and, therefore, is required to file an application for a certificate of public convenience and necessity.

Transco states that it proposes to modify several of its existing reciprocating engines at Station 60 in order to comply with the State of Louisiana plan to implement the Clean Air Act Amendments of 1990. Station 60 has 13 units including 10 reciprocating/compressor units and three gas turbine-driven centrifugal compressor units. The facilities at Station 60 are located within a fenced area of approximately 11 acres. Transco states that it plans to install turbochargers and associated equipment on 9 of the 10 reciprocating engines in order to reduce NO_X emissions.

Transco states that, following installation of the turbochargers, the 9 engines will have the potential to perform above their current operating horsepower. However, since Station 60 is automated, it is stated that Transco has the ability to shut down other engines or reduce their load to ensure that the station will not operate above the station's total certificated horsepower. Transco states that there will be no increase in the capacity of Transco's system in the vicinity of the station as a result of installing the 9 new turbochargers and modifying the two existing turbochargers.

Transco states that installation of new turbochargers and modifications to existing ones at Station 60 will require some work to be done outside of the compressor building. All of the proposed work described above will be done within the confines of previously disturbed areas. Approximately one acre of previously disturbed ground will be affected by the proposed project. Restoration of this area will be conducted according to the Commission's Upland Erosion Control, Revegetation, and Maintenance Plan.

Transco estimates that the proposed modifications will cost $32.2 million.

Transco submits that the public convenience and necessity requires the issuance of the authorization requested herein because this project will (1) reduce NO_X emissions at Station 60, and (2) enable Transco to comply with the Clean Air Act Amendments of 1990 and the requirements of the DEQ implementing regulations issued pursuant thereto.

Transco states that it needs to commence the work at Station 60 in April 2003 in order to complete the work on a timely basis with respect to the requirements of the Clean Air Act Amendments of 1990 and the requirements of the DEQ, while at the same time accommodating the operational needs of its pipeline system and ensuring that Transco's gas service obligations are met. Engine modifications were initially scheduled to commence in 2004. However, a recent project evaluation indicated Transco must phase engine outages over an extended period in order to minimize the impact to gas throughput. With this revised engine outage schedule, Transco must begin construction in April 2003 and recommence work in April 2004 in order to complete the required engine modifications prior to the May 1, 2005, regulatory deadline.

Any questions regarding this application should be directed to Kevin Farris, P. O. Box 1396, Houston, Texas 77251–1396, (713) 215–2862.

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 (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 January 13, 2003, 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. 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.

A person obtaining intervenor status will be placed on the service list maintained by FERC and will receive copies of all documents filed by Applicant and by every one of the intervenors. An intervenor can file for rehearing of any FERC order and can petition for court review of any such order. However if an intervenor choses not to file electronically, an intervenor must submit copies of comments or any other filing it makes with FERC to every other intervenor in the proceeding, as well as 14 copies with FERC.

However, a person does not have to intervene in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of FERC. Commenters will be placed on FERC's environmental mailing list, receive copies of environmental documents, and be able to participate in meetings (if any) associated with FERC's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by FERC and will not have the right to seek rehearing or appeal FERC's final order to a Federal court.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receiver copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon FERC by sections 7 and 15 of the Natural Gas Act and FERC's rules of practice and procedure, a hearing will be held without further notice before FERC or its designee on this application if no motion to intervene is filed within the time required herein, if FERC on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if FERC on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the Transco to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–32872 Filed 12–27–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–65–001]

Cove Point LNG Limited Partnership; Notice of Compliance Filing

December 24, 2002.

Take notice that on December 19, 2002, Cove Point LNG Limited Partnership (Cove Point) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets:

Effective December 4, 2002: Second Revised Sheet No. 115.

Effective December 20, 2002: Second Revised Sheet No. 128;

First Revised Sheet No. 128A; Third Revised Sheet No. 153.

Cove Point states that its filing complies with Order No. 587-O and the Commission's order issued on December 4, 2002, in Docket No. RP03–65–000. Cove Point proposes an effective date of December 4, 2002, for Sheet Nos. 115 and 153 and of December 19–20, 2002, for Sheet Nos. 115 and 153.

Cove Point states that copies of its letter of transmittal and enclosures have been served upon Cove Point's customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: December 31, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–32971 Filed 12–27–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–255–057]

TransColorado Gas Transmission Company; Notice of Compliance Filing

December 24, 2002.

Take notice that on December 19, 2002, TransColorado Gas Transmission Company (TransColorado) tendered for filing as part of its FERC Gas Tariff,

Original Volume No. 1, Fifty-Sixth Revised Sheet No. 21 and Twenty-Ninth Revised Sheet No. 22A, to be effective January 1, 2003.

TransColorado states that the filing is being made in compliance with the Commission's letter order issued March 20, 1997, in Docket No. RP97–255–000.

TransColorado states that the tendered tariff sheets propose to revise TransColorado's Tariff to reflect an

amended negotiated-rate contract with National Fuel Marketing Company.

TransColorado stated that a copy of this filing has been served upon all parties to this proceeding, TransColorado's customers, the Colorado Public Utilities Commission and the New Mexico Public Utilities Commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: December 31, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–32974 Filed 12–27–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP93–109–019]

Southern Star Central Gas Pipeline, Inc.; Notice of Filing OF Refund Report

December 24, 2002.

Take notice that on December 17, 2002, Southern Star Central Gas Pipeline, Inc. (Southern Star) formerly Williams Gas Pipelines Central, Inc. tendered for filing, pursuant to Article III, paragraph D of the Stipulation & Agreement dated January 31, 2001, in Docket No. RP93–109–017, its refund report of environmental proceeds received from third-party insurers.

Article III states that Southern Star will allocate its pass-through of third-party environmental proceeds, if any, to Southern Star's customers based on firm reservation revenues during the twelve months ended September 30. Southern Star is herewith filing its report of third-party insurance proceeds received during the 12 months ended September 30, 2002, and the allocation, reflected on Schedule B, which sets forth the amount to be refunded to each party under the terms of this settlement. Southern Star states that it will make the refunds to each of the customers listed thereon on or before January 31, 2003.

Southern Star states that a copy of its filing was served on all jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed on or before December 31, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–32972 Filed 12–27–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–131–005]

Vector Pipeline L.P.; Notice of Proposed Amendment to Presidential Permit

December 24, 2002.

Take notice that on November 22, 2002, Vector Pipeline L.P. (Vector), filed an application to amend the Presidential Permit issued to Vector in the Commission's May 27, 1999 order in the captioned proceeding, as amended in an order issued June 13, 2001. Vector states that the proposed amendment would add to the extant authority to transport gas between the United States and Canada by increasing the maximum capacity permitted to flow through the existing facilities to 1,330 MMcf/d. No additional facilities would be constructed to implement this requested change. 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 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.

Any person desiring to be heard or to protest this filing should on or before the comment date stated below file a motion to intervene or protest with the Federal Energy Regulatory Commission, Washington, DC 20426, in accordance with 385.214 and 385.211 of the Commission's Rules and Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: January 13, 2003.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–32965 Filed 12–27–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–208–000]

Wyoming Interstate Company, Ltd.; Notice of Proposed Changes in FERC Gas Tariff

December 24, 2002.

Take notice that on December 17, 2002, Wyoming Interstate Company, Ltd. (WIC) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 2, the following tariff sheets, to be effective February 1, 2003:

Third Revised Sheet No. 42
Second Revised Sheet No. 44

WIC states that the tariff sheets remove provisions requiring shippers to submit a request fee with their initial request for firm transportation service.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Intervention Date: December 30, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–32969 Filed 12–27–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–30–000, et al.]

Illinois Power Company, et al.; Electric Rate and Corporate Filings

December 20, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Illinois Power Company, Illinois Electric Transmission Company, LLC Trans-Elect, Inc.

[Docket Nos. EC03–30–000 and ER03–284–000]

Take notice that on December 16, 2002, Illinois Power Company (Illinois Power), and Illinois Electric Transmission Company, LLC (IETC), Illinois Transco-Holdings, LP (ITH) and Trans-Elect, Inc. (Trans-Elect) (collectively Trans-Elect Applicants), (collectively, Applicants), submitted a joint application (Application) seeking an order of the Commission under the Federal Power Act authorizing (1) the reclassification of certain transmission and distribution assets of Illinois Power; (2) the sale and transfer by Illinois Power to IETC of all of Illinois Power's right, title, and interest in its jurisdictional transmission facilities and related assets (Purchased Assets); (3) the rate treatments, rates and terms and conditions of service as set forth in the Application for the provision of open access transmission service over the Purchased Assets through a regional transmission organization; (4) the continuation, without change in rates, terms or conditions, of wholesale distribution service by Illinois Power over its distribution system in conjunction with open access transmission service over the Purchased Assets; and (5) acceptance and/or approval of a rate schedule for wholesale distribution service and the various agreements to be entered into by the parties prior to or at the time of closing as specified in the Application.

The Trans-Elect Applicants state that copies have been served on all affected state commissions and customers taking service under Illinois Power's open access transmission tariff.

Comment Date: January 6, 2003.

2. Georgia Power Company

[Docket No. EC03–31–000]

Take notice that on December 17, 2002, Georgia Power Company filed with the Federal Energy Regulatory Commission (Commission) an application pursuant to section 203 of the Federal Power Act requesting all necessary authorizations for the transfer and exchange of certain transmission facilities from Georgia Power Company to the City of Dalton, Georgia and certain transmission facilities from the City of Dalton, Georgia to Georgia Power Company.

Comment Date: January 7, 2003.

3. Calpine Energy Services, L.P., Calpine California Equipment Finance Company, LLC

[Docket No. EC03–32–000]

Take notice that on December 17, 2002, Calpine Energy Services, L.P. (CES) and Calpine California Equipment Finance Company, LLC (CCEFC) tendered for filing an application under section 203 of the Federal Power Act for approval of the assignment by CES to CCEFC of a wholesale power sales agreement between CES and the California Department of Water Resources.

Comment Date: January 7, 2003.

4. Elk Hills Power, LLC

[Docket No. EG03–31–000]

Take notice that on December 17, 2002 , Elk Hills Power, LLC, 101 Ash Street, San Diego, California 92101 filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's Regulations.

Comment Date: January 10, 2003.

5. Midwest Independent Transmission System Operator, Inc.

[Docket No. EL03–34–000]

Take notice that on December 17, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) filed with the Federal Energy Regulatory Commission (Commission) a Petition for Declaratory Order seeking Commission confirmation that the Midwest ISO stakeholders that fund the costs incurred in starting up Midwest ISO market operations should be entitled to reasonable recovery of such funds.

Comment Date: January 16, 2003.

6. Midwest Independent Transmission System Operator, Inc.

[Docket No. EL03–35–000]

Take notice that on December 17, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) filed with the Federal Energy Regulatory Commission (Commission) a Petition for Declaratory Order seeking approval of the general

approach represented in the market rules appended thereto.

Comment Date: January 10, 2003.

7. D. E. Shaw Plasma Power, L.L.C.

[Docket No. EL03–36–000]

Take notice that on December 18, 2002, D. E. Shaw Plasma Power, L.L.C. tendered for filing with the Federal Energy Regulatory Commission (Commission) a Petition for A Declaratory Order Disclaiming Jurisdiction; Request for Waivers and Pre-Approvals; and Request for Expedition.

Comment Date: January 8, 2003.

8. AES Placerita, Inc.

[Docket Nos. ER00–33–003 and ER03–287–000]

Take notice that on November 22, 2002, AES Placerita, Inc. (Placerita) submitted its triennial market power update. In addition, pursuant to Section 205 of the Federal Power Act, Placerita submitted its second revision to FERC Electric Rate Schedule, Original Volume No. 1, and its first revision to its code of conduct reflecting new corporate affiliations.

Comment Date: December 30, 2002.

9. Wayne-White Counties Electric Cooperative

[Docket No. ER00–320–001]

Take notice that on December 17, 2002, Wayne-White Counties Electric Cooperative tendered for filing an updated market analysis and report of changes in status in compliance with the Commission's order, issued December 17, 1999, in Wayne-White Counties Electric Cooperative, 89 FERC 61,282 .

Comment Date: January 7, 2003.

10. Thompson River Co-Gen, LLC

[Docket No. ER02–298–002]

Take notice that on December 13, 2002, Thompson River Co-Gen, LLC (Thompson) amended its petition to the Commission for acceptance of Thompson Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates, and waiver of certain Commission regulations.

Thompson intends to sell at wholesale electricity generated from a 16-megawatt cogeneration facility located in Thompson Falls, Montana, to NorthWestern Energy, LLC, (NWE). Thompson does not intend to make other wholesale sales of electricity to any entity other than NWE. Thompson is an LLC with passive ownership interests, and Barry Bates and Lawrence Underwood are the Partners and will manage Thompson's day-to-day business. Thompson has no legal or economic interest, and is not in any way related to, any utility or other entity that owns any generation, transmission or other jurisdictional facilities.

Comment Date: January 3, 2003.

11. Otter Tail Power Company

[Docket No. ER03–91–001]

Take notice that on December 16, 2002, pursuant to the December 6, 2002 Letter Order in the above-referenced proceeding, Otter Tail Power Company (Otter Tail) submitted for filing a version of the executed umbrella form of service agreement between Otter Tail and the Midwest Independent Transmission System Operator, Inc. that includes service agreement designations as required by Order No. 614.

Comment Date: January 6, 2003.

12. Entergy Services, Inc.

[Docket No. ER03–171–001]

Take notice that on December 13, 2002, Entergy Services, Inc., on behalf of Entergy Mississippi, Inc., (Entergy Mississippi), tendered for filing for informational purposes the Agreement for the Lease of Silver Creek Substation between Entergy Mississippi and South Mississippi Electric Association (SMEPA), dated July 1, 2002, as additional information in support of the Interconnection and Operating Agreement between Entergy Mississippi and SMEPA filed in this docket on November 7, 2002.

Comment Date: January 3, 2003.

13. Thompson River Co-Gen, LLC

[Docket No. ER03–270–000]

On December 17, 2002 the Commission issued a ''Notice of Filing'' in the above referenced docket. This notice is hereby rescinded.

14. Ameren Services Company

[Docket No. ER03–272–000]

Take notice that on December 13, 2002, Ameren Services Company (ASC) tendered for filing a Transmission System Interconnection Agreement and Parallel Operating Agreement between ASC and Ameren Energy Generating Company. ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to Ameren Energy Generating Company pursuant to Ameren's Open Access Transmission Tariff.

Comment Date: January 3, 2003.

15. Ameren Services Company

[Docket No.ER03–273–000]

Take notice that on December 13, 2002, Ameren Services Company (ASC) tendered for filing a Transmission System Interconnection Agreement and Parallel Operating Agreement between ASC and Ameren Energy Generating Company. ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to Ameren Energy Generating Company pursuant to Ameren's Open Access Transmission Tariff.

Comment Date: January 3, 2003.

16. Graham County Electric Cooperative, Inc.

[Docket No. ER03–274–000]

Take notice that on December 13, 2002, Graham Electric Cooperative, Inc. (GCEC), filed a firm power wheeling agreement with the City of Safford and Gila Resources, Inc., as well as a notice of cancellation that the firm power wheeling agreement supersedes an earlier firm power wheeling agreement (GCEC Rate Schedule FERC No. 1) between GCEC and the City of Safford.

GCEC states that copies of this filing were served upon the City of Safford, Gila Resources, Inc., and the Arizona Corporation Commission.

Comment Date: January 3, 2003.

17. Union Power Partners, L.P.

[Docket No. ER03–275–000]

Take notice that on December 13, 2002, Union Power Partners, L.P. tendered for filing with the Federal Energy Regulatory Commission (Commission) correspondence approving its membership to the Western Systems Power Pool (WSPP). Union Power Partners, L.P. requests that the Commission allow its membership in the WSPP to become effective on December 12, 2002.

Union Power Partners, L.P. states that a copy of this filing has been provided to the WSPP Executive Committee and to Michael E. Small, General Counsel to the Western Systems Power Pool.

Comment Date: January 3, 2003.

18. Panda Gila River, L.P.

[Docket No. ER03–276–000]

Take notice that on December 13, 2002, Panda Gila River, L. P. tendered for filing with the Federal Energy Regulatory Commission (Commission) correspondence approving its membership to the Western Systems Power Pool (WSPP). Panda Gila River, L. P. requests that the Commission allow its membership in the WSPP to become effective on December 11, 2002.

Panda Gila River, L. P. states that a copy of this filing has been provided to the WSPP Executive Committee and to Michael E. Small, General Counsel to the Western Systems Power Pool.

Comment Date: January 3, 2003.

19. Florida Power & Light Company

[Docket No. ER03–278–000]

Take notice that on December 16, 2002, Florida Power & Light Company (FPL) tendered for filing an executed Oleander Power Project Operation/Scheduling Agreement between FPL and Seminole Electric Cooperative, Inc. FPL requests that the agreement be made effective December 1, 2002, as mutually agreed by the parties.

Comment Date: January 6, 2003.

20. Bangor Hydro-Electric Company

[Docket No. ER03–279–000]

Take notice that on December 13, 2002, Bangor Hydro-Electric Company (Bangor Hydro) filed an executed service agreement for short-term firm point-to-point transmission service with Indeck Maine Energy, L.L.C.

Bangor Hydro requests a waiver of the Commission's 60-day notice requirement to permit the effective date agreed to by the parties. Bangor states that copies of this filing were served upon Indeck Maine Energy, L.L.C., the Maine Public Utilities Commission, and the Maine Public Advocate.

Comment Date: January 3, 2003.

21. Bangor Hydro-Electric Company

[Docket No. ER03–280–000]

Take notice that on December 13, 2002, Bangor Hydro-Electric Company (Bangor Hydro) filed an executed service agreement for long-term firm point-to-point transmission service with Indeck Maine Energy, L.L.C.

Bangor Hydro requests a waiver of the Commission's 60-day notice requirement to permit the effective date agreed to by the parties. Bangor Hydro states that copies of this filing were served upon Indeck Maine Energy, L.L.C., the Maine Public Utilities Commission, and the Maine Public Advocate.

Comment Date: January 3, 2003.

22. Connexus Energy

[Docket No. ER03–282–000]

Take notice that on December 16, 2002, Connexus Energy submitted for filing revised sheets to Connexus Energy's Electric Rate Schedule FERC No. 1. Connexus Energy states that the revised sheets effect minor rate changes under Connexus Energy's contract with Elk River Municipal Utilities. Connexus Energy requests waiver of the Commission's notice requirement to allow a January 1, 2003 effective date.

Comment Date: January 6, 2003.

23. American Transmission Company LLC

[Docket No. ER03–283–000]

Take notice that on December 13, 2002, the American Transmission Company LLC (ATCLLC) filed a Notice of Termination of the Generation-Transmission Interconnection Agreement between ATCLLC and Badger Generating Company LLC, Service Agreement No 180, filed in Docket No. ER01–2705–000.

Comment Date: January 3, 2003.

24. Tampa Electric Company

[Docket No. ER03–286–000]

Take notice that on December 16, 2002, Tampa Electric Company (Tampa Electric) tendered for filing notices of cancellation of the service agreements under its open access transmission tariff with the following customers: AIG Trading Corporation; Allegheny Energy Supply Company, LLC; Engage Energy US, L.P.; Exelon Generation Company, LLC; PECO Energy Company—Power Team; Utility Board of the City of Key West, Florida; Western Power Services, Inc.; and Williams Energy Services Company. Tampa Electric proposes that the cancellations be made effective on January 1, 2003.

Copies of the filing have been served on the affected customers and the Florida Public Service Commission.

Comment Date: January 6, 2003.

25. Arizona Public Service Company

[Docket No. ER03–288–000]

Take notice that on December 17, 2002, Arizona Public Service Company (APS) and Imperial Irrigation District (IID) filed a Notice of Cancellation in Rate Schedule No. 5.

APS states that this filing has been sent to IID and the Arizona Corporation Commission.

Comment Date: January 7, 2003.

26. Soyland Power Cooperative, Inc.

[Docket No. ER03–289–000]

Take notice that on December 17, 2002, Soyland Power Cooperative, Inc. (Soyland) tendered for filing with the Federal Energy Regulatory Commission (Commission) proposed non-rate changes to its formulary rate schedule, designated as Supplement No. 2 to its Rate Schedules.

Soyland requests an effective date of January 1, 2003 for the proposed change. Accordingly, Soyland requests waiver of the Commission's regulations regarding prior notice. Supplement No. 2 is the formulary rate under which Soyland recovers the costs associated with its service to its Members pursuant to the Wholesale Power Contract that Soyland has with each Member.

Comment Date: January 7, 2003.

27. Calpine California Equipment Finance Company, LLC

[Docket No. ER03–290–000]

Take notice that on December 17, 2002, Calpine California Equipment Finance Company, LLC tendered for filing, under section'205 of the Federal Power Act, a request for authorization to make wholesale sales of electric energy, capacity, replacement reserves, and ancillary services at market-based rates, to reassign transmission capacity, and to resell firm transmission rights.

Comment Date: January 7, 2003.

28. D. E. Shaw Plasma Power, L.L.C.

[Docket No. ER03–292–000]

Take notice that on December 18, 2002, D. E. Shaw Plasma Power, L.L.C. tendered for filing an application for authorization to sell energy, capacity, and ancillary services at market-based rates pursuant to section 205 of the Federal Power Act.

Comment Date: January 8, 2003.

29. North Branch Resources, LLC

[Docket No. ER03–293–000]

Take notice that on December 18, 2002, North Branch Resources, LLC (NBR) petitioned the Federal Energy Regulatory Commission (Commission) for acceptance of NBR Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations. NBR also filed a supplement to its application for market-based rates as power marketer on the same date.

Comment Date: January 8, 2003.

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. 02–32867 Filed 12–27–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–018–000]

City of Duluth, Minnesota; Notice of Intent to Prepare an Environmental Assessment for the Proposed City of Duluth Pipeline Project and Request for Comments on Environmental Issues

December 24, 2002.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the City of Duluth Pipeline Project involving construction and operation of facilities by the City of Duluth, Minnesota (City) in St. Louis County, Minnesota and Douglas County, Wisconsin.[1] These facilities would consist of about 5.3 miles of 10-inch-diameter pipeline, check and block valves, a town border station, and other ancillary facilities. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a City representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The City would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the City could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' was attached to the project notice the City provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site *www.ferc.gov.*

Summary of the Proposed Project

The purpose of the project is to expand the capacity and service, while improving the reliability, of the City's natural gas distribution system. The gas would enter the City's current system for distribution to residents and businesses of the City. This project would help ensure continued dependable natural gas service to the customers of the City. The volume of gas delivered by the proposed facilities would be 6,000,000 cubic feet per day. The City seeks authority to construct and operate:

—approximately 5.3 miles of 10-inch-diameter pipeline;
—a town border station, including a heater, pressure regulators, relief valves, odorant tank, odorant injector, communication and electronics equipment, valves, and associated piping;
—a pig launcher/receiver trap and associated valving/piping or piping for a temporary pig launcher/receiver trap, a check valve and a block valve; and
—a meter station.

The general location of the project facilities is shown in appendix 1.[2] If you are interested in obtaining detailed maps of a specific portion of the project, send in your request using the form in appendix 4.

Land Requirements for Construction

Construction of the proposed project would disturb about 44.3 acres of land. Following construction, about 19.4 acres would be maintained as permanent right-of-way or aboveground facilities. The remaining 24.9 acres of land would be restored and allowed to revert to its former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[3] to discover and address concerns the public may have about proposals. This process is referred to as ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

—geology and soils
—land use
—water resources, fisheries, and wetlands
—cultural resources
—vegetation and wildlife
—air quality and noise
—endangered and threatened species
—hazardous waste

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

[1] The City's application was filed with the Commission under Section 7 of the Natural Gas Act and part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's Web site at the ''FERRIS'' link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to FERRIS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] ''We'', ''us'', and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by the City. This preliminary list of issues may be changed based on your comments and our analysis.

—Twelve waterbodies and 35 wetlands would be crossed by the proposed pipeline.
—Five waterbodies would be crossed using the horizontal directional drill technique, including the St. Louis River, a tributary to the St. Louis River, an unnamed ditch, the Little Pokegama River, and the Pokegama River.
—Five federally listed endangered or threatened species may occur in the proposed project area.
—Nineteen state threatened, endangered, or special concern species may occur in the proposed project area.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.

Label one copy of the comments for the attention of Gas Hydro Branch.

Reference Docket No. CP03–018–000.

Mail your comments so that they will be received in Washington, DC on or before January 24, 2003.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on ''Login to File'' and then ''New User Account.''

We might mail the EA for comment. If you are interested in receiving it, please return the Information Request (appendix 4). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor''. Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (*see* appendix 2).[4] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

This notice is being sent to individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. It is also being sent to all identified potential right-of-way grantors. By this notice we are also asking governmental agencies, especially those in appendix 3, to express their interest in becoming cooperating agencies for the preparation of the EA.

[4] Interventions may also be filed electronically via the Internet in lieu of paper. *See* the previous discussion on filing comments electronically.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov)*using the FERRIS link. Click on the FERRIS link, enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with FERRIS, the FERRIS helpline can be reached at 1–866–208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov*. The FERRIS link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–32963 Filed 12–27–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Surrender of Major Project License and Soliciting Comments, Motions To Intervene, and Protests

December 23, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Surrender of Major Project License.

b. *Project No.:* P–10359.

c. *Date Filed:* November 13, 2002.

d. *Applicant:* Snoqualmie River Hydro Inc.

e. *Name of Project:* Youngs Creek Hydroelectric Project.

f. *Location:* The project is located on Youngs Creek, near the Town of Sultan, in Snohomish County, Washington. This project does not utilize Federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Maureen E. O'Brien, Chief Operating Officer, Snoqualmie River Hydro, Inc., 19515 North Creek Parkway, Suite 310, Bothell, WA 98011, (425) 487–6541.

i. *FERC Contact:* Blake Condo at blake.condo@ferc.gov, or telephone (202) 502–8914.

j. *Cooperating agencies:* We are asking Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental

issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item k below.

k. *Deadline for filing comments, motions, or protests and requests for cooperating agency status:* February 1, 2003.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, Mail Code: DEER, PJ–11.3, 888 First Street, NE., Washington, DC 20426. Comments and protests 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 at *http://www.ferc.gov/documents/makeanelectronicfiling/doorbell.htm*.

Please include the project number (P–10359) on any comments or motions filed.

l. *Description of Project:* Snoqualmie River Hydro, licensee for the Youngs Creek Hydroelectric Project (Project), requests to surrender its major project license for the existing, un-constructed Project.

m. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. The application may be viewed on the web at*http://www.ferc.gov*. Call (202) 502–8222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

o. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

p. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–32875 Filed 12–27–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission, Establishing Procedural Schedule for Relicensing, and a Deadline for Submission of Final Amendments

December 23, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2177–053.

c. *Date Filed:* December 13, 2002.

d. *Applicant:* Georgia Power Company.

e. *Name of Project:* Middle Chattahoochee Project.

f. *Location:* On the Chattahoochee River, in Harris and Muscogee Counties, Georgia; Lee and Russell Counties, Alabama; near the cities of Columbus, Georgia and Phenix City, Alabama. The project does not affect Federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* George Martin, Relicensing Project Manger, Georgia Power Company, 22nd Floor, Bin 10221, 241 Ralph McGill Blvd., NE., Atlanta, Georgia 30308, (404)-506–1357 or *gamartin@southernco.com*.

i. *FERC Contact:* Ron McKitrick, (770) 452–3778 or *ronald.mckitrick@ferc.gov*.

j. *Deadline for filing comments on the application:* 60 days from date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

k. *Cooperating agencies:* We are asking Federal, state, local, and tribal agencies with jurisdiction and /or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document Agencies who would like to request cooperation status should follow the instruction for filing comments described in the item j above. Requests for cooperating agency status may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

l. This application is not ready for environmental analysis at this time.

m. The proposed Middle Chattahoochee Project includes three developments: Goat Rock Development consisting of: (1) A 965-acre impoundment; (2) a 75foot-high concrete reinforced dam located at river mile (RM) 172.2; (3) a 909.5-foot-long fixed crest spillway structure topped with 4-foot-high wooden flashboards; (4) a 200-foot-long and 77-foot-long non-overflow section; (5) a 173-foot-long combined powerhouse and intake section; (6) four trash gates on the east end of the intake having a total length of 74 feet; (7) two new horizontal generating units (to replace 2 existing units) with a nameplate rating of 8.7 MW each, one vertical generating unit with a nameplate rating of 6.9 MW, and three horizontal generating units with a nameplate rating of 5.0 MW; (8) a total generating capacity of 39.3 MW, a total hydraulic capacity of 9,877 cfs, and average annual generation of 151,120,490 kWh.

Oliver Development consisting of: (1) A 2,280-acre impoundment; (2) a 70-foot-high concrete reinforced dam located at RM 163.5; (3) a 1,324-foot-long gated spillway structure which includes 33 16-foot-high by 35-foot-long radial-arm taintor gates, and one 16-foot-high by 11-foot-long trash gate; (4) a 284-foot-long and 215-foot-long non-overflow section; (5) a 198-foot-long combined powerhouse and intake section; (6) three vertical generating units with a nameplate rating of 18 MW each, and one vertical generating unit with a nameplate rating of 6.0 MW; and (7) a total generating capacity of 60 MW, a total hydraulic capacity of 12,496 cfs, and average annual generation of 234,019,210 kWh.

North Highlands Development consisting of: (1) A 131-acre impoundment; (2) a 36foot-high concrete reinforced dam located at RM 162.5 (3) a curved 705-foot-long spillway section topped with 3.6-foot-high flashboards; (4) a 46-foot-long and 40-foot-long non-overflow section; (5) a 193-foot-long combined power house and intake section; (6) three vertical generating units with a nameplate rating of 9.2 MW each, and one vertical generating unit with a nameplate rating

of 2.0 MW; (7) a total generating capacity of 29.6 MW, a total hydraulic capacity of 13,031 cfs, and average annual generation of 138,832,160 kWh.

The three developments of the Middle Chattahoochee Project have a total installed capacity of 128.9 megawatts (MW) and generates about 524,000 megawatt-hours (MWh) of electric energy annually. All generated power is utilized within the applicant's electric utility system.

n. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

o. *Procedural schedule and final amendments:* At this time we do not anticipate the need for preparing a draft EA. We intend to prepare a single environmental document. The EA will include our recommendations for operating procedures and environmental enhancement measures that should be part of any license issued by the Commission. Recipients will have 60 days to provide the Commission with any written comments on the EA. All comments filed with the Commission will be considered in the Order taking final action on the license applications. However, should substantive comments requiring reanalysis be received on the NEPA document, we would consider preparing a subsequent NEPA document.

The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Issue Acceptance letter: February 2003.

Notice soliciting final terms and conditions: February 2003.

Deadline for Agency Recommendations: April 2003.

Notice of the availability of the EA: August 2003.

Public Comments on EA due: October 2004.

Ready for Commission's decision on the application: April 2004.

Final amendments to the application must be filed with the Commission no later than 45 days from the issuance date of the notice soliciting final terms and conditions.

p. With this notice, we are initiating consultation with the Georgia and Alabama State Historic Preservation Officers as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR, part 800.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–32876 Filed 12–27–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Surrender of Exemption and Soliciting Comments, Motions To Intervene, and Protests

December 23, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Surrender of Exemption.

b. *Project No.:* P–6564.

c. *Date Filed:* December 11, 2002.

d. *Applicant:* Bob Horning.

e. *Name of Project:* Brunswick Creek Hydroelectric Project.

f. *Location:* The project is located on Brunswick Creek, in Washington County, Oregon. This project does not utilize Federal or Tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Bob Horning, 21277 NW Brunswick Canyon Road, North Plains, OR 97133. (503) 647–2920.

i. *FERC Contact:* Blake Condo at blake.condo@ferc.gov, or telephone (202) 502–8914.

j. *Cooperating agencies:* We are asking Federal, State, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item k below.

k. *Deadline for filing comments, motions, or protests and requests for cooperating agency status:* January 27, 2003.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, Mail Code: DEER, PJ–11.3, 888 First Street, NE., Washington, DC 20426. Comments and protests 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 at *http://www.ferc.gov/documents/makeanelectronicfiling/doorbell.htm.*

Please include the project number (P–6564) on any comments or motions filed.

l. *Description of Project:* Jane Horning, exemptee for the Brunswick Creek Hydroelectric Project (Project), requests to surrender its exemption for the existing, non-operational Project.

m. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. The application may be viewed on the web at *http://www.ferc.gov*. Call (202) 502–8222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

o. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

p. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–32877 Filed 12–27–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7432–7]

Agency Information Collection Activities: Proposed Collection; Comment Request; Safe Drinking Water Act State Revolving Fund Program

AGENCY: Environmental Protection Agency, (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Safe Drinking Water Act State Revolving Fund Program; EPA ICR No. 1803.04; OMB No. 2040–0185; expiration date June 30, 2003. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before February 28, 2003.

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

FOR FURTHER INFORMATION CONTACT: For more specific aspects of this ICR, contact Vinh Nguyen at (202) 564–4631; fax (202) 564–3757; E-mail at *nguyen.vinh@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Affected Entities

Entities potentially affected by this action are the fifty States, Puerto Rico, and the recipients of assistance in each of these jurisdictions.

B. Background

Title: Safe Drinking Water Act State Revolving Fund Program; OMB Control No. 2040–0185; EPA ICR No. 1803.04; expiration date June 30, 2003.

Abstract: The Safe Drinking Water Act (SDWA) Amendments of 1996 (Public Law 104–182) authorize the creation of Drinking Water State Revolving Fund (DWSRF) programs in each State and Puerto Rico to assist public water systems to finance the costs of infrastructure needed to achieve or maintain compliance with SDWA requirements and to protect public health. Section 1452 authorizes the Administrator of the U.S. Environmental Protection Agency (EPA) to award capitalization grants to the States and Puerto Rico which, in turn, provide low-cost loans and other types of assistance to eligible drinking water systems. States can also reserve a portion of their grants to conduct various set-aside activities.

The information collection activities will occur primarily at the program level through the: (1) Capitalization Grant Application and Agreement/State Intended Use Plan; (2) Biennial Report; (3) Annual Audit; and (4) Assistance Application Review. Information collected is needed for input into the DWSRF National Information Management System.

(1) *Capitalization Grant Application and Agreement/State Intended Use Plan:* The State must prepare a Capitalization Grant Application that includes an Intended Use Plan (IUP) outlining in detail how it will use all the funds covered by the capitalization grant. States may, as an alternative, develop the IUP in a two part process with one part identifying the distribution and uses of the funds among the various set-asides in the DWSRF program and the other part dealing with project assistance from the Fund.

(2) *Biennial Report:* The State must agree to complete and submit a Biennial Report on the uses of the capitalization grant. The scope of the report must cover assistance provided by the DWSRF Fund and all other set-aside activities included under the Capitalization Grant Agreement. States which jointly administer DWSRF and the Clean Water State Revolving Fund (CWSRF) programs, in accordance with section 1452(g)(1), may submit reports (according to the schedule specified for each program) which cover both programs.

(3) *Annual Audit:* A State must comply with the provisions of the Single Audit Act Amendments of 1996. Best management practices suggest and EPA recommends that a State conduct an annual independent audit of its DWSRF program. The scope of the report must cover the DWSRF Fund and all other set-aside activities included in the Capitalization Grant Agreement. States which jointly administer DWSRF and CWSRF programs, in accordance with section 1452(g)(1), may submit audits which cover both programs but which report financial information for each program separately.

(4) Assistance Application Review: Local applicants seeking financial assistance must prepare and submit DWSRF loan applications. States then review completed loan applications and verify that proposed projects will comply with applicable federal and state requirements.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Burden Statement

(1) Capitalization Grant Application and Agreement/State Intended Use Plan

2003: 51 States × 400 Hours = 20,400 Burden Hours.
2004: 51 States × 400 Hours = 20,400 Burden Hours
2005: 51 States × 400 Hours = 20,400 Burden Hours

(2) Biennial Report

2003: 25 States × 275 Hours = 6,875 Burden Hours.
2004: 26 States × 275 Hours = 7,150 Burden Hours.
2005: 25 States × 275 Hours = 6,875 Burden Hours.

(3) Annual Audit

2003: 51 States × 80 Hours = 4,080 Burden Hours.
2004: 51 States × 80 Hours = 4,080 Burden Hours.
2005: 51 States × 80 Hours = 4,080 Burden Hours.

(4) Loan Application Review

2003: 51 States × 27 Applications × 40 Hours = 55,080 Burden Hours.
2004: 51 States × 27 Applications × 40 Hours = 55,080 Burden Hours.
2005: 51 States × 27 Applications × 40 Hours = 55,080 Burden Hours.

The annual reporting and recordkeeping hour burden by state and local respondents is 196,687 hours.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

C. How Can I Get Copies of the ICR Supporting Statement and Other Related Information?

1. *Docket.* EPA has established an official public docket for this ICR under Docket ID No. OW–2002–0059. The official public docket is the collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center, (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Water Docket is (202) 566–2426.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.*

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

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI, and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.C.

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

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

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments in formulating a final decision.

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

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in Docket ID No. OW–2002–0059. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to *OW-docket@epa.gov,* Attention Docket ID No. OW–2002–0059. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

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

2. *By Mail.* Send an original and three number of copies of your comments to: Water Docket, Environmental Protection Agency, Mail Code: 4101T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. OW–2002–0059.

3. *By Hand Delivery or Courier.* Deliver your comments to: EPA Docket Center, EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC, Attention Docket ID No. OW–2002–0059. Such deliveries are only accepted during the Docket's normal hours of operation as identified in Unit I.C.

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

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

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line

on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

E. What Information Is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are 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 estimates of the burdens of the proposed collections of information.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Dated: December 23, 2002.

Cynthia C. Dougherty,

Director, Office of Ground Water & Drinking Water.

[FR Doc. 02–32887 Filed 12–27–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2002–0090; FRL–7432–9]

Agency Information Collection Activities; Submission of EPA ICR No. 1718.04 (OMB No. 2060–0308) to OMB for Review and Approval; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Recordkeeping and Reporting Requirements for the Fuel Quality Regulations for Diesel Fuel Sold in 2001 and Later Years (OMB Control No. 2060–0308, EPA ICR No. 1718.04). The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before January 29, 2003.

ADDRESSES: Follow the detailed instructions in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Anne Pastorkovich, Transportation and Regional Programs Division (Mail Code 6406J), telephone number: (202) 564–8987, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 565–2085; fax number: (202) 565–2085; e-mail address: pastorkovich.anne-marie@epa.gov.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 23, 2001 (66 FR 28461), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OAR–2002–0090, which is available for public viewing at the Air and Radiation Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket and Information Center is (202) 566–1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to *www.epa.gov/oar/docket.html*, or by mail to: EPA Docket Center, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) Mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov/edocket.*

Title: Recordkeeping and Reporting Requirements for the Fuel Quality Regulations for Diesel Fuel Sold in 2001 and Later Years (Final Rule) (OMB Control No. 2060–0308, EPA ICR Number 1718.04). This is a request for a revised collection. Under the OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: The pollution emitted by diesel engines contributes greatly to our nation's continuing air quality problems. New emissions standards for these engines and vehicles will apply starting with model year 2007. Since the new technology requires low sulfur diesel fuel containing 15 parts per million (ppm) sulfur or less, the regulations at 40 CFR part 80, subpart I, require the availability of 15 ppm by no later than 2006, with all motor vehicle diesel fuel required to meet the 15 ppm standard by 2010. The recordkeeping and reporting requirements associated with this program are necessary to ensure its environmental benefits. They are designed to be consistent with existing requirements. Many reporting items represent one-time burdens, including applications for exemptions or specific flexibilities (including small refiner status). In addition, annual reporting requirements associated with this program cease after 2010, when all motor vehicle diesel fuel must meet the 15 ppm standard.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB

control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 166 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Domestic and foreign refiners, importers, and fuel additives manufacturers.

Estimated Number of Respondents: 450

Frequency of Response: On occasion/annual

Estimated Total Annual Hour Burden: 72,648 hours.

Estimated Total Annual Cost: $9,208,880, includes $4,800,000 annualized capital or O&M costs.

Changes in the Estimates: This rule increases the estimate by 72,648 hours over the burden currently identified in the OMB Inventory of Approved ICR Burdens for this program.

Dated: December 18, 2002.

Oscar Morales, Director,

Collection Strategies Division.

[FR Doc. 02–32900 Filed 12–27–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7433–1]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Regional Haze Regulations, ICR number 1813.04, and OMB Control Number 2060–0421, expiration date: December 31, 2002. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 29, 2003.

ADDRESSES: Send comments, referencing EPA ICR No. 1813.04 and OMB Control No. 2060–0421, to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822T), 1200 Pennsylvania Avenue, NW, Washington, DC 20460–0001; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Susan Auby at EPA by phone at (202) 566–1672, or by e-mail at *auby.susan@epa.gov* and refer to EPA ICR No. 1813.04. For technical questions about the ICR contact Tim Smith by phone at (919) 541–4718, by E-mail at *smith.tim@epa.gov*, or by mail at Integrated Policy and Standards Group (C504–02), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711.

SUPPLEMENTARY INFORMATION: Title: Regional Haze Regulations, ICR number 1813.04., and OMB Control Number 2060–0421, expiration date: December 31, 2002. This is a request for extension of a currently approved collection.

Abstract: This ICR is for activities related to the implementation of EPA's 1999 regional haze rule, for the time period between October 1, 2002 and September 30, 2005. This ICR renews the previous ICR, which addressed the three year time period immediately after the rule was promulgated. The regional haze rule, as authorized by sections 169A and 169B of the Clean Air Act, requires States to develop implementation plans to protect visibility in 156 federally-protected Class I area. Tribes may choose to develop implementation plans. For this time period, States will be conducting technical analyses in support of development of reasonable progress goals and strategies for regional haze as required by the rule. EPA is encouraging States to work together in regional planning organizations to development and implement multi-state strategies.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on July 31, 2002. No comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 219 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: State air quality agencies; local air quality agencies, regional planning organizations; certain facilities built between 1962 and 1977.

Frequency of Response: annually.

Estimated Total Annual Hour Burden: 44,917.

Estimated Total Annualized Capital, O&M Cost Burden: $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above.

Please refer to EPA ICR No. 1813.04 and OMB Control No. 2060–0421 in any correspondence.

Dated: December 19, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02–32901 Filed 12–27–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[RCRA–2002–0022; FRL–7433–2]

Agency Information Collection Activities; Submission of EPA ICR No. 2076.01 to OMB for Review and Approval; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: National Waste Minimization Partnership Program, EPA ICR No. 2076.01. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before January 29, 2003.

ADDRESSES: Follow the detailed instructions in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Newman Smith, Office of Solid Waste, mailcode 5302W, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–308–8757; fax number: 703–308–8433; e-mail address: smith.newman@epa.gov.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 21, 2002 (67 FR 42251), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. RCRA–2002–0022, which is available for public viewing at the RCRA Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the RCRA Docket is (202) 566–0270. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to *RCRA–docket@epa.gov*, or by mail to: RCRA Docket in the EPA Docket Center, (mailcode 5305T) EPA West Basement, Room B102, 1301 Constitution Ave., NW., Washington, DC 20460; and (2) Mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov./edocket.*

Title: Reporting and Recordkeeping Requirements under EPA's National Waste Minimization Partnership Program (EPA ICR Number 2076.01). This is a request for a new collection. Under the OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Affected Entities: Any generator, treater, storer, and/or disposer of RCRA-regulated hazardous waste may participate in the National Waste Minimization Partnership Program.

Abstract: EPA is establishing a national program to encourage the minimization of hazardous waste through source reduction and recycling. Participation in the National Waste Minimization Partnership Program is completely voluntary. EPA will use two forms to collect information from participants, called partners, which can be prepared and submitted by hard copy or electronically. Participation begins when an Enrollment Form is submitted and received by EPA. The form asks for basic site identification information as well as information on the company's waste minimization goals under the program. Once in the program, partners can submit an optional Accomplishments Form when they have accomplished steps toward reaching the goal(s) established during their enrollment in the program. The Accomplishments Form asks for a description of the waste minimization accomplishment and whether the partner would like the information posted on the EPA Waste Minimization Program's website. Once the waste minimization goal(s) are reached, partners may choose to submit an optional, one-time Case Study. All Case Studies submitted will be available on EPA's National Waste Minimization Program website, and each will describe a partner's waste minimization techniques, implementation problems, lessons learned, benefits, and relevant implications. The authority under which the Agency will conduct the program is the Pollution Prevention Act of 1990, which directs EPA to ''facilitate the adoption of source reduction techniques by businesses * * *, foster the exchange of information regarding source reduction techniques * * *, and [foster] the provision of technical assistance to businesses'' (42 U.S.C. 13101).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 14 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and

requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Generators, Storers, Treaters, and Disposers of RCRA Hazardous Waste.

Estimated Number of Respondents: 150.

Frequency of Response: One-time.

Estimated Total Annual Hour Burden: 3,235 hours.

Estimated Total Annual Cost: $200,633, includes no annualized capital or O&M costs.

Dated: December 19, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02–32902 Filed 12–27–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2002–0091; FRL–7433–3]

Agency Information Collection Activities: Submission of EPA ICR No. 0940.17 (OMB No. 2060–0084) to OMB for Review; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Ambient Air Quality Surveillance (Renewal) (OMB Control Number 2060–0084, EPA ICR No. 0940.17 which will expire December 31, 2002. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 29, 2003.

ADDRESSES: See detailed instructions in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: David Lutz, Emission, Monitoring, and Analysis Division, Office of Air Quality Planning and Standards, (C339–02), Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541–5476, FAX (919) 541–1903.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On March 7, 2002 (47 FR 10401), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OAR–2002–0091, which is available for public viewing at the Air and Radiation Docket and Information Center Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket and Information Center Docket is (202) 566–1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to *http://www.epa.gov/oar/docket.html*, or by mail to: EPA Docket Center, Environmental Protection Agency, Mailcode: (C339–02), 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) Mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov./edocket.*

Title: Ambient Air Quality Surveillance, (OMB Control No. 2060–0084, EPA ICR Number 0940.17). This is a request to renew an existing approved collection that will expire December 20, 2002 . Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: The general authority for the collection of ambient air quality data is contained in sections 110 and 319 of the Clean Air Act (42 U.S.C. 1857). Section 110 makes it clear that State generated air quality data is central to the air quality management process through a system of State implementation plans (SIP). Section 319 was added via the 1977 Amendments to the Act and spells out the key elements of an acceptable monitoring and reporting scheme. To a large extent, the requirements of section 319 had already been anticipated in the detailed strategy document prepared by EPA's Standing Air Monitoring Work Group (SAMWG). The regulatory provisions to implement these recommendations were developed through close consultation with the State and local agency representatives serving on SAMWG and through reviews by ad-hoc panels from the State and Territorial Air pollution Program Administrators and the Association of Local Air Pollution Control Officials. These modifications to the previous regulations were issued as final rules on May, 10, 1979 (44 FR 27558) and are contained in 40 CFR part 58.

Major amendments which affect the hourly burdens, were made in 1983 for lead, 1987 for PM–10, 1993 for the enhanced monitoring for ozone, and 1997 for PM–2.5. The specific required activities for the burden include establishing and operating ambient air monitors and samplers, conducting sample analyses for all pollutants for which a national ambient air quality standard (NAAQS) has been established, preparing, editing, and quality assuring the data, and submitting the ambient air quality data and quality assurance data to EPA.

Some of the major uses of the data are for judging attainment of the NAAQS, evaluating progress in achieving/maintaining the NAAQS or State/local

standards, developing or revising SIP's, evaluating control strategies, developing or revising national control policies, providing data for model development and validation, supporting enforcement actions, documenting episodes and initiating episode controls, documenting population exposure, and providing information to the public and other interested parties.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 18,497 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Respondents/Affected Entities: State/local Agencies

Estimated Number of Respondents: 130

Frequency of Response: Quarterly

Estimated Total Annual Hour Burden: 2,404,606.

Estimated Total Annual Cost: $196,406,873, includes $81,327,810 annualized capital or O&M costs.

Changes in the Estimates: There is no change in hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens.

Dated: December 18, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02–32903 Filed 12–27–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Petition IV–2002–1; FRL–7432–5]

Clean Air Act Operating Permit Program; Petition for Objection to State Operating Permit for Oglethorpe Power Company—Wansley Combined Cycle Energy Facility; Roopville (Heard County), GA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final order on petition to object to a state operating permit.

SUMMARY: Pursuant to Clean Air Act section 505(b)(2) and 40 CFR 70.8(d), the EPA Administrator signed an order, dated November 15, 2002, denying a petition to object to a state operating permit issued by the Georgia Environmental Protection Division (EPD) to Oglethorpe Power Company—Wansley Combined Cycle Energy Facility (WCCEF) located in Roopville, Heard County, Georgia. This order constitutes final action on the petition submitted by the Georgia Center for Law in the Public Interest (GCLPI) on behalf of the Sierra Club (Petitioner). Pursuant to section 505(b)(2) of the Clean Air Act (the Act) any person may seek judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of this notice under section 307 of the Act.

ADDRESSES: Copies of the final order, the petition, and all pertinent information relating thereto are on file at the following location: EPA Region 4, Air, Pesticides and Toxics Management Division, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The final order is also available electronically at the following address: *http://www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitions/oglethorpewansley_decision2002.pdf.*

FOR FURTHER INFORMATION CONTACT: Art Hofmeister, Air Permits Section, EPA Region 4, at (404) 562–9115 or *hofmeister.art@epa.gov*.

SUPPLEMENTARY INFORMATION: The Act affords EPA a 45-day period to review and, as appropriate, to object to operating permits proposed by state permitting authorities under title V of the Act, 42 U.S.C. 7661–7661f. Section 505(b)(2) of the Act and 40 CFR 70.8(d) authorize any person to petition the EPA Administrator to object to a title V operating permit within 60 days after the expiration of EPA's 45-day review period if EPA has not objected on its own initiative. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the state, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period.

GCLPI submitted a petition on behalf of the Sierra Club to the Administrator on February 4, 2002, requesting that EPA object to a state title V operating permit issued by EPD to WCCEF. The Petitioner maintains that the WCCEF permit is inconsistent with the Act because of: (1) The permit's lack of a requirement for a case-by-case maximum achievable control technology determination; (2) the inadequacy of the test method used to determine compliance with a carbon monoxide emission limit; (3) the identification of Georgia Rule 391–3–1–.03(2)(c) as ''State Only Enforceable''; (4) the omission of a short-term best available control technology limit covering startup and shutdown periods; and (5) EPD's improper issuance of the permit to a company with other facilities that are operating out of compliance with their respective permits.

On November 15, 2002, the Administrator issued an order denying this petition. The order explains the reasons behind EPA's conclusion that the Petitioner has failed to demonstrate that the WCCEF permit is not in compliance with the requirements of the Act on the grounds raised.

Dated: December 6, 2002.

A. Stanley Meiburg,

Deputy Regional Administrator, Region 4.

[FR Doc. 02–32904 Filed 12–27–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Petition IV–2001–9; FRL–7432–4]

Clean Air Act Operating Permit Program; Petition for Objection to State Operating Permit for Shaw Industries, Inc.—Plant No. 80; Dalton (Whitfield County), GA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final order on petition to object to a state operating permit.

SUMMARY: Pursuant to Clean Air Act section 505(b)(2) and 40 CFR 70.8(d), the EPA Administrator signed an order, dated November 15, 2002, denying a petition to object to a state operating permit issued by the Georgia Environmental Protection Division

(EPD) to Shaw Industries, Inc.—Plant No. 80 (Shaw) located in Dalton, Whitfield County, Georgia. This order constitutes final action on the petition submitted by the Georgia Center for Law in the Public Interest (GCLPI) on behalf of Georgia Forest Watch (Petitioner). Pursuant to section 505(b)(2) of the Clean Air Act (the Act) any person may seek judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of this notice under section 307 of the Act.

ADDRESSES: Copies of the final order, the petition, and all pertinent information relating thereto are on file at the following location: EPA Region 4, Air, Pesticides and Toxics Management Division, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The final order is also available electronically at the following address: *http://www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitions/shaw80_decision2001.pdf.*

FOR FURTHER INFORMATION CONTACT: Art Hofmeister, Air Permits Section, EPA Region 4, at (404) 562–9115 or *hofmeister.art@epa.gov.*

SUPPLEMENTARY INFORMATION: The Act affords EPA a 45-day period to review and, as appropriate, to object to operating permits proposed by state permitting authorities under title V of the Act, 42 U.S.C. 7661–7661f. Section 505(b)(2) of the Act and 40 CFR 70.8(d) authorize any person to petition the EPA Administrator to object to a title V operating permit within 60 days after the expiration of EPA's 45-day review period if EPA has not objected on its own initiative. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the state, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period.

GCLPI submitted a petition on behalf of Georgia Forest Watch to the Administrator on November 26, 2001, requesting that EPA object to a state title V operating permit issued by EPD to Shaw. The Petitioner maintains that the Shaw permit is inconsistent with the Act because of: (1) The inadequacy of the public participation process and related public notice; (2) the permit's apparent limitation of enforcement authority and credible evidence; (3) the inadequacy of the monitoring and reporting requirements; and (4) the incompleteness of the permit itself as well as the corresponding narrative.

On November 15, 2002, the Administrator issued an order denying this petition. The order explains the reasons behind EPA's conclusion that the Petitioner has failed to demonstrate that the Shaw permit is not in compliance with the requirements of the Act on the grounds raised.

Dated: December 6, 2002.

A. Stanley Meiburg,

Deputy Regional Administrator, Region 4.

[FR Doc. 02–32905 Filed 12–27–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Petition IV–2001–10; FRL–7432–3]

Clean Air Act Operating Permit Program; Petition for Objection to State Operating Permit for Shaw Industries, Inc.—Plant No. 2; Dalton (Whitfield County), GA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final order on petition to object to a state operating permit.

SUMMARY: Pursuant to Clean Air Act section 505(b)(2) and 40 CFR 70.8(d), the EPA Administrator signed an order, dated November 15, 2002, denying a petition to object to a state operating permit issued by the Georgia Environmental Protection Division (EPD) to Shaw Industries, Inc.—Plant No. 2 (Shaw) located in Dalton, Whitfield County, Georgia. This order constitutes final action on the petition submitted by the Georgia Center for Law in the Public Interest (GCLPI) on behalf of Georgia Forest Watch (Petitioner). Pursuant to section 505(b)(2) of the Clean Air Act (the Act) any person may seek judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of this notice under section 307 of the Act.

ADDRESSES: Copies of the final order, the petition, and all pertinent information relating thereto are on file at the following location: EPA Region 4, Air, Pesticides and Toxics Management Division, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The final order is also available electronically at the following address: *http://www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitions/shaw2_decision2001.pdf.*

FOR FURTHER INFORMATION CONTACT: Art Hofmeister, Air Permits Section, EPA Region 4, at (404) 562–9115 or *hofmeister.art@epa.gov.*

SUPPLEMENTARY INFORMATION: The Act affords EPA a 45-day period to review and, as appropriate, to object to operating permits proposed by state permitting authorities under title V of the Act, 42 U.S.C. 7661–7661f. Section 505(b)(2) of the Act and 40 CFR 70.8(d) authorize any person to petition the EPA Administrator to object to a title V operating permit within 60 days after the expiration of EPA's 45-day review period if EPA has not objected on its own initiative. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the state, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period.

GCLPI submitted a petition on behalf of Georgia Forest Watch to the Administrator on November 26, 2001, requesting that EPA object to a state title V operating permit issued by EPD to Shaw. The Petitioner maintains that the Shaw permit is inconsistent with the Act because of: (1) The inadequacy of the public participation process and related public notice; (2) the permit's apparent limitation of enforcement authority and credible evidence; (3) the inadequacy of the monitoring and reporting requirements; and (4) the incompleteness of the permit itself as well as the corresponding narrative.

On November 15, 2002, the Administrator issued an order denying this petition. The order explains the reasons behind EPA's conclusion that the Petitioner has failed to demonstrate that the Shaw permit is not in compliance with the requirements of the Act on the grounds raised.

Dated: December 6, 2002.

A. Stanley Meiburg,

Deputy Regional Administrator, Region 4.

[FR Doc. 02–32906 Filed 12–27–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2002–0066; FRL–7286–6]

Endocrine Disruptor Screening Program, Proposed Chemical Selection Approach for Initial Round of Screening; Request for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice sets forth for public comment the approach EPA plans to use for selecting the first group of chemicals to be screened in the

Agency's Endocrine Disruptor Screening Program (EDSP). Following consideration of comments on this draft approach, EPA will issue a second **Federal Register** notice setting forth its approach for selecting the first group of chemicals and the chemicals it proposes for this initial list. Following comment on the draft list of specific chemicals, EPA will issue the final list.

Because the list of chemicals produced using the proposed approach will be a list of chemicals that the Agency, in its discretion, has decided should be tested first, based primarily upon exposure potential, it should not be construed as a list of known or likely endocrine disruptors nor characterized as such. Nothing in the approach for selecting the initial list would provide a basis to infer that any of the chemicals selected for the list interferes with or is suspected to interfere with the endocrine systems of humans or other species.

EPA anticipates that it will modify its chemical selection approach for subsequent Tier 1 screening lists based on experience gained from the results of testing of chemicals on the initial list, the feasibility of incorporating different categories of chemicals (e.g., non-pesticide substances) and additional pathways of exposure, and the availability of new priority-setting tools (e.g., High Throughput Pre-screening (HTPS) or Quantitative Structure Activity Relationship (QSAR) models).

DATES: Comments, identified by docket ID number OPPT–2002–0066, must be received on or before March 1, 2003.

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

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Acting Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Greg Schweer, Exposure Assessment Coordination and Policy Division (7203M), Office of Science Coordination and Policy, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8469; e-mail address: *schweer.greg@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of particular interest to those persons who are or may be required to conduct testing of chemical substances under the Toxic Substances Control Act (TSCA), the Federal Food, Drug and Cosmetic Act (FFDCA), the Safe Drinking Water Act (SDWA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

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

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPPT–2002–0066. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

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

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

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

C. How and To Whom Do I Submit Comments?

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

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

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPPT–2002–0066. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *oppt.ncic@epa.gov*, Attention: Docket ID Number OPPT–2002–0066. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

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

2. *By mail*. Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier*. Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Building Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–2002–0066. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

D. How Should I Submit CBI To the Agency?

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

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

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

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

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. Provide specific examples to illustrate your concerns.

5. Offer alternative ways to improve the proposed approach.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Introduction

A. What Action is the Agency Taking?

In this notice, EPA is setting forth, and requesting public comment on, the approach EPA plans to use for selecting an initial group of chemicals to be screened in the Agency's EDSP. EPA anticipates that it will modify its chemical selection approach for subsequent Tier 1 screening lists based on experience gained from the results of testing of chemicals on the initial list, the feasibility of incorporating different categories of chemicals (e.g., non-pesticide substances) and additional pathways of exposure, and the availability of new priority-setting tools (e.g., HTPS or QSAR models). EPA developed its EDSP in response to a Congressional mandate in section 408(p) of FFDCA ''to determine whether certain substances may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other effects as [EPA] may designate'' (21 U.S.C. 346a(p)). When carrying out the program, the statute requires EPA to ''provide for the testing of all pesticide chemicals.'' The statute also provides EPA with discretionary authority to ''provide for the testing of any other substance that may have an effect that is cumulative to an effect of a pesticide chemical if the Administrator determines that a substantial population may be exposed to such a substance.'' In addition, section 1457 of SDWA provides EPA with discretionary authority to provide

for testing, under the FFDCA section 408(p) screening program, ''of any other substances that may be found in sources of drinking water if the Administrator determines that a substantial population may be exposed to such substance.''

EPA is following a tiered approach in implementing the requirements of section 408(p) of FFDCA. The core elements of the tiered approach are priority setting, Tier 1 screening, and Tier 2 testing. Tier 1 will be comprised of a battery of screening assays to identify substances that have potential to interact with the estrogen, androgen, or thyroid hormone systems. The purpose of Tier 2 is to determine whether the substance may cause endocrine-mediated effects via or involving estrogen, androgen, or thyroid hormone systems, determine the consequences to the organism of the activities observed in Tier 1, and establish the relationship between doses of an endocrine-active substance administered in the test and the effects observed. (**Federal Register** issue of December 28, 1998 (63 FR 71542, FRL–6052–9, Docket Control Number OPPTS–42208).

At the request of EPA, a joint subcommittee of the EPA Science Advisory Board (SAB) and the FIFRA Scientific Advisory Panel (SAP) reviewed a set of scientific issues related to the development of the Agency's EDSP. One of the recommendations of the SAB/SAP Subcommittee (Ref. 1) was that EPA should initiate the Tier 1 screening program with a set of 50 to 100 chemicals and then convene a panel of independent scientists to review the screening data for the purpose of evaluating and optimizing the Tier 1 screening battery. EPA is proposing to adopt this SAB/SAP recommendation to initially select and screen approximately 50 to 100 chemicals to help the Agency further refine the EDSP. The Agency intends to submit the data received from the screening to an independent external panel of experts and request an evaluation of whether the program could be improved or optimized, and if so, how.

EPA has stated its intention to consider a broad universe of chemicals as potential candidates for testing under the EDSP including pesticide chemicals, non-pesticide commercial chemicals, mixtures, and environmental contaminants (63 FR 71542). However, for the first group of chemicals to be tested, EPA is intending to focus only on pesticide active ingredients and high production volume (HPV) chemicals with some pesticidal inert uses (i.e., the chemicals that are specifically mandated for testing under section 408(p) of FFDCA). The pesticide inerts to be considered are those with relatively large overall production volumes considering both pesticide and non-pesticide uses. This approach will allow EPA to focus its initial endocrine screening efforts on a smaller and more manageable universe of chemicals that emphasizes early attention to the pesticide chemicals that Congress specifically mandated EPA to test for possible endocrine effects.

The purpose of this notice is to describe the approach that EPA plans to use to select this initial set of chemicals to undergo Tier 1 screening. EPA is proposing to use an approach based in part on the compartment-based priority setting approach described in the December 28,1998, **Federal Register** notice (FRL–6052–9) in which EPA provided details about, and requested comment on, its EDSP. The proposed approach focuses on human exposure-related factors rather than using a combination of exposure- and effects-related factors. The approach would, however, exclude from the first group of chemicals to undergo Tier 1 screening any chemical for which the available effects information clearly shows an endocrine-mediated effect. Such chemicals would be considered for proposed Tier 2 tests, mechanistic or special studies, or hazard assessment. Similarly, the approach for this initial list also would exclude substances that EPA anticipates have low potential to cause endocrine disruption (e.g., certain FIFRA List 4 inerts, most polymers with number average molecular weight greater than 1,000 daltons, strong mineral acids, and strong mineral bases). Although EPA's general focus in this approach is on pesticide active ingredients and inerts with relatively greater potential human exposure, EPA believes that the proposed approach will also identify chemicals with high potential for exposure of humans from non-pesticide uses and/or chemicals with widespread environmental exposures to other organisms. EPA does not intend to develop an ordinal ranking of priorities of the chemicals within any list developed using the proposed approach.

Because the list of chemicals produced using the proposed approach will be a list of chemicals that the Agency, in its discretion, has decided should be tested first, based primarily upon exposure potential, it should not be construed as a list of known or likely endocrine disruptors nor characterized as such. Nothing in the approach for selecting the initial list would provide a basis to infer that any of the chemicals selected for the list interferes with or is suspected to interfere with the endocrine systems of humans or other species.

EPA has decided to defer consideration of nominations from the public until subsequent testing lists in order to keep this initial effort administratively simpler and ensure that a set of test results can be obtained in a relatively prompt timeline to aid the Agency in a mid-course evaluation of the EDSP Tier 1 screening battery. In addition, EPA has decided that the prudent approach would be to gain experience with the Tier 1 screening battery on single chemicals before the tests are used with mixtures. EPA also is proposing to exclude from consideration for the initial Tier 1 screening list chemicals that are no longer produced or used in the United States. The Agency thinks that the added administrative complexity of determining who should be responsible for testing such chemicals could unnecessarily delay EPA's selection of an initial list for Tier 1 screening.

B. What is the Agency's Authority for Taking this Action?

In this notice, EPA is proposing an approach for selecting an initial set of chemicals to go through endocrine disruptor screening. EPA has a number of authorities at its disposal to require screening and testing for endocrine disrupting effects. As explained previously, FFDCA section 408(p) requires EPA ''to determine whether certain substances may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other effects as [EPA] may designate.'' (21 U.S.C. 346a(p)). The statute requires EPA to ''provide for the testing of all pesticide chemicals.'' It defines ''pesticide chemical'' as ''any substance that is a pesticide within the meaning of the Federal Insecticide, Fungicide, and Rodenticide Act, including all active and inert ingredients of such pesticide.'' (FFDCA section 201(q)(1) (21 U.S.C. 231(q)(1)). The statute also provides EPA with discretionary authority to ''provide for the testing of any other substance that may have an effect that is cumulative to an effect of a pesticide chemical if the Administrator determines that a substantial population may be exposed to such a substance'' (21 U.S.C. 346a(p)(3)). In addition, section 1457 of SDWA provides EPA with discretionary authority to provide for testing, under the FFDCA section 408(p) screening program, ''of any other substances that may be found in sources of drinking water if the Administrator determines

that a substantial population may be exposed to such substance.'' (42 U.S.C. 300j–17). Several other Federal statutes also provide EPA with authority to require testing of certain substances, including FIFRA and TSCA. EPA may use any or all of these authorities to require testing of substances to determine whether a substance may cause endocrine effects.

III. Background

A. EPA's Endocrine Disruptor Screening Program

EPA initially set forth the EDSP in the **Federal Register** issue of August 11, 1998 (63 FR 42852, FRL–6021–3, Docket Control Number OPPTS–42206) and solicited public comment on the program in the December 28, 1998, **Federal Register** notice (FRL–6052–9). The program set forth in these notices was based on the recommendations of the Endocrine Disruptor Screening and Testing Advisory Committee (EDSTAC) which was a committee chartered under the Federal Advisory Committee Act. The Committee was comprised of members representing the commercial chemical and pesticides industries, Federal and State agencies, worker protection and labor organizations, environmental and public health groups, and research scientists. EPA charged EDSTAC to advise the Agency regarding:

1. Methods for chemical selection and priorities for screening,
2. A set of available, validated screening assays for early application,
3. Ways to identify new and existing screening assays and mechanisms for their validation,
4. Processes and criteria for deciding when additional tests beyond screening would be needed and how to validate such tests, and
5. Processes for communicating to the public about EDSTAC's agreements, recommendations, and information developed during priority setting, screening, and testing.

In response to this charge, EDSTAC recommended that EPA's EDSP address both potential human and ecological effects; examine effects on estrogen, androgen, and thyroid hormone-related processes; and include non-pesticide chemicals, contaminants, and mixtures in addition to pesticides (Ref. 2). Based on these recommendations, EPA developed a tiered approach for the EDSP. The core elements of the proposed approach are: Priority setting, Tier 1 screening, and Tier 2 testing. Tier 1 is envisioned as a battery of screening assays that would identify substances that have the potential to interact with the estrogen, androgen, and thyroid hormone systems. The purpose of Tier 2 is to determine whether the substance could, in fact, cause endocrine effects mediated by estrogen-, androgen-, and thyroid-related processes, and establish the relationship between doses of an endocrine-active substance administered in the test and any effects observed (December 28, 1998, **Federal Register** notice (FRL–6052–9)).

In addition, based on EDSTAC's recommendations, EPA proposed in the December 28, 1998, **Federal Register** notice (FRL–6052–9) an approach to establish the priority of chemicals for Tier 1 screening. The approach reflected the concern that the quantity and quality of exposure and effects information would be uneven across chemicals. EPA wanted to ensure that data-rich and data-poor chemicals were not directly compared in the priority setting process because data-poor chemicals might tend to be ranked low under such an approach. Thus, the approach set forth in the December 28, 1998, **Federal Register** notice (FRL–6052–9) was to set up categories of information relating to the production, release, exposure and hazard of chemicals and to group the chemicals according to what data were available. This approach was termed a ''compartment-based approach.'' The compartment-based approach was based on exposure- and effects-related compartments even though it was recognized that effects or toxicity data relevant to endocrine disruption would be extremely limited for the majority of chemicals. To partly compensate for the lack of relevant toxicity data, EPA proposed to conduct a HTPS on all non-pesticide active ingredient chemicals with a production volume in excess of 10,000 pounds per year. HTPS activities are discussed more fully in Unit IV.C. EPA developed the Endocrine Disruptor Priority Setting Data Base (EDPSD) to assist in assigning chemicals to compartments and setting priorities. More information on the EDPSD is available at: *http://www.epa.gov/scipoly/oscpendo/prioritysetting/*.

EPA currently is implementing its EDSP in three major parts. The Agency is:

1. Developing and validating Tier 1 screening level assays, selecting the appropriate screening assays for the Tier 1 battery based on the validation data, and developing and validating Tier 2 tests.
2. Developing an approach for selecting an initial set of chemicals to go through Tier 1 screening.
3. Developing the procedures the Agency will use to require screening.

This notice deals only with the development of the approach that EPA will use to select the initial set of chemicals for Tier 1 screening.

B. SAB/SAP Review

EPA asked the SAB and the SAP to review jointly the Agency's proposed EDSP as described in the December 28, 1998 **Federal Register** notice (FRL–6052–9). The Agency's charge to the SAB/SAP Subcommittee was broad and complex consisting of 18 questions in four broad areas:

1. Scope of the program.
2. Priority setting.
3. HTPS.
4. Screening and testing.

The Subcommittee met on March 30–April 1, 1999. Its report was published the following July (Ref. 1). In general, the SAB/SAP Subcommittee agreed with the program that EPA had developed for conducting endocrine disruptor screening. The following are recommendations from the Subcommittee with respect to the scope of the program and setting of priorities for Tier 1 screening.

In the December 28, 1998, **Federal Register** notice (FRL–6052–9), EPA explained that it was considering 87,000 substances as potential candidates for testing under the EDSP. The SAP/SAB Subcommittee expressed some reservations about the ambitious scope of the universe of chemicals that EPA envisioned as potentially being included in the Program. The Subcommittee felt that developing massive amounts of screening data on a large universe of chemicals would not necessarily expedite the development of the appropriate underpinning that the Agency needs before it proceeds with the screening of the large universe of chemicals that it anticipates will be included in the EDSP. The Subcommittee also expressed concern that it did not see a provision for mid-course correction or optimization of the Program. Thus, the Subcommittee recommended that the EPA implement the EDSP on 50 to 100 compounds and submit the data to independent review with an eye toward eliminating methods that do not work and optimizing the program.

The Subcommittee also recommended against including mixtures in the initial set of chemicals to be tested. The Subcommittee thought that the question of testing mixtures should be deferred until accepted single-compound methods had been successfully completed.

The Subcommittee also found that the compartment-based approach to priority setting was supportable when ranking is

based on both effect and exposure data. It suggested that the greatest weight should be given to chemicals for which there are data that indicate actual human or environmental exposure and effects. Lower weight should be given to agents for which the data are indicative of probable exposure (in food or drinking water) or probable effects (from animal studies). The lowest weight and priority should be given to chemicals for which the data are indicative of possible exposure (based on release or production volume) or possible effects (from *in vitro* or HTPS assays). The Subcommittee expressed concern that the lack of effects data on the universe of chemicals currently in commercial use would lead to a database that only identifies known problem chemicals that are already well studied. To overcome this obstacle, the Subcommittee encouraged the development of new techniques including QSAR and molecular modeling to help identify the bio-available, potentially active compounds for further testing in the EDSP. The Subcommittee supported the concept of nominations by citizens but recommended that the process needed further definition.

Finally, the Subcommittee agreed with EPA's assessment that the HTPS system, which EPA subjected to a demonstration project, was not ready for use but that the concept was still valuable. The Subcommittee encouraged EPA to be open to other types of assays for HTPS including receptor binding, gene chip and microassays, and computer modeling. The Subcommittee also gave some guidance regarding further development and employment of HTPS including the need for standardization and validation of any system to be used in priority setting.

C. Previous Public Comments on Priority Setting

In addition to comments provided by the SAB/SAP Subcommittee, comments provided by the public on priority setting in response to EPA's EDSP Proposed Statement of Policy in the December 28, 1998, **Federal Register** notice (63 FR 71542, FRL–6052–9, Docket Control Number OPPTS–42208) and at two public meetings on the Endocrine Disruptor Priority Setting Data Base held on January 20, 1999 (**Federal Register** issue of December 28, 1998 (63 FR 71568, FRL–6052–8, Docket Control Number OPPTS–42207)) and June 5–6, 2000 (**Federal Register** issue of May 19, 2000 (65 FR 31900, FRL–6559–9, Docket Control Number OPPTS–42212)) have been helpful to the Agency in developing the approach presented in this notice for selecting the first group of chemicals to be screened in the EDSP.

IV. EPA's Approach to Selecting the Initial Set of Chemicals to Undergo Tier 1 Screening

On the basis of EPA's experience to date and comments received from the SAB/SAP Subcommittee and the public, EPA is setting forth its approach for selecting the first group of chemicals to be screened in the EDSP. Based on the SAB/SAP recommendations, EPA is proposing to select and screen approximately 50 to 100 chemicals drawn from pesticide active ingredients and HPV chemicals with some pesticidal inert uses (HPV/Inert chemicals) to help the Agency further refine the EDSP. As recommended by the SAP/SAB Subcommittee, the Agency intends to submit the data received from the screening to an independent external panel of experts and request an evaluation of whether the program could be improved or optimized, and if so, how. EPA does not intend to develop an ordinal ranking of priorities of the chemicals within this initial list.

EPA is proposing to use an approach based in part on the compartment-based priority setting approach described in the December 28, 1998, **Federal Register** notice (FRL–6052–9) that provided details about the EDSP. That document proposed approach focuses on exposure-related factors rather than using a combination of exposure- and effects-related factors. The approach would, however, exclude from the first group of chemicals to undergo Tier 1 screening any chemical for which the available effects information clearly shows an endocrine-mediated effect. Such chemicals would be considered for proposed Tier 2 tests, mechanistic or special studies, or hazard assessment. Similarly, the approach for this initial list also would exclude substances that EPA anticipates have low potential to cause endocrine disruption (e.g., certain FIFRA List 4 inerts, most polymers with number average molecular weight greater than 1,000 daltons, strong mineral acids, and strong mineral bases). Although EPA proposes to use in this approach many of the exposure-data sets previously identified for use in the EDPSD, EPA is not proposing to directly use the EDPSD itself at this time in light of the narrower scope and focus of this initial list. EPA anticipates that it will modify its chemical selection approach for subsequent Tier 1 screening lists based on experience gained from the results of testing of chemicals on the initial list, the feasibility of incorporating different categories of chemicals (e.g., non-pesticide substances), and the availability of new priority-setting tools (e.g., HTPS and QSAR models).

EPA is proposing to use several bodies of data to identify pesticide active ingredients for screening in the first use of the Tier 1 battery. These data focus on human exposure by different pathways:

1. As a consequence of consumption of food containing pesticide residues.
2. As a consequence of consumption of drinking water containing pesticide residues.
3. As a consequence of residential use of pesticide products.
4. Through occupational contact with pesticide-treated surfaces.

For each of the four pathways, EPA has identified existing data that it believes will help to identify active ingredients likely to be among those having either relatively more widespread or higher levels of human exposure than would be expected for other active ingredients. EPA proposes to give higher priority for inclusion on the list for initial screening to chemicals likely to have human exposure via multiple pathways, with the highest priority being given to substances having exposure through all four pathways, followed by those having exposure via three pathways, etc. Details on EPA's proposed approach for selecting pesticide active ingredients are presented in Unit V.

EPA is proposing to use a generally similar approach to identify HPV/Inert chemicals to be included in the initial list for screening in the Tier 1 battery. However, EPA generally has more extensive information of known quality available to assess potential exposure to pesticide active ingredients via food, water, occupational and residential exposure pathways than is available to assess exposure to HPV/Inert chemicals. In addition, EPA generally has more extensive information available on usage (including both agricultural and residential) of active ingredients than is available for HPV/Inert chemicals (including both pesticidal and non-pesticidal uses of those same substances). For these reasons, the specific data and approaches EPA has identified for selecting an initial set of HPV/Inert chemicals for endocrine disruptor screening differs somewhat from those proposed for selecting pesticide active ingredients.

For HPV/Inert chemicals, EPA will focus on several indicators of the potential for human exposure, including production volume, specific pathways of exposure, and presence in human tissues. First, EPA will review existing

databases to identify chemicals that are both pesticide inerts and HPV (defined as chemicals that are manufactured or imported into the United States for all uses in amounts equal to or greater than 1 million pounds per year) chemicals (HPV/Inert). This first step will focus initial Tier 1 screening of pesticide inerts on chemicals with higher potential human exposure on the basis of large amounts produced or imported each year in the United States. Second, EPA will review existing data to identify HPV/Inert chemicals that have been found to be present in: Human tissue, ecological tissues that have human food uses (i.e., fish tissues), drinking water, and/or indoor air. Using this approach, an HPV/Inert chemical appearing in monitoring data from one or more of these media, would be a higher priority for testing than an HPV/Inert chemical that does not appear in monitoring data from any of the media. Details on this priority setting approach for HPV/Inert chemicals are presented in Unit VI.

While EPA's general focus in this approach is on pesticide active ingredients and HPV/Inert chemicals with relatively greater potential human exposure, this focus does not necessarily mean that the list developed using this approach will not contain substances which also have potentially high levels of environmental exposure to ecological receptors. As explained in Units V. and VI., EPA believes that the approach proposed to select an initial list of pesticide active ingredients and HPV/Inert chemicals for screening, while focused on human exposure, will also capture many chemicals with widespread environmental exposures to other organisms.

This proposed approach for selecting the initial list of chemicals to undergo Tier 1 screening differs from the more general EDSP priority setting approach outlined in EPA's December 28, 1998, **Federal Register** notice (FRL–6052–9) in several aspects: EPA would focus chemical selection for this initial list on the subset of chemicals subject to a statutory mandate for screening (i.e., pesticide chemicals); EPA would use exposure data as the primary basis for chemical selection rather than using HTPS, QSARs or other hazard data in conjunction with exposure data; EPA would defer consideration of nominations from the public; and EPA would not include mixtures in this initial list. The reasons for these proposed changes are as follows:

A. Focusing on the Subset of Chemicals Subject to a Statutory Mandate for Screening

For the initial Tier 1 screening list, EPA is proposing to focus only on pesticide active ingredients and HPV chemicals with some pesticidal inert uses (i.e., the chemicals that are specifically mandated for testing under section 408(p) of FFDCA) as candidates. The pesticide inerts to be considered are those with relatively large overall production volumes considering both pesticide and non-pesticide uses. This approach will allow EPA to focus its initial endocrine screening efforts on a smaller and more manageable universe of chemicals that emphasizes early attention to the pesticide chemicals that Congress specifically mandated EPA to test for possible endocrine effects.

B. Using Exposure Data as the Primary Basis for Chemical Selection

In response to the recommendations of EDSTAC, EPA had stated its intention to incorporate effects information into an overall chemical prioritization scheme in conjunction with exposure information for identifying chemicals to undergo screening and testing for endocrine disruption potential. However, in light of the limited availability of data for many chemicals that would indicate their relative potential for disrupting endocrine systems and the delays in identifying adequate HTPS or QSAR approaches that are discussed in Units IV.C. and IV.D., the Agency is proposing to use a simpler and narrower approach based primarily on exposure for this initial selection of a limited number of chemicals for screening under the EDSP.

A relatively broad range of toxicity data generally are available for pesticide active ingredients regulated under FIFRA, but in most cases it has not yet been established how the available data might be confidently used to predict the endocrine disruption potentials of these chemicals. This may be due, for example, to the non-specific nature of an effect or effects observed, questions related to whether the mode of action of a given effect or effects is or are endocrine system-mediated in whole or in part, or the lack of relevant data to make a judgement altogether. A more limited set of toxicity data generally is available for pesticide inert ingredients.

Nevertheless, for certain chemicals the available data may provide a sufficiently clear indication of an endocrine-mediated effect or perturbation to warrant exclusion from the first group of chemicals to undergo Tier 1 testing. Such chemicals would be considered for proposed Tier 2 tests, mechanistic or special studies, or hazard assessment. Similarly, based on a review of the available information, there are certain other substances which EPA anticipates have low potential to cause endocrine disruption (e.g., certain FIFRA List 4 inerts, most polymers with number average molecular weight greater than 1,000 daltons, strong mineral acids, and strong mineral bases). EPA anticipates also excluding certain of these substances from the first group of chemicals to undergo Tier 1 testing.

Therefore, except for purposes of exclusion (e.g., there are sufficient data to determine that a chemical has endocrine-mediating activity), effects data are not being considered in this approach for identifying the initial group of chemicals for Tier 1 screening. This does not necessarily mean, however, that toxicity data will not be used in identifying subsequent groups of chemicals for Tier 1 screening.

Because the list of chemicals produced using the proposed approach will be a list of chemicals that the Agency, in its discretion, has decided should be tested first based primarily upon exposure potential, it should not be construed as a list of known or likely endocrine disruptors nor characterized as such. Nothing in the approach for selecting the initial list would provide a basis to infer that any of the chemicals selected for the list interferes with or is suspected to interfere with the endocrine systems of humans or other species.

C. HTPS

Recognizing the limitations on existing hazard data, EPA proposed in the December 28, 1998, **Federal Register** notice (FRL–6052–9) the use of *in vitro* HTPS to assist in sorting and priority setting. The plan was to use HTPS to pre-screen up to 15,000 chemicals that are produced in quantities exceeding 10,000 pounds per year. HTPS data would define one of the compartments in the EDPSD and provide a criterion for identifying high priority chemicals. EPA sponsored a limited demonstration of an HTPS system utilizing reporter gene assays for the estrogen receptor (ER), androgen receptor (AR), and thyroid receptor (TR). The reporter gene assays used in this demonstration project employed a human cell line that naturally contains the receptor. A reporter element was then introduced into these cells so that when a substance binds to a receptor it would activate the genetic machinery in the cell. This activation could be detected in a quantitative manner. The SAB/SAP

Subcommittee agreed with EPA that the demonstration HTPS system did not work well enough in its present form to serve as a tool for priority setting (Ref. 1). The assays had too much variability and too low of a response to be useful without modifications to boost their sensitivity. EPA concluded that the HTPS approach still holds promise but that it has potential for success only after substantial additional research. EPA decided to defer its plans for using HTPS and to explore the potential for using QSAR models to address the problem of inadequate hazard data to prioritize chemicals. Nonetheless, the SAB/SAP Subcommittee believed that HTPS is a promising tool for priority setting and EPA agrees. EPA has issued a Request For Application (RFA) under its Science to Achieve Results (STAR) research grants program to solicit new approaches that may lead to the development of HTPS to assist in the prioritization of chemicals for screening for endocrine disrupting activity (*http://es.epa.gov/ncer/rfa/current/2003high_throughput.html*). EPA is also following the work being conducted in Japan on ER and AR transcriptional activation-based HTPS systems. EPA will consider the applicability of new HTPS approaches to future priority setting in the EDSP as those approaches are further developed and refined.

D. QSAR Models

At the time EPA decided to suspend its efforts under the EDSP on HTPS, it was aware of at least two QSAR models that were being developed to predict the potential of a chemical to bind to cellular ER. QSAR offers one important advantage over HTPS. It could provide data on thousands of chemicals without testing them in the laboratory. Such a tool could save millions of dollars in chemical testing costs, but still, if valid, be able to predict whether a new molecule that had never been synthesized or an untested existing chemical would be likely to interact with the ER or AR. EPA designed a program to validate two QSAR models within a defined chemical domain and activity range of interest to EPA. The comparative molecular field analysis (CoMFA) model developed by Federal Food and Drug Administration's (FDA) National Center for Toxicological Research and the common reactivity pattern (COREPA) model developed at the University of Bourgas were evaluated. EPA asked each of the modeling teams to predict the relative ER binding of 6,649 high production chemicals on the TSCA inventory. EPA selected 50 chemicals predicted to be positive by each model and approximately 200 chemicals selected from the 6,649 at random and tested almost all in an ER binding assay. Thus, a total of nearly 300 chemicals were tested to validate the models. Each model predicted about 300 of the 6,649 chemicals to be positive. There were 78 chemicals that were predicted to be positive by both models (Ref. 3). A comparison of model predictions with laboratory results did not meet EPA's expectations because, although both models demonstrated relatively high specificity, both models also demonstrated low sensitivity. EPA believes that the performance problems associated with the models are likely due to the chemical training set being significantly dissimilar in terms of structures and binding potency ranges compared to the TSCA HPV chemicals. EPA is continuing to encourage the development and refinement of QSARs and beginning in Fiscal Year 2002 redirected $4 million to a computational toxicology initiative to integrate modern computing and information technology, not limited to just QSARs, with the technology of molecular biology and chemistry to improve EPA's ability to prioritize chemicals for screening and testing, and its risk assessments.

E. Deferring Consideration of Nominations From the Public

For the initial Tier 1 screening list, EPA proposes to focus on pesticide active ingredients and HPV chemicals with some pesticidal inert uses (i.e., the chemicals that are specifically mandated for testing under section 408(p) of FFDCA) as candidates. EPA believes that nominations from the public are important because they provide a mechanism to identify chemicals which may result in high exposures in local communities but which would not otherwise receive national attention. However, EPA has decided to defer consideration of nominations from the public until subsequent testing lists in order to keep this initial effort administratively simpler and ensure that a set of test results can be obtained in a relatively prompt timeline to aid the Agency in a mid-course evaluation of the EDSP Tier 1 screening battery.

F. Not Testing Mixtures

EPA has decided that the prudent approach would be to gain experience with these tests on a variety of single chemicals before it addresses mixtures. This judgement is consistent with advice from the SAB/SAP Subcommittee (Ref. 1).

G. Excluding Chemicals that are no Longer Produced or Used in the United States

EPA also is proposing to exclude from the initial Tier 1 screening list any chemicals that are no longer produced or used in the United States. The Agency thinks that such chemicals would not warrant high priority for testing at this time. Although some of the databases that EPA proposes to consider may report past detections of such chemicals, the discontinuation of their use and manufacture means that exposure to these substances is likely declining. Moreover, EPA anticipates that it will have to resolve significant practical difficulties (such as determining who EPA could require to conduct the testing) before it attempts to require testing of these substances. This combination of reasons leads the Agency to propose excluding discontinued chemicals from the initial group of chemicals to undergo testing in the Tier 1 screening battery.

V. Approach for Selecting Pesticide Active Ingredients

EPA is proposing to use several sets of criteria for identifying pesticide active ingredients to be given priority for screening in EPA's initial application of the Tier 1 battery. These criteria would focus on human exposure by different pathways: As a consequence of consumption of food containing pesticide residues; as a consequence of consumption of drinking water containing pesticide residues; as a consequence of residential use of pesticide products; and through occupational contact with pesticide-treated surfaces. For each of the four pathways, EPA would review existing databases that can help the Agency to identify active ingredients generally expected to be among those having either widespread or high levels of human exposure.

While EPA's general focus is on pesticide active ingredients with relatively greater potential human exposure, this focus does not necessarily mean that the list of active ingredients will not contain substances which also have potentially high levels of environmental exposure to ecological receptors. Many of the pesticide active ingredients having greater potential for human exposure will also have greater potential for exposure to wildlife. For example, one pathway of human exposure, drinking water, is also a pathway through which aquatic life and many terrestrial species are exposed. Most of the databases that EPA will consider in evaluating active ingredients

for exposure through drinking water contain monitoring data collected on raw surface water, i.e., before the water enters a Community Water System. Thus, these monitoring data show the levels of pesticide residues which fish, amphibians, and other aquatic species will encounter. Similarly, when data show higher and more widely distributed levels of pesticide residues in food, EPA thinks that such residues generally tend to reflect greater usage and/or persistence of the pesticide on crops and thus, greater environmental loads. Accordingly, EPA believes that the approach proposed to evaluate pesticide active ingredients, while focused on human exposure, will also capture many active ingredients with widespread environmental exposures.

A. The Food Pathway

Every person eats food and a significant portion of food contains some amount of pesticide residues, although usually at very low levels. Therefore, pesticide residues in food have the potential to cause widespread human exposure. Pesticides have different use patterns and have different physical and chemical properties that affect how they move in the environment and how quickly they break down. As a result, there are often significant differences among pesticides in the proportion of food containing residues and in the levels of such residues. People also consume different amounts of different foods. All of these factors mean that people ingest greater quantities of some pesticide active ingredients than of others.

To evaluate the interplay of these different variables, EPA proposes to identify the pesticide active ingredients which are most frequently found as residues on the top twenty foods that people consume. First, EPA will examine the most recent Continuing Survey of Food Intake by Individuals (CSFII) to determine the mean amount of each raw agricultural commodity consumed in the general population. The CSFII is a database derived from a survey performed by the U. S. Department of Agriculture (USDA) in 1994–1996 and supplemented with additional survey responses collected in 1998. USDA collected food diary information from over 20,000 individuals who were interviewed on two non-consecutive days, generally spaced 3 to 10 days apart. After appropriate statistical weighting, the survey, in the aggregate, is representative of the U. S. population in terms of age, gender, major ethnic groups, and socio-economic status. Moreover, sampling was representative of different days of the week, seasons of the year, and parts of the country. Extensive quality control procedures assured that the data collected in the survey were accurate and reliable. More information on USDA's food surveys and the CSFII ('94–'96) is available through *http://www.barc.usda.gov/bhnrc/foodsurvey*.

Using the CSFII information, EPA has converted the reported food consumption for each survey respondent into the constituent raw agricultural commodities. For example, if a person reported having eaten 6 ounces of beef stew, EPA estimated the amount of beef, carrot, potato, and each other raw agricultural commodity used in making that quantity of beef stew. EPA made similar conversions for each of the different finished foods reported in the CSFII—from apple pie to yogurt. Then EPA estimated the total amount of each of the various raw agricultural commodities eaten over the course of the day, for example summing the amount of apple consumed from drinking cider and eating apple sauce. This individual food consumption database provides the basis for identifying the top twenty foods consumed, in terms of mean daily consumption for the general population. List 1 of this unit lists these raw agricultural commodities.

List 1.—Top Twenty Foods
(Foods accounting for the largest quantity of food intake by individuals (arranged alphabetically))
1. Apple
2. Banana
3.Beef
4.Carrot
5.Chicken
6.Corn, Field
7.Corn, Sweet
8.Egg
9.Grape
10.Lettuce
11.Milk
12.Onion
13.Orange
14.Pork
15.Potato
16.Rice
17.Soybean, oil
18.Sugar
19.Tomato
20.Wheat

Having identified the top 20 foods, EPA would characterize the pesticide residue levels on these foods using information collected by two Federal agency monitoring programs, the USDA Pesticide Data Program (PDP) and the Surveillance Monitoring Program conducted by FDA's Center for Food Safety and Applied Nutrition. PDP has been collecting pesticide residue data since 1991. PDP is designed to provide a nationally representative database on the distribution of pesticide residues in food as close as possible to the actual time of consumption as practical. Using analytical methods that have been standardized and validated, and following strict quality control procedures, USDA has focused on foods highly consumed by children throughout the year. Over the years of operation, PDP has collected data on over 290 different pesticides and 50 different commodities. Additional information can be found at *http://www.ams.usda.gov/science/pdp/index.htm*. The FDA Surveillance Monitoring Program is designed primarily for enforcement of pesticide tolerances on imported foods and domestic foods shipped in interstate commerce. Domestic samples are collected as close as possible to the point that the food enters the distribution system. FDA samples imported food at the port of entry into the United States. Additional information on the FDA program appears at *http://www.cfsan.fda.gov/~dms/pesrpts.html*.

Because of the differences in how samples are collected and handled, EPA would rely on the PDP database when both sources cover the same pesticides and commodities. The FDA Surveillance data covers different pesticides and commodities in different years from the PDP monitoring. (For example, in 1999, FDA used analytical methods capable of detecting 366 different active ingredients.) Therefore, in making its weight-of-the-evidence judgment, EPA would consider the FDA information as a supplement to the information from the PDP database.

EPA proposes to examine the PDP and FDA Surveillance databases to identify the pesticide active ingredients which appear on the largest proportion of the samples, focusing on the twenty foods which make up the largest part of the U.S. diet. Generally, EPA would give higher weight to pesticides that appear frequently on multiple foods. In reviewing these data, EPA will take into account qualitatively any risk mitigation measures implemented since residues levels were monitored.

EPA recognizes that this approach would be more likely to give higher priority to the pesticides which are the subject of routine monitoring in either PDP or FDA's Surveillance program. Both programs rely primarily on ''multi-residue methods'' that are capable of detecting many different chemical substances using a single analytical procedure. Active ingredients which

require specialized analytical methodology may not be looked for and thus would be unlikely to be included for consideration in the food pathway. This limitation particularly applies to newer pesticide active ingredients. Notwithstanding these limitations, EPA believes that the approach described is a practicable approach for identifying pesticide active ingredients with widespread or high levels of exposure.

B. The Water Pathway

Significant portions of the general population may be exposed to pesticide residues in drinking water. Although monitoring data indicate that most pesticide active ingredients are rarely detected, analytical surveys in virtually every region of the country have detected a number of active ingredients in ground and surface water used as sources of drinking water. Monitoring also indicates that, even when found in water, residue levels vary significantly both seasonally and regionally for a single pesticide, as well as across pesticides. Particularly for surface water, residues tend to occur in pulses that can last days to weeks to months, depending on the type of water body and the pesticide. Because almost every person consumes some water every day, either in prepared foods or beverages (e.g., coffee, tea, or reconstituted juice) or simply by drinking water, exposure to pesticides through the drinking water pathway can be widespread and repeated. And, while such exposure is usually neither as widespread nor of the same magnitude as pesticide exposure through food, a significant portion of the population in a particular region of the country can be exposed.

To assess relative exposure to different pesticides in water, EPA would examine a number of different databases that contain the results of programs to monitor surface and ground water for the presence of pesticide residues. These databases, which contain data collected by Federal and State agencies, academicians, pesticide companies, and others, are summarized in this unit:

1. *EPA Pesticides in Ground Water Database (PGWDB).* The PGWDB was created to provide a more complete picture of ground-water monitoring for pesticides in the United States. It is a collection of ground-water monitoring studies conducted by Federal, State, and local governments; the pesticide industry; and private institutions between 1971–1991. The PGWDB compiles, in tabular format, data from monitoring of raw ground-water[1] and contains data only from studies in which pesticides were included as analytes. Some of the data limitations include: age of the data; differences in the design of studies; lack of historical pesticide use or hydrological information; and lack of information on well use, sampling practices, and laboratory procedures. Further details can be found in *EPA Pesticides in Ground Water Database, A Compilation of Monitoring Studies: 1971–1991 National Summary* (Ref. 4).

2. *EPA Chemical-Specific Monitoring Data*. Pesticide registrants have conducted and submitted to the Agency targeted surface water and ground water monitoring studies for approximately 50 pesticide active ingredients. The Agency decides whether to require monitoring of raw surface or ground water for a pesticide based on the environmental fate characteristics (persistence and mobility) of the pesticide; the current or proposed use patterns for the pesticide; and other information that would indicate potentially significant levels of the pesticide could be present in water. The design of monitoring studies takes into consideration application rate, crops, and the location of potentially more vulnerable use sites. These studies are performed under Good Laboratory Practice regulations, and contain internal quality assurance procedures. When submitted, the monitoring data undergo primary and secondary review by Agency scientists.

3. *Heidelberg College's Monitoring Data*. Heidelberg College's Water Quality Laboratory (WQL) conducts research, monitoring and educational programs that address the impacts of agricultural and urban land use on the water resources of Ohio, the Midwest, and the Lake Erie and Great Lakes ecosystems. The WQL began studying pesticides in 1981. These studies now provide the longest and most detailed record of pesticide residues in raw water available for any river system in the United States. The WQL maintains a modern, highly automated water chemistry laboratory with capabilities rarely found within academic research settings. While much of the WQL's program is organized within the context of a large-scale, long-term agricultural ecosystem study, the lab also conducts research related to public drinking water supplies (finished water), urban runoff, industrial and municipal pollution sources and changing biological communities in Lake Erie. Further details can be found on the web at: *http://www.heidelberg.edu/WQL/index.html*.

4. *U.S. Geological Survey (USGS)/EPA Reservoir Monitoring Study*. The USGS/EPA Reservoir Monitoring study was a pilot monitoring program initiated by USGS and EPA to provide information on pesticide concentrations in drinking water and to assist in the implementation of the Food Quality Protection Act (FQPA) of 1996. Drinking-water utilities that withdrew water from reservoirs were sampled in 1999 and 2000. Water samples were collected from raw water (at the intake point) and from finished drinking-water (at the tap prior to entering the distribution system). At some sites, samples were also collected at the reservoir outflow. Sampling frequencies were designed to measure long-term mean and short-term peak concentrations of pesticides in drinking water. The analytical methods used for analyzing the pesticides in the water samples included 178 different pesticides and degradation products. Additional information on the USGS/EPA Reservoir Monitoring Study can be found in *Pesticides in Select Water Supply Reservoirs and Finished Drinking Water, 1990–2000: Summary of Results from a Pilot Monitoring Program* (Ref. 5).

5. *Environmental Monitoring and Assessment Program (EMAP)*. EMAP is an EPA research initiative designed to support the development of tools necessary to monitor and assess the status and trends of national ecological resources. Research is conducted on various ecosystems (e.g., estuaries, forests, rangelands, and lakes). Sediment samples were collected in 18 States at various times between 1990 and 1998. This data source provides information about the contaminants present in sediment/soil which humans and wildlife may contact. EMAP includes relevant data for over 170 chemicals and three separate data sets for estuary sediments. Extensive field and laboratory QA/QC procedures were performed during the collection and analysis of the samples. Further details can be found on the web at: *http://www.epa.gov/emap/*.

6. *National Sediment Inventory (NSI)*. The Water Resources Development Act (WRDA) of 1992 directed EPA, in consultation with the National Oceanic and Atmospheric Administration (NOAA) and the U.S. Army Corps of Engineers (USACE), to conduct a national survey of data regarding the quality of sediments in the United States. To comply with the WRDA mandate, EPA's Office of Science and Technology initiated the NSI. The NSI

[1] ''Raw'' water refers to a water source that has not been treated in a drinking water facility. Water that has been treated is referred to as ''finished'' water.

is a database that documents the composition of sediment in rivers, lakes, oceans, and estuaries. The NSI tissue residues studies (primarily fish) help assess sediment quality and can be used to assess potential exposure of humans to these chemicals through the consumption of fish. Also, sediment chemistry data are evaluated for theoretical bioaccumulation potential. The NSI includes data collected by a variety of Federal, State, regional, local, and other monitoring programs from 1980 through 1999. It includes over 4.6 million analytical observations for over 50,000 monitoring stations across the country of sediment chemistry, tissue residues, and sediment toxicity data. NSI's minimum data requirements include monitoring program identification, sampling date, latitude and longitude coordinates, and measured units. EPA retains additional data such as QA/QC information, if available, but did not require that information for a data set to be included in NSI. Additional limitations of the compiled data include the mixture of data sets derived using different sampling strategies, incomplete sampling coverage, and the age and quality of the data. Because the data analyzed in this report were collected over a relatively long period of time, conditions may have changed since the sediment was sampled. Further details on the NSI database and the National Sediment Quality Survey, which the NSI was developed to support, can be found at: *http://www.epa.gov/waterscience/cs/nsidbase.html* and *http://www.epa.gov/waterscience/cs/draft/survey.html*.

7. *National Drinking Water Chemical Occurrence Database (NCOD).* NCOD is a repository of drinking water quality data, mandated by Congress in the 1996 SDWA Amendments. NCOD contains national occurrence data from public water systems and from ambient water from the USGS National Water Information System. It includes information on regulated and unregulated contaminants, containing physical, chemical, microbial, and radiological information for both detects and non-detects. NCOD-drinking water contains relevant data for over 120 chemicals, and includes samples from both raw and finished water. Currently, NCOD-drinking water contains occurrence only for those water systems that have been reported by States to EPA's Safe Drinking Water Information System. While data sets will be updated over time, they may reflect a lag time of at least six months. Further details can be found on the web at: *http://www.epa.gov/safewater/data/ncodgateway.html*.

8. *National Stream Quality Accounting Network (NASQAN) Data.* NASQAN, a monitoring and data-collection program conducted by the USGS, is designed to characterize raw surface water in large sub-basins of rivers, determine regional source areas for chemicals, and assess the effects of human influences on observed concentrations and amounts of chemicals. Since 1995, NASQAN has focused on monitoring the water quality of four of the nation's largest river systems: the Mississippi, the Columbia, the Colorado, and the Rio Grande. A network of 40 stations monitors the concentrations of a broad range of chemicals including pesticides, major ions, and trace elements. NASQAN contains relevant data for over 70 chemicals. NASQAN samplers collect quality control (QC) samples to evaluate the quality of sampling data. However, the data in NASQAN do not characterize ambient water quality throughout the United States, only for four river basins and sub-basins. Further details can be found on the web at: *http://water.usgs.gov/nasqan/*.

9. *The National Water Quality Assessment Program (NAWQA).* Congress appropriated funds in 1986 for the USGS to design and implement a program to address questions related to status and long-term trends in raw surface- and ground-water quality at national, regional, and local scales. The USGS began a pilot program in seven project areas to develop and refine a plan for the National Water-Quality Assessment (NAWQA) Program. In 1991, the USGS began full implementation of the program. The NAWQA program builds upon an existing base of water-quality studies of the USGS, as well as those of other Federal, State, and local agencies. The NAWQA Program was designed to study 60 of the Nation's most important river basins and aquifer systems, which are referred to as study units. A national map of these study units shows that they are distributed throughout the Nation and cover a diversity of hydrogeologic settings. More than two-thirds of the Nation's freshwater use occurs within the study units and more than two-thirds of the people served by public water-supply systems live within their boundaries. The 60 study units have been divided into groups of 20 study units each, and their intensive data-collection phases have been staggered to allow efficient and effective use of resources. The first 20 studies began in 1991, the second group began in 1994, and the third group began study in 1997. Due to funding constraints, only 14 of the original first group of 20 study units began a second cycle of study in the year 2000. The cycle is intended to continue into the future with a total of 52 study units so as to provide both short-term information necessary for today's water-resource management decisions, and the long-term information needed for policy decisions. Further details can be found on the web at: *http://wwwga.usgs.gov/nawqa/main.nawqa.html*.

EPA notes that most of the monitoring databases report results from samples of ''raw,'' or untreated, water, rather than ''finished'' drinking water prepared by a drinking water facility for its customers. To the extent that treatment methodologies (such as flocculation, softening, filtration, chlorination, sedimentation, etc.) either remove or transform the pesticide residue in the source water, residues found in the raw water may not represent exposure of the public consuming the finished water. EPA has considered the impacts of various treatment methodologies on different classes of pesticides found in raw water and concluded that conventional water treatment processes (such as coagulation/flocculation, sedimentation, and filtration) can have little or no effect on the removal of certain pesticides (Ref. 6). Thus, the Agency regards the results of monitoring raw or ambient water as an appropriate indicator of potential human exposure.

Many other factors affect the interpretation of a set of water monitoring data. Monitoring is most likely to detect the presence of pesticide residues in water if it is conducted in an area where the pesticide has been used, and samples are collected at a time when residues are likely to occur. Moreover, the analysis must employ methods sensitive enough to detect any residue. Often, however, monitoring reports lack sufficient information to evaluate how well these factors were considered. Consequently, evaluation of water monitoring data requires considerable judgment. See the discussion of considerations affecting the evaluation of water monitoring data in *Estimating the Drinking Water Component of a Dietary Exposure Assessment* (Ref. 7) and the *EPA Background Paper for the FIFRA Scientific Advisory Panel Meeting on Monitoring Strategies for Pesticides in Surface-Derived Drinking Water* (Ref. 8).

The limitations on an individual data set can be overcome, to some extent, by consideration of multiple sets of data and multiple databases. EPA thinks that, when considered collectively, the databases discussed in Unit V.B. are not

as vulnerable to criticism as a single data set. Generally, all of these databases include studies with high levels of quality control, and together they provide wide temporal and spatial coverage for a large number of pesticides. Thus, the Agency believes the databases in Unit V.B. would provide a reliable basis for drawing conclusions about the relative potential of different active ingredients to leach into ground water or run off into surface water in different parts of the country.

In light of these considerations, EPA proposes to review the multiple databases to identify those active ingredients which appear relatively more frequently and/or in more geographical areas than other pesticides. Because the scope of monitoring varies from pesticide to pesticide, EPA would use a weight-of-the-evidence approach to assess the frequency and geographic distribution of pesticide residues in water.

EPA's reliance on these databases would necessarily have some limitations. For example, most monitoring looks only for the ''parent'' compound, i.e., the pesticide active ingredient, rather than for environmental degradation products or compounds formed by chemical reactions during the treatment of raw water sources in a drinking water facility. Further, like food residue monitoring programs, monitoring efforts rely on multi-residue methods that may not detect certain compounds or classes or compounds. Notwithstanding these limitations, EPA believes that the approach described is a practicable approach for identifying pesticide active ingredients generally expected to be among those having either widespread or high levels of human exposure.

C. The Residential Use Pathway

Human exposure to pesticides may occur as the result of use of pesticidal products in and around homes, schools, businesses, public areas, golf courses, and similar sites. Such use patterns, collectively referred to as ''residential use,'' include: Lawn and garden treatments, insect repellants, termite, and other indoor insect control, fumigation products, products applied to pets for flea or tick control, household sanitizers and disinfectants, and many more.

EPA proposes to use pesticide product labeling information as the primary indicator of pesticides whose use involves potential human exposure by this pathway. EPA would review its databases and identify those active ingredients approved for residential use. Aside from products approved only for limited exposure uses, such as rodenticides applied in tamper resistant bait boxes, all currently registered residential use pesticides would be identified as having higher priority with respect to the residential use pathway.

The Agency recognizes that registration of a pesticide for residential use does not necessarily mean that it would be widely used or that its use would entail significant levels of human exposure. EPA, however, generally lacks information to compare the extent of application of different active ingredients for residential uses. Moreover, EPA does not have a basis for distinguishing among various residential use patterns on the basis of which consistently have potential for higher levels of human exposure. Thus, EPA does not regard its proposed basis for selecting priority chemicals for this pathway as being as effective in setting priorities among active ingredients as the criteria proposed for the other pathways. Nonetheless, residential use pesticides involve potential exposures to the general population, the Agency believes it would be appropriate to consider giving priority to some of these products.

D. Occupational Exposure Pathways

Occupational exposure can occur either as a person mixes, loads, or applies a pesticide product (i.e., during pesticide use), or as a person, during some other occupational activity, comes in direct, repeated contact with pesticide residues present on previously treated surfaces (i.e., post-application exposure). Although numerically smaller than the populations exposed to pesticides through food, drinking water, and residential use, individuals receiving occupational exposures generally experience significantly higher levels of exposure than the larger groups encounter by the other pathways. Based on available data and current agricultural practices, the number of workers exposed through post-application is greater than the number of workers exposed through mixing, loading, and applying pesticides. As a result, EPA proposes to focus on post-application exposures.

Many factors affect the post-application exposure of agricultural workers, most notably the type of work activity and the level of residue present on pesticide-treated surfaces. As will be discussed in more detail in Unit V.D., different activities involve differing levels of contact with pesticide-treated surfaces and therefore can lead to different levels of exposure. Exposure levels also depend on the amount of residue available on a treated surface. This, in turn, depends on the amount of pesticide initially applied, how quickly the material degrades or is taken up by the plant, and how soon after application the worker contacts the treated surface. Pesticides show a large range of variation in application rates, application timing, and environmental fate characteristics with the result that there are significant differences in the levels of dislodgeable residues on treated surfaces encountered by workers.

In identifying active ingredients for priority consideration by this pathway, EPA proposes to rank pesticides on the basis of their potential for post-application exposure of agricultural workers. This group includes farmers and farmworkers who reenter pesticide-treated fields and orchards to care for or harvest the crop. A relatively recent database developed by the Agricultural Reentry Task Force (ARTF) clearly indicates that certain work activities in particular crops lead to higher levels of exposure than other post-application work activities (Ref. 9). For example, harvesting fruit in orchards or pruning vines in a grape vineyard requires extensive contact with plant foliage that is likely to contain pesticide residues. When the worker touches the foliage, a certain amount of the residue transfers to the worker's skin or clothing. The greater the contact is, the higher the residue transferred and the higher the ensuing exposure.

EPA will review the ARTF's transfer coefficient studies to identify those work activities and crops which have the highest potential for post-application exposure. The ARTF is a consortium of pesticide companies that formed a joint venture to develop data for use in EPA assessments of worker risk. The ARTF conducted a series of carefully controlled studies that measured the amount of pesticide residue present on workers' clothing after a specific period of time working in a crop with known amounts of pesticide residue on the crop foliage. The ARTF set of data is very extensive, covering over 100 different crops —essentially all crops, including greenhouses and ornamental crops, in which workers might come into contact with pesticide-treated leaf surfaces. The studies permit the calculation of a standardized ''transfer coefficient'' for the crop and activity.[2] Activities having

[2] The transfer coefficient is calculated by dividing the amount of residue found on workers, expressed as milligrams (mg), by the amount of dislodgeable residue found on the crop foliage, expressed as mg per square centimeter (cm2), and dividing this value by the length of time spent in the activity, expressed in hours (hr). The resulting coefficient for

higher transfer coefficients should result in higher levels of worker exposure, all other factors being equal.

EPA proposes to identify the crops having approximately the dozen highest transfer coefficients and then to identify the pesticides having the highest levels of use on those crops. Specifically, EPA would estimate the total number of acre treatments for each pesticide on all of the top crops and then rank the pesticides on the basis of the highest totals.[3] The Agency would obtain information about the number of acre-treatments for each pesticide from a variety of public and private data sources including USDA's National Agriculture Statistics Service, California's Department of Pesticide Regulation, and Doane Marketing Research.

The USDA's National Agricultural Statistics Service (NASS) has, for more than 10 years, conducted annual surveys of pesticide use in a large number of crops, surveying thousands of agricultural producers in any given year. NASS conducts their use survey every year for a set of row crops. NASS also surveys pesticide usage on other crops, alternating every year between a group of fruit and nut crops and a group of vegetable crops (i.e., selected fruits/nuts were surveyed in 1997, 1999, 2001; selected vegetables were surveyed in 1996, 1998, and 2000). NASS surveys states representing a majority of national production for a crop and reports a number of statistics for insecticide, fungicide, and herbicide use including: percent crop treated, application rate, numbers of applications, acreage grown. Using these data, EPA can estimate the total acre-treatments for the pesticides used on crops with the highest transfer coefficients. More information on NASS pesticide use data can be found at: *http://www.pestmanagement.info/nass/*.

The State of California has reported annually on all agricultural pesticide usage in the State for almost 10 years. This data collection effort is managed by the California Department of Pesticide Regulation (CDPR), and includes an extensive array of treatment information on crops including timing, location, area, and rate. These data allow EPA to calculate acre-treatments for pesticides on crops grown in California. In cases where crops with high transfer coefficients are grown in California, but not reported by NASS, CDPR data would be extremely useful. For those crops reported by both CDPR and NASS, data from both sources would serve to validate estimates. More information on CDPR pesticide usage data can be found at:*http://www.cdpr.ca.gov/docs/pur/purmain.htm*.

EPA's third major source of pesticide use information is AgroTrak™, a product of Doane Marketing Research, Inc. (referred to here simply as Doane). Doane maintains a proprietary national database of agricultural pesticide use summarizing data from surveys of thousands of agricultural producers across a wide range of row and specialty crops. Doane has conducted an annual survey for more than 15 years, and among the statistics they publish for a given crop/chemical combination are acres grown, acres treated, and acre-treatments. These data represent an important source of data, and can be compared to NASS and CDPR data to fill data gaps, or serve as another point of validation. Doane's survey can be particularly useful because their national survey covers fruits and vegetables producers every year. More information on Doane Marketing Research can be found at: *http://www.doanemr.com/*.

Basing its priorities for this pathway on the number of acre-treatments of crops with worker activities having high transfer coefficients should identify pesticides that have potential for relatively higher worker exposure. The combined criteria of crops with high transfer coefficients and pesticides used on such crops should identify those active ingredients with potential for high worker exposures. The use of the additional criterion of total acre-treatments should identify pesticides with the widest use, and thus the potential for exposures for the largest number of workers.

The proposed criteria, however, would not account for any of the characteristics specific to the use of a particular pesticide on a crop that could decrease or increase the potential for exposure—application rate, application timing, and environmental fate characteristics. Consequently, the priority listing may not completely reflect where the highest post-application exposures exist.

Nevertheless, EPA believes that the approach described is a practicable approach for identifying those pesticide active ingredients with the potential for either widespread or high levels of exposure to post-application workers.

E. Integration of Pathway Priorities for Pesticide Active Ingredients

This unit addresses how EPA would integrate the information developed on priorities through the analysis of the four exposure pathways discussed in Units V.A. through V.D. As its first step, the Agency would apply the criteria proposed for each pathway to produce four lists of candidate chemicals for potential screening in the endocrine disruptor Tier 1 battery. EPA expects that a number of pesticide active ingredients would be identified for more than one pathway, and that some chemicals will appear only on the list for a single pathway. In choosing which active ingredients it would recommend for screening, EPA would give higher priority to chemicals that appeared on multiple lists, with the substances appearing on four lists receiving the highest priority, followed by the group of chemicals appearing on three lists, followed by chemicals on only two lists. To the extent necessary to establish priorities within these four groups, EPA would propose to give greater priority to chemicals which appear on the list for the food pathway (which generally involves the most widespread exposure of the four pathways), followed by the list for the occupational pathway (which generally involves the highest per capita levels of exposure of the different pathways). As a final step, EPA would review the available effects information to identify any chemical for which the information clearly indicates an endocrine-mediated effect/perturbation. Such chemicals would be considered for proposed Tier 2 tests, mechanistic or special studies, or hazard assessment. During this step, EPA also would identify substances that EPA anticipates would have low potential to cause endocrine disruption. EPA would consider excluding substances in either category from the first group of chemicals to undergo Tier 1 testing.

VI. Approach for Selecting Pesticide HPV/Pesticide Inert Chemicals

EPA is proposing to use several sets of criteria for identifying HPV/Inert chemicals that should be given priority for screening in the Tier 1 battery. In general, the Agency is proposing an approach for HPV/Inert chemicals that is similar to that proposed for pesticide active ingredients. EPA will focus on several indicators of the potential for human exposure including production volume, specific pathways of exposure, and presence in human tissues. While EPA's general focus is on HPV/Inert chemicals with relatively greater potential human exposure, this focus

each activity is expressed as cm^2/hr and quantitatively reflects the extent to which the activity involves contact with pesticide-treated surfaces in a manner that dislodges the residues present on the surface.

[3] Acre-treatments are measured as the number of times an acre of crop may have been treated with a pesticide. For example, if two acres were each treated one time in a season, that would represent two acre-treatments. If a single acre were treated two times in a season, that would also represent two acre-treatments.

does not necessarily mean that the list of chemicals produced will contain no substances which have potentially high levels of environmental exposure to ecological receptors. Many of the HPV/Inert chemicals having greater potential for human exposure will also have greater potential for exposure to wildlife. For example, the databases to be reviewed for ecological biological monitoring data will directly identify certain chemicals to which aquatic organisms have been exposed (see Unit VI.B.). Similarly, several of the monitoring databases that will be reviewed for the drinking water pathway contain monitoring data collected on raw surface water, i.e., before the water enters a Community Water System (see Unit VI.C.). Thus, these surface water monitoring data will show the levels of chemical to which fish, amphibians, and other aquatic species are exposed. Accordingly, EPA believes that the approach proposed to evaluate pesticide HPV/Inert chemicals, while focused on human exposure, will also capture HPV/Inert chemicals with widespread environmental exposures.

EPA generally has more extensive information of known quality available to assess potential exposure to pesticide active ingredients via food, water, occupational and residential exposure pathways than is available to assess exposure to HPV/Inert chemicals. In addition, EPA generally has more extensive information available on usage (including both agricultural and residential) of active ingredients than is available for HPV/Inert chemicals (including both pesticidal and non-pesticidal uses of inerts). For these reasons, the databases available to evaluate potential human exposure of the two classes also differ.

First, EPA will review existing databases to identify chemicals that are both pesticide inerts and HPV chemicals (HPV/Inert). HPV chemicals are those chemicals manufactured or imported into the United States in amounts equal to or greater than one million pounds per year. The HPV chemicals are identified through information collected under the TSCA Inventory Update Rule (IUR). Organic chemicals that are manufactured or imported into the United States in amounts equal to or greater than 10,000 pounds per year are subject to reporting under TSCA IUR every 4 years. Second, EPA will review existing data bases to identify HPV/Inert chemicals that are present in human tissue, or ecological tissues that have human food uses, or drinking water or indoor air. Third, EPA will prioritize these chemicals based on the number of data bases in which that the chemical was found. Thus, HPV/Inert chemicals appearing in four types of monitoring data would be given higher priority than those appearing in only one type of monitoring data. EPA may also give higher priority to those HPV/Inert chemicals that appear in human tissues than to those chemicals that only appear in water, air, or ecological tissues.

As a final step, EPA would review the available effects information to identify any chemical for which the information clearly indicates an endocrine-mediated effect/perturbation. Such chemicals would be considered for proposed Tier 2 tests, mechanistic or special studies, or hazard assessment. During this step, EPA also would identify substances that EPA anticipates would have low potential to cause endocrine disruption (e.g., certain FIFRA List 4 inerts, most polymers with number average molecular weight greater than 1,000 daltons, strong mineral acids, and strong mineral bases). EPA would consider excluding substances in either category from the first group of chemicals to undergo Tier 1 testing.

A. HPV/Inert Chemicals in Human Biological Monitoring Data

EPA proposes to review the following data sources to determine which HPV/Inert chemicals have been detected in human biological samples.

1. *Third National Health and Nutrition Examination Survey (NHANES III).* The Third National Health and Nutrition Examination Survey (NHANES III) was conducted between 1988 and 1994 on 33,994 people. The survey was designed to obtain nationally representative information on the health and nutritional status of the U.S. population through interviews and direct physical examinations. Several studies (e.g., high blood pressure, immunization status, nutritional blood measures, etc.) were conducted under NHANES III. One study relevant to this priority setting exercise is Ashley et al (1994) (Ref. 10). This NHANES volatile organic compound (VOC) article contains relevant human biomonitoring data for over 40 chemicals. Standard quality assurance/quality control (QA/QC) procedures such as sample duplicates and blanks were used in the NHANES III study. The study participants in the special study are not statistically representative of the U.S. population.

2. *National Report on Human Exposure to Environmental Chemicals.* The National Report on Human Exposure (Ref. 11) is a Centers for Disease Control and Prevention (CDC) report that provides exposure information about people participating in an ongoing national survey of the general U.S. population—the NHANES. This report provides information on concentrations of 27 environmental chemicals measured in blood and/or urine in the U.S. population. These chemicals include metals; organophosphate pesticide metabolites; phthalate metabolites and cotinine, a marker of exposure to tobacco smoke. This report will be updated with additional biomonitoring data for these same or different chemicals on an annual basis. It is anticipated that a second report will be issued in late 2002 with human biomonitoring information on an additional 75 chemicals.

3. *National Human Adipose Tissue Survey (NHATS).* The EPA's OPPT operated the National Human Monitoring Program (NHMP) until the early 1990s. The NHMP's primary activity was conducting NHATS, which analyzed human adipose tissue specimens to monitor human exposure to potentially toxic chemicals. A nationwide network of pathologists and medical examiners from 47 standard metropolitan statistical areas (SMSAs) collected tissue specimens from cadavers and surgical patients that were then analyzed for certain chemicals. Throughout the 1970s and early 1980s, the chemical residues of primary interest were organochlorine pesticides and polychlorinated biphenyls (PCBs). In 1982, VOCs and semivolatile organic compounds (SVOCs) were included in the survey. NHATS contains relevant human biomonitoring data for over 150 chemicals. Quality control samples, such as method and equipment blank samples, control samples, and spike samples, were collected to evaluate the quality of sampling data. Data are available for years 1970 through 1987; however, a standard set of summarized data parameters are not available. (Refs. 12–25).

4. *Total Exposure Assessment Methodology Study (TEAM Study).* The TEAM Study was designed to develop methods to measure individual total exposure (exposure through air, food, and water) and resulting body burden of toxic and carcinogenic chemicals, and to apply these methods within a probability-based sampling framework to estimate the exposures and body burdens of urban populations in several U.S. cities. The TEAM Study reports the results of eight monitoring studies performed in five communities during different seasons of the year. Breath, personal air, outdoor air, and water samples were collected for 30 VOCs. (Refs. 26–28).

Established methods were used to collect and analyze TEAM Study data.

Quality control and quality assurance samples collected and analyzed include reagent blanks, field blanks, duplicate samples, and spiked samples. Data were reported for water using units of measure different than those used for air and breath samples. Environmental and biological data are generally lognormally distributed; thus, the data's central tendency is generally best represented using a geometric mean. Geometric means are provided for all compounds that were measured in 50% or more of the samples. For most of the compounds that were measured in less than 50% of the samples, a minimum quantifiable limit that can be used for ranking the data was provided.

B. HPV/Inert Chemicals in Ecological Biological Monitoring Data Relevant to Human Exposure

EPA proposes to review the following data sources to determine which HPV/Inert chemicals have been detected in non-human tissues potentially relevant to human ingestion exposure.

1. *National Sediment Inventory Fish Tissue Data (NSI Fish Tissue Data).* This database is described in Unit V.B.

2. *National Fish Tissue Study.* EPA is conducting a screening-level study to estimate the national distribution of selected persistent, bioaccumulative and toxic chemical residues in fish tissue from lakes and reservoirs of the continental United States. This 4-year study will define the national background levels for 265 chemicals in fish, establish a baseline to track the progress of pollution control activities, and identify areas where contaminant levels are high enough to warrant further investigation. The national fish tissue survey is the first survey of fish tissue to be based on a random sampling design. This sampling design will allow EPA to develop national estimates of the mean levels of persistent, bioaccumulative, and toxic chemicals in fish tissue. It will also provide data on the largest set of persistent, bioaccumulative, and toxic chemicals ever studied in fish. More details can be found at: *http://www.epa.gov/waterscience/fishstudy/results.htm.*

C. HPV/Inert Chemicals in Drinking Water Monitoring Data

EPA proposes to review the following data sources to determine which HPV/Inert chemicals have been detected in drinking water and in potential sources of drinking water.

1. *National Drinking Water Chemical Occurrence Data Base (NCOD Data Base).* This database is described in Unit V.B.

2. *National Human Exposure Assessment Survey (NHEXAS).* EPA designed the NHEXAS program to address some of the limitations of single-chemical and single-media exposure route studies. The purpose of NHEXAS is to evaluate comprehensive human exposure to multiple chemicals from multiple routes on both a community and regional scale, as well as its association with environmental concentrations and personal activities. EPA completed Phase 1 field sample collection and laboratory analyses of NHEXAS in 1998. EPA used established methods to collect and analyze NHEXAS data. Quality control and quality assurance samples collected and analyzed include reagent blanks, field blanks, duplicate samples, and spiked samples. Samples were split and analyzed in multiple laboratories; when appropriate audit samples were available, they were also analyzed. Data are reported for different media using different units of measure and different measures of central tendency. For example, arsenic concentrations are reported in micrograms per kilogram (μg/Kg) for beverages and food and in micrograms per liter (μg/L) for water. Sometimes the central tendency value is reported as an arithmetic mean, sometimes as a median, and sometimes as a 90th percentile. (Refs. 29–32).

3. *Total Exposure Assessment Methodology Water Data (TEAM Water Data).* The TEAM Study is described in Unit VI.A.

4. *National Stream Quality Accounting Network (NASQAN) Data.* This database, which contains information on surface water monitoring studies, is described in Unit V.B.

5. *The National Water Quality Assessment Program (NAWQA).* This database, which contains information on surface water and ground water monitoring studies, is described in Unit V.B.

D. HPV/Inert Chemicals in Indoor Air Monitoring Data

EPA proposes to review the following data sources to determine which HPV/Inert chemicals have been detected in residential indoor air.

1. *Office of Research and Development Published Literature.* The following eight EPA/ORD-authored journal articles and reports provide indoor air monitoring data: Brown et al. (1994), Daisey et al. (1994), Kelly et al. (1994), Immerman and Schaum. (1990), Samfield (1992), Shah et al. (1988), Sheldon et al. (1992), and Shields et al. (1996). (Refs. 33–40).

2. *NHEXAS.* The NHEXAS program was designed to evaluate comprehensive human exposure via indoor and outdoor air to multiple chemicals on a community and regional scale. Samples were collected of both the indoor and outdoor air that people breathe. Preliminary results of Phase I of NHEXAS were reported in 15 journal articles published in 1999. Four of these 15 journal articles provided information that is applicable to indoor air monitoring. (Refs. 30–32, 41).

3. *Total Exposure Assessment Methodology (TEAM).* The TEAM Study is described in Unit VI.A.

E. Integration of Pathway Priorities for HPV/Inert Chemicals

This unit addresses how EPA would integrate the information developed on priorities through the analysis of the four types of exposure monitoring data discussed in Units VI.A through VI.D (human biological data, ecological biological data relevant to human exposure, drinking water data, and indoor air data). As its first step, the Agency would produce four lists of candidate chemicals, one for each type of monitoring data, for potential screening in the endocrine disruptor Tier 1 battery. EPA expects that a number of chemicals will be identified in more than one type of monitoring data and that some chemicals will appear only in a single type of monitoring data. In choosing which HPV/Inert chemicals it would recommend for screening, EPA would give higher priority to chemicals that appeared in multiple types of monitoring data, with the HPV/Inerts appearing in four types receiving the highest priority, three types the next highest priority, etc. To the extent it becomes necessary to establish priorities within these four types of monitoring data, EPA would propose to give greater priority to HPV/Inerts which appear in human biological monitoring data followed by drinking water/indoor air monitoring data (weighted equally), followed by ecological biological monitoring data relevant to human exposure. As a final step, EPA would review the available effects information to identify any chemical for which the information clearly indicates an endocrine-mediated effect/perturbation. Such chemicals would be considered for proposed Tier 2 tests, mechanistic or special studies, or hazard assessment. During this step, EPA also would identify substances that EPA anticipates would have low potential to cause endocrine disruption (e.g., certain FIFRA List 4 inerts, most polymers with number average molecular weight greater than 1,000 daltons, strong mineral acids, and strong mineral

bases). EPA would consider excluding substances in either category from the first group of chemicals to undergo Tier 1 testing.

VII. Issues for Comment

In developing this proposed approach for selecting the first group of chemicals to be screened in the Agency's EDSP, EPA discussed a number of alternative approaches and identified a series of questions to elicit information from the public that would help in the evaluation of alternative approaches. In addition to the specific questions in this unit, EPA invites comment on additional alternative approaches.

A. Overall Approach for Selecting the Initial Set of Chemicals to Undergo Tier 1 Screening

1. *Focusing on the subset of chemicals subject to a statutory mandate for screening.* EPA is intending to focus only on pesticide active ingredients and HPV chemicals with some pesticidal inert uses (i.e., the chemicals that are specifically mandated for testing under section 408(p) of FFDCA) as candidates for the first group of chemicals to be screened. The pesticide inerts to be considered are those with relatively large overall production volumes considering both pesticide and non-pesticide uses. This approach will allow EPA to focus its initial endocrine screening efforts on a smaller and more manageable universe of chemicals that emphasizes early attention to the pesticide chemicals that Congress specifically mandated EPA to test for possible endocrine effects. Please comment on this proposed decision.

2. *Limited use of effects information.* Because the amount and type of toxicological data available to identify or characterize endocrine-related human health or ecological effects is not considered by the Agency to be adequate to support determinations of the endocrine disruption potential of most pesticide chemicals, EPA has proposed an approach that would use effects information only to exclude certain chemicals from the first group of chemicals to undergo Tier 1 screening. The approach would exclude from the first group of chemicals to undergo Tier 1 screening any chemical for which the available effects information is determined by EPA to clearly shows an endocrine-mediated effect. Such chemicals would be considered for proposed Tier 2 tests, mechanistic or special studies, or hazard assessment. Similarly, the approach for this initial list also would exclude substances that EPA anticipates have low potential to cause endocrine disruption (e.g., certain FIFRA List 4 inerts, most polymers with number average molecular weight greater than 1,000 daltons, strong mineral acids, and strong mineral bases). Please comment on this proposed decision and comment on the types of studies/data which could be evaluated by the Agency to aid in making exclusion decisions.

3. *Focus on human exposure; no separate criteria pertaining to exposure of ecological receptors.* While EPA's general focus in this approach is on pesticide active ingredients and HPV/Inerts with relatively greater potential for human exposure, this focus does not necessarily mean that the list developed using this approach will not contain substances which have potentially high levels of environmental exposure to ecological receptors. EPA believes that the proposed approach, while focused on human exposure, will also identify many chemicals with widespread environmental exposures to other organisms. If EPA should consider such exposures separately, please identify databases and criteria appropriate for setting priorities.

4. *Deferring consideration of nominations from the public.* For the initial Tier 1 screening list, EPA proposes to focus on pesticide active ingredients and HPV chemicals with some pesticidal inert uses. EPA believes that nominations from the public are important because they provide a mechanism to identify chemicals which may result in high exposures in local communities but which would not otherwise receive national attention. However, EPA has decided to defer consideration of nominations from the public until subsequent testing lists are proposed by EPA to keep this initial effort administratively simpler and ensure that a set of test results can be obtained in a relatively prompt timeline to aid the Agency in a mid-course evaluation of the EDSP Tier 1 screening battery. Please comment on this proposed decision.

5. *Defer testing of mixtures.* EPA believes that experience with the Tier 1 tests on a variety of single chemicals needs to be attained before the tests are used with mixtures. Therefore, EPA is proposing to defer consideration of testing of mixtures until subsequent testing lists are proposed by EPA. This judgement is consistent with advice from the SAB/SAP Subcommittee. Please comment on this proposed decision.

6. *Excluding chemicals that are no longer produced or used in the United States.* EPA also is proposing to exclude from the initial Tier 1 screening list any chemicals that are no longer produced or used in the United States. The Agency thinks that the added administrative complexity of determining who should be responsible for testing such chemicals could unnecessarily delay EPA's selection of an initial list for Tier 1 screening. Please comment on this proposed decision.

7. *Number of chemicals to be selected for the initial testing list.* The SAB/SAP Joint Subcommittee which reviewed EPA's proposed EDSP in 1999 felt that developing massive amounts of screening data on a large universe of chemicals would not necessarily expedite the development of the appropriate underpinning that the Agency needs to broaden this effort. The Subcommittee also expressed concern that it did not see a provision that would allow for mid-course correction or optimization of the Program. Thus, the Subcommittee recommended that EPA should initiate the Tier 1 testing program with a set of 50 to 100 chemicals and then convene an external panel of independent scientists to review the screening data for the purpose of evaluating whether the Tier 1 screening program could be improved or optimized, and if so, how. EPA is proposing to adopt this SAB/SAP recommendation. Please comment on this proposed decision.

8. *Integration of lists generated by the pesticide active ingredient approach and the pesticide inert approach.* As discussed in Unit IV, EPA is proposing to use similar but somewhat different sets of criteria for identifying pesticide active ingredients and inerts that should be given priority for screening in the Tier 1 battery. EPA generally has more extensive information of known quality available to assess usage and potential exposure to pesticide active ingredients than is available to assess exposure to HPV/Inert chemicals. Thus, the databases available to evaluate potential human exposure of the two classes also differ. EPA has not yet decided on the method to use to select the initial list of chemicals for screening from the separate lists that will be generated by the proposed approaches for pesticide active ingredients and HPV/Inert chemicals. Several alternative methods are being considered including the following. After looking at the separate lists, once they are generated, there may be natural break points. For example, if the top category for pesticide active ingredients (i.e., those chemicals which appear on lists for each of the four pathways) yields 60 actives and the top category for HPV/Inert chemicals (i.e., those chemicals which appear on lists for each of the three pathways and in human biomonitoring samples) yields

30, the Agency may select these 90 chemicals. Another approach being considered is a simple ratio approach. Because there are approximately an equal number of pesticide actives as HPV/Inerts, one way to produce a combined list would be to select approximately 50% of the chemicals from the active list and 50% from the HPV/Inert chemicals list. Please comment on these and other approaches that EPA could use to integrate the lists.

B. Approach for Selecting Pesticide Active Ingredients

1. The Agency considered approaches that did not focus on the four separate pathways of human exposure. Please comment on the following issues.

i. The advantages and disadvantages of setting priorities based on the overall extent of pesticide use, for example total pounds applied or total acres treated.

ii. Should all four pathways be considered? If not, please comment on which pathways should and should not be included.

2. Within separate pathways, EPA considered a variety of alternative approaches. Please comment on the following issues.

i. Food pathway. Would ranking pesticides by the extent of use on the top 20 crops be appropriate, given that it would be simpler and more quantitative than the approach proposed in this Notice?

ii. Water pathway. With regards to the proposed databases, should other databases be included, and should any be dropped?

iii. Residential use pathway. Should any additional criteria be used to set priorities within the universe of active ingredients with residential uses? For example, should EPA give higher or lower priority to particular use patterns because they are consistently likely to lead to greater or lesser levels of human exposure? Are there databases that could provide information on the extent of residential use of pesticides that would support setting priorities within this group?

iv. Occupational pathway. Are there criteria that would recognize how the differences in rate and timing of application of a pesticide or its environmental fate properties might affect levels of post-application exposure? Also, please comment on whether EPA should employ criteria to set priorities for active ingredients based on their levels of exposure for mixers, loaders, and applicators. If EPA should consider such exposure in setting priorities for the occupational pathway, please identify databases and criteria appropriate for setting priorities. Also, please comment on whether EPA should consider criteria for the occupational pathway that employs data from reports on the incidence of adverse effects among workers, such as data collected by the California's Pesticide Illness Surveillance Program (PISP) (see, for example, the PISP report for 2000, *http://www.cdpr.ca.gov/docs/dprdocs/pisp/2000pisp.htm*) or the National Institute of Occupational Safety and Health's Sentinel Event Notification System for Occupational Risk (see *http://www.cdc.gov/niosh/pestsurv/default.html*).

3. EPA's proposed approach to setting its overall priority for pesticide active ingredients that combines the analysis for each of the four pathways generally gives each pathway equal weight. Alternative approaches are also possible. Please comment on the following issues.

i. Should a different approach be used to integrate the information from the four different pathways, for example by assigning different weights to the pathways?

ii. Should there be any limit on the number of active ingredients included on the list for a single pathway?

iii. Should any factors other than the pathway lists and the hazard-based considerations be included in the integrative step?

iv. Should EPA attempt to explicitly consider magnitude of the environmental concentrations of chemicals in this approach and, if so, how?

C. Approach for Selecting Pesticide HPVolume/Pesticide Inert Chemicals

1. EPA's proposed approach for setting screening priorities for pesticide inert ingredients that are also HPV chemicals uses four types of monitoring data. These are human biomonitoring data, ecological biomonitoring data relevant to human exposure, water monitoring data and indoor air monitoring data. Please comment on the following issues.

i. Should the selection of priority HPV/Inert chemicals be based upon all four types of monitoring data? If not, please comment on which type of monitoring data should and should not be included.

ii. Should other types of exposure information be used instead of or in addition to monitoring data?

2. Within the four separate types of monitoring data, EPA identified and selected sources of monitoring data for use in priority setting for HPV/Inert chemicals. Please comment on the following issues.

i. The appropriateness of the data sources identified in this proposed approach.

ii. For human biological monitoring data, are there additional sources of data that EPA should consider?

iii. For ecological biological monitoring data relevant to human exposure, are there additional sources of data that EPA should consider?

iv. For water monitoring data, are there additional sources of data that EPA should consider?

v. For indoor air monitoring data, are there additional sources of data that EPA should consider?

3. EPA's proposed approach to setting its priorities for HPV/Inert chemicals combines the analysis for each of the four types of monitoring data and generally gives each type of monitoring data equal weight. However, if necessary to establish priorities within these four types of monitoring data, higher weight would be assigned to human biomonitoring data than to the other three types of monitoring data. Alternative approaches are also possible. Please comment on the following issues.

i. Should a different approach be used to integrate the information from the four different types of monitoring data, for example by assigning different weights initially to all types of monitoring data?

ii. Should there be any limit on the number of HPV/Inert chemicals included on the list for a single type of monitoring data?

iii. Should any factors other than the lists of HPV/Inert chemicals found in the four types of monitoring data and the hazard-based considerations be included in the integrative step?

VIII. References

The Agency's actions are supported by the references listed in this unit and cited in this notice. These references are available in the public record for this notice under docket ID number OPPT–2002–0066. (See Unit I.B. for information on how to access this docket).

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IX. Statutory and Executive Order Reviews

This notice is not subject to review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Nevertheless, OMB participated in an interagency review of this notice and any comments or suggestions received during that review, have been addressed.

Since this notice does not impose any requirements, and instead seeks comments and suggestions for the Agency to consider in developing its approach for selecting the first group of chemicals to be screened in the Agency's EDSP, the various other review requirements that apply when an agency imposes requirements do not apply to this notice. As a part of your comments on this document, however, you may include any comments or information that would facilitate the Agency's consideration of approaches for selecting the first group of chemicals to be screened in the Agency's EDSP, including but not limited to potential impacts on small entities covered by the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the availability of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), and potential paperwork burden and costs, as well as any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, related to the collection of this information as described by the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*). The Agency will consider such comments during the development of the approach and will take appropriate steps to address any applicable requirements.

List of Subjects

Environmental protection, Chemicals, Endocrine disruptors, Pesticides and pests.

Dated: December 23, 2002.

Stephen L. Johnson,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 02–32853 Filed 12–24–02; 11:49 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

FRL–7432–2]

State Program Requirements; Approval of Application by Arizona To Administer the National Pollutant Discharge Elimination System (NPDES) Program; Arizona

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On December 5, 2002, the Regional Administrator for the Environmental Protection Agency, Region IX (EPA), approved the application by the State of Arizona to administer and enforce the Arizona Pollutant Discharge Elimination System (AZPDES) Program, for all areas within the State, other than Indian country. The authority to approve State programs is provided to EPA in section 402(b) of the Clean Water Act (CWA). The State will administer the approved program through the Arizona Department of Environmental Quality (ADEQ), subject to continuing EPA oversight and enforcement authority, in place of the National Pollutant Discharge Elimination System (NPDES) program previously administered by EPA in Arizona. The program is a partial program to the extent described in the section of this Notice entitled National Pollutant Discharge Elimination System (NPDES) program ''Scope of the AZPDES Program.'' In making its decision, EPA considered and addressed all comments and issues raised during the public comment period.

DATES: Pursuant to 40 CFR 123.61(c), the AZPDES program was approved and became effective on December 5, 2002.

FOR FURTHER INFORMATION CONTACT: Matthew Mitchell, USEPA Region IX (WTR–5), 75 Hawthorne Street, San Francisco, CA, 94105, (415) 972–3508 or Chris Varga, Federal Permits Unit, Arizona Department of Environmental Quality, 1110 W. Washington St., Phoenix, AZ, 85007, (602) 771–4665. Part of the State's program submission and supporting documentation is available electronically at the following Internet address: *http://www.adeq.state.az.us/environ/water/permits/federal.html*

SUPPLEMENTARY INFORMATION: Arizona's application was described in the **Federal Register** (67 FR 49916) on August 1, 2002, in which EPA requested comments. Notice of Arizona's application was published in the Arizona Republic on August 13, 2002. A public hearing on the application was held on September 4, 2002, in Phoenix, AZ.

Section 402 (c)(1) of the CWA provides that ninety days after a State has submitted an application to administer the NPDES program, EPA's authority to issue such permits is suspended unless EPA disapproves or approves the State's application. 40 CFR 123.21(b)(1). This ninety day statutory review period ended on October 8, 2002. However, because of the many complex issues that were raised with respect to the State's program and the need to address them in a comprehensive manner, EPA was unable to make a final decision by October 8, 2002. Thus, EPA suspended issuance of NPDES permits in Arizona on October 8, 2002. However, failure to make a decision by the October 8, 2002 deadline did not mean that the State automatically gained NPDES authority. It is EPA's interpretation that a State agency does not gain NPDES authority unless and until EPA approves the State program, consistent with CWA section 402(b) and 40 CFR 123.1. As of December 5, 2002, the ADEQ is now authorized to issue AZPDES permits under the CWA in all areas within the State, except for in Indian country.

A. Scope of the AZPDES Program

The AZPDES program is a partial program which conforms to the requirements of section 402(n)(3) of the CWA. Specifically, Arizona is being approved to administer both the NPDES permit program covering point source dischargers to State waters and the pretreatment program covering industrial sources discharging to publicly owned treatment works.

Pursuant to CWA section 402(d), in specified circumstances EPA retains the right to object to AZPDES permits proposed by ADEQ, and if the objections are not resolved, to issue the permits itself. EPA also will retain jurisdiction over all NPDES permits it has issued in Arizona until ADEQ reissues them as AZPDES permits. Finally, EPA and State have agreed that EPA may retain permitting authority in certain limited circumstances, as set forth in the Memorandum of Agreement between EPA and ADEQ.

As part of operating the approved program, ADEQ generally will have the lead responsibility for enforcement. However, EPA will retains its full statutory enforcement authorities under CWA sections 308, 309, 402(i) and 504. Thus, EPA may continue to bring federal enforcement action under the CWA in response to any violation of the CWA, as appropriate. In particular, if EPA determines that the State has not taken timely and/or appropriate enforcement action against a violator in Arizona, EPA may take its own enforcement action.

B. Public Comments

The EPA received numerous public comments concerning the Arizona program.

Several commenters urged the EPA to approve the State's program. The EPA agrees that the State program should be approved at this time outside Indian country.

Several commenters were concerned about impacts on endangered species and historic properties associated with EPA's approval of the AZPDES program. In addition, a few commenters urged that the EPA reject Arizona's program application on a variety of grounds.

All public comments are addressed in EPA's Response to Comments Document, dated December 5, 2002. In addition, EPA actions taken in accordance with the requirements of the Endangered Species Act and the National Historic Preservation Act are described below in Section C.

C. Other Federal Statutes

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act (ESA), 16 U.S.C. 1536(a)(2), requires that federal agencies ensure, in consultation with the United States Fish & Wildlife Service (FWS) that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of listed threatened or endangered species (listed species) or result in the destruction or adverse modification of critical habitat designated for such listed species.

EPA consulted with the FWS under section 7(a)(2) of the ESA regarding the effects of the AZPDES program approval on listed species and designated critical habitat. On December 3, 2002, the Service issued a biological opinion concluding that EPA's approval of Arizona's NPDES application is not likely to jeopardize the continued existence of listed threatened or endangered species or result in the destruction or adverse modification of their critical habitat. In the opinion, the FWS also stated that it does not anticipate that EPA's action will result in the incidental take of listed species. Issuance of the biological opinion with these findings concludes the consultation process required by ESA section 7(a)(2) and reflects the Service's agreement with EPA that the approval of the State program meets the substantive requirements of the ESA.

National Historic Preservation Act

Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. 470(f), requires Federal agencies to take into account the effects of their undertakings on historic properties and to provide the Advisory Council on Historic Preservation (ACHP) an opportunity to comment on such undertakings. Under the ACHP's regulations (36 CFR part 800), the Agency consults with the appropriate State Historic Preservation Officer (SHPO) and/or Tribal Historic Preservation Officer on federal undertakings that have the potential to affect historic properties listed or eligible for listing in the National Register of Historic Places. During EPA's review of the Arizona NPDES application, EPA engaged in discussions with the Arizona SHPO regarding EPA's determination that approval of the State permitting program would have no effect on historic properties.

On August 23, 2002, EPA provided the Arizona SHPO's Office with EPA's determination that approval of Arizona's application would have no effect on historic properties in Arizona. As part of the coordination process, the SHPO's Office raised certain issues regarding approval of the Arizona program for further discussions. By letter dated September 23, 2002, the SHPO withdrew these issues for consideration and informed EPA that it was working with ADEQ to coordinate its activities in the protection of Arizona's cultural resources. On October 18, 2002, the SHPO and ADEQ entered into a Memorandum of Understanding (MOU) assuring the SHPO that it would receive notices of certain proposed permit actions. This MOU further provides for coordination between ADEQ and the SHPO to resolve any identified issues to ensure that AZPDES permits will comply with Arizona water quality standards and Arizona laws protecting historic properties. For those permits with the potential to adversely affect historic properties, ADEQ and the SHPO agreed to seek ways to avoid, minimize or mitigate any adverse effects to historic properties stemming from the proposed permit. EPA believes that the agreement between ADEQ and the SHPO is consistent with EPA's determination that approval of the State permitting program would have no effect on historic properties.

Regulatory Flexibility Act

Based on General Counsel Opinion 78–7 (April 18, 1978), EPA has long considered a determination to approve or deny a State NPDES program submission to constitute an adjudication because an ''approval,'' within the meaning of the APA, constitutes a ''license,'' which, in turn, is the product of an ''adjudication.'' For this reason, the statutes and Executive Orders that apply to rulemaking action are not applicable here. Among these are provisions of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq*. Under the RFA, whenever a Federal agency proposes or promulgates a rule under section 553 of the Administrative Procedure Act (APA), after being required by that section or any other law to publish a general notice of proposed rulemaking, the Agency must prepare a regulatory flexibility analysis for the rule, unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. If the Agency does not certify the rule, the regulatory flexibility analysis must describe and assess the impact of a rule on small entities affected by the rule. Even if the NPDES program approval were a rule subject to the RFA, the Agency would certify that approval of the State's proposed AZPDES program would not

have a significant economic impact on a substantial number of small entities. EPA's action to approve an NPDES program merely recognizes that the necessary elements of an NPDES program have already been enacted as a matter of State law; it would, therefore, impose no additional obligations upon those subject to the State's program. Accordingly, the Regional Administrator would certify that this program, even if a rule, would not have a significant economic impact on a substantial number of small entities.

E. Notice of Decision

I hereby provide public notice that EPA has taken final action authorizing Arizona to implement the NPDES program in all areas of the State except for Indian Country.

Authority: This action is taken under the authority of section 402 of the Clean Water Act as amended, 42 U.S.C. 1342.

Dated: December 5, 2002.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 02–32907 Filed 12–27–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7432–1]

Notice of Tentative Approval and Solicitation of Request for a Public Hearing for Public Water System Supervision Program Revision for the Commonwealth of Pennsylvania

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative approval and Solicitation of Requests for a Public Hearing.

SUMMARY: Notice is hereby given in accordance with the provision of section 1413 of the Safe Drinking Water Act as amended, and the National Primary Drinking Water Regulations Implementation that the Commonwealth of Pennsylvania is revising its approved Public Water System Supervision Program. Pennsylvania has adopted an Interim Enhanced Surface Water Treatment Rule (IESWTR) to improve control of microbial pathogens in drinking water, including specifically the protozoan Cryptosporidium, and a Stage 1 Disinfectants/Disinfection Byproducts Rule (DBPR), setting new requirements to limit the formation of chemical disinfection byproducts in drinking water. EPA has determined that these revisions are no less stringent than the corresponding Federal regulations outside of two minor omissions to their regulations. The two items concern turbidity monitoring reporting requirements under IESWTR for systems that use alternative filtration technologies and selection of disinfection byproduct monitoring locations under the DBPR for surface water systems serving at least 10,000 people. These omissions are being addressed through an EPA/Pennsylvania Department of Environmental Protection signed letter agreement that includes required interim actions to cover the deficiencies and a schedule for correcting the deficiencies. Therefore, EPA has decided to tentatively approve these program revisions. All interested parties are invited to submit written comments on this determination and may request a public hearing.

DATES: Comments or a request for a public hearing must be submitted by January 29, 2003. This determination shall become effective on January 30, 2003 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, and if no comments are received which cause EPA to modify its tentative approval.

ADDRESSES: Comments or a request for a public hearing must be submitted to the U.S. Environmental Protection Agency Region III, 1650 Arch Street, Philadelphia, PA 19103–2029. 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:

- Drinking Water Branch, Water Protection Division, U.S. Environmental Protection Agency Region III, 1650 Arch Street, Philadelphia, PA 19103–2029.
- Pennsylvania Department of Environmental Protection, Bureau of Water Supply and Wastewater Management, 11th Floor Rachael Carson State Office Building Harrisburg, 400 Market Street, Harrisburg, PA 17105–8467.

FOR FURTHER INFORMATION CONTACT: Jason Gambatese, Drinking Water Branch (3WP22) at the Philadelphia address given above; telephone (215) 814–5759 or fax (215) 814–2318.

SUPPLEMENTARY INFORMATION: All interested parties are invited to submit written comments on this determination and may request a public hearing. All comments will be considered, and, if necessary, EPA will issue a response. 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 29, 2003, a public hearing will be held. A request for public hearing shall include the following: (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 of information that the requesting person intends to submit at such a hearing; and (3) the signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

Dated: December 11, 2002.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 02–32898 Filed 12–27–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1446–DR]

Guam; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Territory of Guam, (FEMA–1446–DR), dated December 8, 2002, and related determinations.

EFFECTIVE DATE: December 19, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov.*

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Territory of Guam is hereby amended to include Individual Assistance for The Territory of Guam determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of December 8, 2002:

The Territory of Guam for Individual Assistance (already designated for debris removal (Category A) and emergency protective measures (Category B) under the Public Assistance program, including direct Federal assistance at 75 percent Federal funding.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537,

Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–32857 Filed 12–27–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1448–DR]

North Carolina; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of North Carolina, (FEMA–1448–DR), dated December 12, 2002, and related determinations.

EFFECTIVE DATE: December 20, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov*.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of North Carolina is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of December 12, 2002:

Caldwell, Davie, Edgecombe, Johnston, Northampton, Polk, Warren, Wayne and Wilson Counties for Public Assistance.

All counties in the State of North Carolina, including the Cherokee Indian Reservation, are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–32858 Filed 12–27–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1448–DR]

North Carolina; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of North Carolina (FEMA–1448–DR), dated December 12, 2002, and related determinations.

EFFECTIVE DATE: December 12, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated December 12, 2002, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of North Carolina resulting from a severe ice storm on December 4–6, 2002, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act).

I, therefore, declare that such a major disaster exists in the State of North Carolina.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation in the designated areas, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under Section 408 of the Stafford Act is later requested and warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Michael Bolch of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of North Carolina to have been affected adversely by this declared major disaster:

Alamance, Alexander, Anson, Burke, Cabarrus, Catawba, Chatham, Cleveland, Davidson, Durham, Franklin, Gaston, Granville, Guilford, Halifax, Harnett, Iredell, Lee, Lincoln, McDowell, Mechlenburg, Montgomery, Moore, Nash, Orange, Person, Randolph, Rowan, Rutherford, Stanly, Union, Vance, and Wake Counties for Public Assistance.

Alamance, Alexander, Anson, Burke, Cabarrus, Caldwell, Catawba, Chatham, Cleveland, Davidson, Durham, Edgecombe, Forsyth, Franklin, Gaston, Granville, Guilford, Halifax, Harnett, Iredell, Lee, Lincoln, McDowell, Mecklenberg, Montgomery, Moore, Nash, Orange, Person, Randolph, Rowan, Rutherford, Stanly, Union, Vance, and Wake Counties are eligible to apply for assistance under the Hazard Mitigation grant program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–32860 Filed 12–27–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1447–DR]

Northern Mariana Islands; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of the Northern Mariana Islands (FEMA–1447–

DR), dated December 11, 2002, and related determinations.

EFFECTIVE DATE: December 11, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated December 11, 2002, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the Commonwealth of the Northern Mariana Islands, resulting from Super Typhoon Pongsona on December 8, 2002, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the Commonwealth of the Northern Mariana Islands.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide assistance for debris removal and emergency protective measures (Categories A and B) under Public Assistance, including direct Federal assistance, in the designated areas, Hazard Mitigation throughout the Commonwealth, and any other forms of assistance under the Stafford Act you may deem appropriate subject to completion of Preliminary Damage Assessments. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Individual Assistance is later requested and warranted, Federal funds provided under the Individuals and Households Program will also be limited to 75 percent of the total eligible costs. You are authorized to make adjustments as warranted to the non-Federal cost shares as provided under the Insular Areas Act, 48 U.S.C. 1469a(d).

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint David Fukutomi of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following area of the Commonwealth of the Northern Mariana Islands to have been affected adversely by this declared major disaster:

Island of Rota for debris removal and emergency protective measures (Categories A and B) under the Public Assistance program.

All areas within the Commonwealth of the Northern Mariana Islands are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–32859 Filed 12–27–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1444–DR]

Ohio; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Ohio, (FEMA–1444–DR), dated November 18, 2002, and related determinations.

EFFECTIVE DATE: December 20, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov.*

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Ohio is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 18, 2002:

The counties of Ashland, Auglaize, Coshocton, Franklin, Henry, Huron, Lorain, Medina, Sandusky, Union, Wayne and Wood for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–32856 Filed 12–27–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1439–DR]

Texas; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas, (FEMA–1439–DR), dated November 5, 2002, and related determinations.

EFFECTIVE DATE: December 16, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov.*

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 5, 2002:

Walker County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance

Grants; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–32855 Filed 12–27–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Federal Radiological Preparedness Coordinating Committee Meeting

AGENCY: Federal Emergency Management Agency (FEMA)

ACTION: Notice.

SUMMARY: The Federal Radiological Preparedness Coordinating Committee (FRPCC) advises the public that the FRPCC will meet on January 28, 2003 in Washington, DC.

DATES: The meeting will be held on January 28, 2003, at 9 a.m.

ADDRESSES: The meeting will be held at FEMA's Lobby Conference Center, 500 C Street, SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Pat Tenorio, FEMA, 500 C Street, SW., Washington, DC 20472, telephone (202) 646–2870; fax (202) 646–4321; or e-mail *pat.tenorio@fema.gov.*

SUPPLEMENTARY INFORMATION: The role and functions of the FRPCC are described in 44 CFR 351.10(a) and 351.11(a). The Agenda for the upcoming FRPCC meeting is expected to include: (1) Introductions, (2) reports from FRPCC subcommittees, (3) old and new business, and (4) business from the floor.

The meeting is open to the public, subject to the availability of space. Reasonable provision will be made, if time permits, for oral statements from the public of not more than five minutes in length. Any member of the public who wishes to make an oral statement at the January 28, 2003, FRPCC meeting should request time, in writing, from W. Craig Conklin, FRPCC Chair, FEMA, 500 C Street, SW., Washington, DC 20472. The request should be received at least five business days before the meeting. Any member of the public who wishes to file a written statement with the FRPCC should mail the statement to: Federal Radiological Preparedness Coordinating Committee, c/o Pat Tenorio, FEMA, 500 C Street, SW., Washington, DC 20472.

Dated: December 18, 2002.

W. Craig Conklin,

Director, Technological Services Division, Office of National Preparedness, Federal Emergency Management Agency, Chair, Federal Radiological Preparedness Coordinating Committee.

[FR Doc. 02–32854 Filed 12–27–02; 8:45 am]

BILLING CODE 6718–06–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 10, 2003.

A. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Alan J. Erickson, North Platte, Nebraska, and Ronald J. Erickson, Scottsbluff, Nebraska; to acquire control of NebraskaLand Financial Services, Inc., York, Nebraska, and thereby indirectly acquire voting shares of NebraskaLand National Bank, North Platte, Nebraska.

Board of Governors of the Federal Reserve System, December 23, 2002.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 02–32830 Filed 12–27–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 22, 2003.

A. Federal Reserve Bank of Cleveland (Stephen J. Ong, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. First Southern Bancorp, Inc., and First Southern Acquisition Corp., both of Stanford, Kentucky; to acquire 100 percent of the voting shares of South Central Bancshares, Inc., Russellville, Kentucky, and thereby indirectly acquire Citizens National Bank, Russellville, Kentucky; First Bank and Trust Company, Princeton, Kentucky; and Citizens State Bank, Wickliffe, Kentucky.

Board of Governors of the Federal Reserve System, December 23, 2002.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 02–32829 Filed 12–27–02; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Citizens Advisory Committee on Public Health Service (PHS) Activities and Research at Department of Energy (DOE) Sites: Oak Ridge Reservation Health Effects Subcommittee.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

Name: Citizens Advisory Committee on PHS Activities and Research at DOE Sites: Oak Ridge Reservation Health Effects Subcommittee (ORRHES).

Time and Date: 12 p.m.–8 p.m., February 10, 2003.

Place: YWCA of Oak Ridge, 1660 Oak Ridge Turnpike, Oak Ridge, Tennessee, 37830. Telephone: (865) 482–9922.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Background: A Memorandum of Understanding (MOU) signed in October 1990 and renewed in September 2000 between ATSDR and DOE delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or ''Superfund''). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles. In addition, under an MOU signed in December 1990 with DOE and replaced by an MOU signed in 2000, the Department of Health and Human Services (HHS) has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production and use. HHS has delegated program responsibility to CDC.

Purpose: This subcommittee is charged with providing advice and recommendations to the Director, CDC, and the Administrator, ATSDR, pertaining to CDC's and ATSDR's public health activities and research at this DOE site. Activities shall focus on providing the public with a vehicle to express concerns and provide advice and recommendations to CDC and ATSDR. The purpose of this meeting is to receive updates from ATSDR and CDC, and to address other issues and topics, as necessary.

Matters to be Discussed: The agenda includes a discussion of the public health assessment, updates from the Public Health Assessment, Health Needs Assessment, Guidelines and Procedures, Agenda, and Communications and Outreach Workgroups. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: La Freta Dalton, Designated Federal Official, or Marilyn Palmer, Committee Management Specialist, Division of Health Assessment and Consultation, ATSDR, 1600 Clifton Road, NE., M/S E–32, Atlanta, Georgia 30333, telephone 1–888–42–ATSDR(28737), fax 404/498–1744.

The Director, Management Analysis and Services Office, has been delegated the authority to sign Federal Register notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: December 20, 2002.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 02–32863 Filed 12–27–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–31]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404)498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Proposed Project: Work-Related Stress Among Coal Miners—NEW—The National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Work-related stress appears to increase the risk of atherosclerotic heart disease, musculoskeletal disorders such as back pain and carpal tunnel syndrome, and clinical depression. The mechanism by which stress increases the risk of chronic disease states is unknown, but it is thought to involve abnormal communication between the brain and the endocrine system. Dysfunction of this communication system, called the Hypothalamic-Pituitary-Adrenal (HPA) axis, is found in a number of chronic diseases, including coronary heart disease, diabetes, and rheumatoid arthritis. In a healthy individual, there is flexible communication between the hypothalamus and pituitary, both located in the brain, and the adrenal gland, located above the kidneys. When stresses occur throughout the day, cortisol is released from the adrenal gland in response to signals from the brain. Cortisol prepares the body to respond to stress, after which cortisol levels return to normal. Chronic stress, with protracted or repeated challenge to the HPA axis, may lead to inappropriate levels of cortisol, further decline of HPA axis function, and increased risk of chronic disease.

This study will investigate the relationship between workplace stress and function of the HPA axis among a sample population of coal miners. Coal miners experience a number of work-related stresses such as long hours of work, heavy workloads, shift work, and concerns about stability of employment. Miners will be asked to complete a 25-minute survey which asks about traditional job stressors including shift schedule and rotation, workload, and degree of control over work. The survey also addresses stressors not typically examined in work stress surveys including time spent in second jobs, commuting time to work, and responsibilities for care of children and the elderly.

Function of the HPA axis will be assessed by obtaining a series of cortisol samples from subjects right after they wake up in the morning. Recent studies have shown that the response of cortisol

to awakening, measured in saliva, serves as a good marker of HPA axis function. Miners will be asked to obtain saliva samples at home and send them to the NIOSH Morgantown laboratory for analysis.

Analyses will examine the relationship between the cortisol response to awakening, an indicator of HPA axis function, and measures of workplace stress. Data collected in this study will help NIOSH determine if workplace stress results in HPA axis dysfunction, which has been linked to a number of chronic disease conditions. There will be no costs to respondents.

Respondents	No. of respondents	No. of responses per respondent	Average burden per respondent (in hours)	Total burden (in hrs.)
Coal Miners	500	1	25/60	208
Total	500	1	25/60	208

Dated: December 23, 2002.

John R. Moore,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–32959 Filed 12–27–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–15–03]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project: Children's Longitudinal Development Study, OMB No. 0920–0450—Revision—National Center for Birth Defects and Developmental Disabilities (NCBDDD), Centers for Disease Control and Prevention (CDC). CDC developed the Children's Longitudinal Development Study to investigate etiologic factors for select developmental disabilities. Since 1991, surveillance of children aged three to ten years who have one or more select developmental disabilities (cerebral palsy, mental retardation, hearing loss, and vision impairment) has been conducted in the five-county Atlanta metropolitan area through CDC Metropolitan Atlanta Developmental Disabilities Surveillance Program (MADDSP).

MADDSP has identified children with developmental disabilities primarily through the special education programs of the public schools in those five counties. Recently, the Metropolitan Atlanta Developmental Disabilities Surveillance Program has been expanded to identify children with cerebral palsy at younger ages through a broader array of medical facilities where diagnostic evaluations are performed, and autism has been included as one of the developmental disabilities.

CDC National Center for Birth Defects and Developmental Disabilities Children's Longitudinal Development Study is an ongoing case-control study that will serve as an instrument to annually, (1) contact parents of all children (1000 children) with any of the five developmental disabilities who are newly identified in the surveillance database and who were born in the metro Atlanta area; (2) contact parents of 500 children to request access to labor and delivery, maternal, and prenatal records; and (3) conduct telephone interviews with mothers of children with cerebral palsy or autism. The interviews will supply additional risk factor information relating to the mothers' medical and reproductive histories, prenatal behaviors and exposures, and family histories of developmental problems. Additionally, photographs and head circumference measurements of children will be included in the interview sample.

The annual burden hours are estimated to be 1,625.

Survey instruments	No. of respondents	No. of responses/respondents	Avg. burden/response (in hrs.)
Mothers:			
Contact Calls	1000	1	20/60
Scheduling Calls	500	1	20/60
Telephone Interview	500	1	90/60
Photography/Anthropometry	500	1	45/60

Dated: December 23, 2002.

John R. Moore,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 02–32958 Filed 12–27–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Vaccine Advisory Committee, Subcommittee on Future Vaccines, Subcommittee on Immunization Coverage, and Subcommittee on Vaccine Safety and Communication Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following Federal advisory committee meetings.

Name: National Vaccine Advisory Committee (NVAC).

Times and Dates: 9 a.m.–5 p.m., February 4, 2003; 8:30 a.m.–3 p.m., February 5, 2003.

Place: Hubert H. Humphrey Building, Room 705A, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open to the public, limited only by the space available.

Notice: In the interest of security, the Department has instituted stringent procedures for entrance to the Hubert H. Humphrey Building by non-government employees. Thus, persons without a government identification card should plan to arrive at the building each day either between 8 a.m. and 8:30 a.m. or 12:30 p.m. and 1 p.m. Entrance to the meeting at other times during the day cannot be assured.

Purpose: This committee advises and makes recommendations to the Director of the National Vaccine Program on matters related to the Program responsibilities.

Matters to be Discussed: Agenda items will include: a report from the National Vaccine Program Office (NVPO) and the Interagency Vaccine Workgroup; a report from the Assistant Secretary for Health; a discussion of homeland security and the role of vaccines; an update on the status of the smallpox vaccination program; an update on vaccine supply; an update on compensation for vaccine administration: Centers for Medicare and Medicaid Services Ruling; a report from the NVAC Workgroup on Public Health Options for Implementing Immunization Requirements; a report from the Institute of Medicine (IOM) regarding SV–40; a discussion of the Department of Health and Human Services global health agenda; an update on polio eradication and polio laboratory containment; a discussion of the Homeland Security Act; reports from the Vaccine Safety and Communication Subcommittee, Immunization Coverage Subcommittee, and the Future Vaccines Subcommittee; and, reports from the Advisory Commission on Childhood Vaccines/Division of Vaccine Injury Compensation, Vaccine Related Biological Products Advisory Committee/Food and Drug Administration, Advisory Committee on Immunization Practices/National Immunization Program/National Center for Infectious Diseases.

Name: Subcommittee on Future Vaccines.

Time and Date: 3:15 p.m.–5 p.m., February 4, 2003.

Place: Hubert H. Humphrey Building, Room 405A, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open to the public, limited only by the space available.

Purpose: This subcommittee develops policy options and guides national activities that lead to accelerated development, licensure, and the best use of new vaccines in the simplest possible immunization schedules.

Matters to be Discussed: Agenda items include an update on planning for a workshop on Pneumococcal Disease Prevention in Adults; discussion of pertussis vaccine strategies; and, a discussion of future vaccine technologies.

Name: Subcommittee on Immunization Coverage.

Time and Date: 3:15 p.m.–5 p.m., February 4, 2003.

Place: Hubert H. Humphrey Building, Room 705A, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open to the public, limited only by the space available.

Purpose: This subcommittee will identify and propose solutions that provide a multifaceted and holistic approach to reducing barriers that result in low immunization coverage for children.

Matters to be Discussed: Agenda items will include an update on Publication of Adult and Pediatric Standards; presentation of the draft report from the Workgroup on Public Health Options for Implementing Immunization Recommendations; an update on the status of the IOM report on vaccine financing; a discussion of creative methods for funding immunization registries; a review of adolescent coverage rates; and, areas of focus for unmet needs funding.

Name: Subcommittee on Vaccine Safety and Communication.

Time and Date: 3:15 p.m.–5 p.m., February 4, 2003.

Place: Hubert H. Humphrey Building, Room 425A, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open to the public, limited only by the space available.

Purpose: This subcommittee reviews issues relevant to vaccine safety and adverse reactions to vaccines.

Matters to be Discussed: Items to be discussed include a report from the IOM Vaccine Safety Review Committee on future activities and risk communication recommendations; a follow-up of the NVPO Risk Communication Workshop; and, a discussion of the smallpox vaccine communication plan.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Gloria Sagar, Committee Management Specialist, NVPO, CDC, 4700 Buford Highway M/S K–77, Chamblee, Georgia 30341, telephone 770/488–2040.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: December 20, 2002.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 02–32864 Filed 12–27–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0077]

Agency Information Collection Activities; Proposed Collection; Comment Request; Emergency Medical Device Shortage Program Survey

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement of an existing information collection, and to allow 60 days for public comment in response to the notice. This notice solicits comments on FDA's emergency medical device shortage program survey. In the **Federal Register** of May 22, 2002 (67 FR 36008), FDA published a notice announcing OMB's approval of this collection of information (OMB control number 0910–0491). Because this was an emergency approval that expired on October 31, 2002, FDA in this notice is following the normal PRA clearance procedures by issuing this notice.

DATES: Submit written or electronic comments on the collection of information by February 28, 2003.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.accessdata.fda.gov/scripts/oc/*

dockets/edockethome.cfm. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (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. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Emergency Medical Device Shortage Program Survey (OMB Control Number 0910–0491)—Reinstatement

Under section 903(d)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 393(d)(2)), the Commissioner of Food and Drugs is authorized to implement general powers (including conducting research) to carry out effectively FDA's mission. Section 510 of the act (21 U.S.C. 360) requires that domestic establishments engaged in the manufacture, preparation, propagation, compounding, assembly, or processing of medical devices intended for human use and commercial distribution register their establishments and list the devices they manufacture with FDA. Section 522 of the act (21 U.S.C. 360(l)) authorizes FDA to require manufacturers to conduct postmarket surveillance of medical devices. Section 705(b) of the act (21 U.S.C. 375(b)) authorizes FDA to collect and disseminate information regarding medical products or cosmetics in situations involving imminent danger to health, or gross deception of the consumer. These sections of the act enable FDA to enhance consumer protection from risks associated with medical devices usage that are not foreseen or apparent during the premarket notification and review process.

Subsequent to the events of September 11, 2001, FDA began planning for handling device-related issues related to counter-terrorism. One of the activities related to planning for addressing terrorism-related medical device shortages is that FDA, working with medical experts and medical device industry organizations, developed a medical device formulary that identifies which medical devices would be needed in responding to terrorist incidents. The National Pharmaceutical Stockpile Program managed by the Centers for Disease Control (CDC) appears to have not given adequate consideration to medical devices. Therefore, FDA has developed a plan to ensure adequate availability of medical devices in case of terrorist incidents.

Most particularly, consumable supplies or disposable devices are supplied through large regional distributors. Adequate supplies should be available through these existing commercial supply chains. Problems in supplying these items will be due to logistics. In an emergency, FDA plans to ensure adequate availability of these types of devices by working with industry/distributor organizations. These organizations have actively pursued working relationships with appropriate government agencies to facilitate adequate response in emergency situations.

However, there are more sophisticated or specialized devices, for example, ventilators, defibrillators, portable x-ray machines, that are sold directly by the manufacturer, that are not through independent distributors. For these devices, FDA plans to maintain a database of device manufacturers so that specific contact information can be supplied to Emergency Response personnel as needed. FDA has identified 17 of these devices and has identified 205 manufacturers.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Telephone survey	250	1	250	.5	125
Total					125

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA has based these estimates on conversations with industry and trade association representatives, and from internal FDA experience and estimates.

The total number of medical device manufacturers regulated by FDA is estimated to be 70,000. Because most of the medical devices which might be needed in a terrorist attack are available through regular commercial channels, FDA focused this collection of information on the 250 manufacturers who manufacture 17 medical devices. Therefore, FDA estimates that approximately 150 manufacturers would be contacted in a 1-year period. It is also estimated from FDA experience that the survey will take approximately 20 to 30 minutes to complete over the telephone.

Dated: December 19, 2002.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 02–32850 Filed 12–27–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0282]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Notice of Participation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by January 29, 2003.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Stuart Shapiro, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Notice of Participation (OMB Control Number 0910–0191)—Extension

The regulations in § 12.45 (21 CFR 12.45), issued under section 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371), sets forth the format and procedures for any interested person to file a petition to participate in a formal evidentiary hearing, either personally or through a representative. Section 12.45 requires that any person filing a notice of participation state their specific interest in the proceedings, including the specific issues of fact about which the person desires to be heard. Section 12.45 also requires that the notice include a statement that the person will present testimony at the hearing and will comply with specific requirements in 21 CFR 12.85, or in the case of a hearing before a Public Board of Inquiry (21 CFR 13.25), concerning disclosure of data and information by participants. In accordance with § 12.45(e), the presiding officer may omit a participant's appearance. The presiding officer and other participants will use the collected information in a hearing to identify specific interests to be presented. This preliminary information serves to expedite the prehearing conference and commits participation. The respondents are individuals or households, State or local governments, not-for-profit institutions, and businesses or other for-profit groups and institutions.

In the **Federal Register** of July 18, 2002 (67 FR 47387), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
12.45	340	1	340	3	1,020

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The agency bases this estimate on past notices filed in which each notice of participation took an estimated 3 hours to complete.

Dated: December 20, 2002.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 02–32849 Filed 12–27–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0509]

International Conference on Harmonisation; Draft Guidance on the M4 Common Technical Document—Quality: Questions and Answers/ Location Issues; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled ''Common Technical Document—Quality: Questions and Answers/ Location Issues.'' The draft guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). In the **Federal Register** of October 16, 2001 (66 FR 52634), FDA announced the availability of an ICH guidance entitled ''M4 Organization of the Common Technical Document for the Registration of Pharmaceuticals for Human Use'' (M4 CTD). This draft guidance provides further clarification for preparing the quality components of an application file in the CTD format (M4Q: The CTD-Quality). The draft guidance addresses: (1) The relationship between linked sections for certain parameters (such as polymorphism and particle size), and (2) location issues (by indicating the section in which to place requested information). The draft guidance is intended to ease the preparation of paper and electronic submissions, facilitate regulatory reviews, and simplify the exchange of regulatory information among regulatory authorities.

DATES: Submit written or electronic comments on the draft guidance by February 28, 2003.

ADDRESSES: Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug

Administration, 5600 Fishers Lane, Rockville, MD 20857; or the Office of Communication, Training and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–3844, FAX 888–CBERFAX. Send two self-addressed adhesive labels to assist the office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: Charles P. Hoiberg, Center for Drug Evaluation and Research (HFD–800), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5918; or Christopher C. Joneckis, Center for Biologics Evaluation and Research (HFM–20), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0833.

Regarding the ICH: Janet J. Showalter, Office of International Programs (HFG–1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0864.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labour, and Welfare; the Japanese Pharmaceutical Manufacturers Association; the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA; and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, Health Canada's Health Products and Food Branch, and the European Free Trade Area.

In accordance with FDA's good guidance practices (GGPs) regulation (21 CFR 10.115), this document is being called a guidance, rather than a guideline.

To facilitate the process of making ICH guidances available to the public, the agency has changed its procedure for publishing ICH guidances. As of April 2000, we no longer include the text of ICH guidances in the **Federal Register**. Instead, we publish a notice in the **Federal Register** announcing the availability of an ICH guidance. The ICH guidance will be placed in the docket and can be obtained through regular agency sources (see **ADDRESSES**). Draft guidances are left in the original ICH format. The final guidance is reformatted to conform to the GGP style before publication.

In October 2001, FDA made available the ICH guidance M4 CTD, which describes a harmonized format for new product applications (including applications for biotechnology-derived products) for submission to the regulatory authorities in the three ICH regions. The M4 CTD guidance was made available in four parts as follows: (1) A description of the organization of the M4 CTD; (2) the Quality section; (3) the Safety, or nonclinical, section; and (4) the Efficacy, or clinical, section.

In September 2002, the ICH Steering Committee agreed that a draft guidance entitled ''Common Technical Document—Quality: Questions and Answers/Location Issues'' should be made available for public comment. The draft guidance is the product of the CTD-Quality Implementation Working Group of the ICH. Comments about this draft will be considered by FDA and the CTD-Quality Implementation Working Group.

The draft guidance provides further clarification for preparing the quality components of an application in the CTD-Quality format. The draft guidance addresses the relationship between linked sections for certain parameters, such as polymorphism and particle size. The draft guidance also addresses location issues by indicating the section in which to place requested information. The draft guidance is intended to ease the preparation of paper and electronic submissions, facilitate regulatory reviews, and simplify the exchange of regulatory information among regulatory authorities.

This draft guidance, when finalized, will represent the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments on the draft guidance. Two copies of any mailed comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.fda.gov/ohrms/dockets/default.htm*, *http://www.fda.gov/cder/guidance/index.htm*, or *http://www.fda.gov/cber/publications.htm*.

Dated: December 23, 2002.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 02–32852 Filed 12–27–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01P–0542]

Determination That Diazepam Autoinjector Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that Diazepam Autoinjector (diazepam for injection) 5 milligrams per milliliter

(mg/mL) was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for diazepam for injection 5 mg/mL.

FOR FURTHER INFORMATION CONTACT: J. Kenneth Borgerding, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved under a new drug application (NDA). Sponsors of ANDAs do not have to repeat the extensive clinical testing otherwise necessary to gain approval of an NDA. The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is generally known as the ''Orange Book.'' Under FDA regulations, drugs are withdrawn from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness, or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (§ 314.162) (21 CFR 314.162)). Under § 314.161(a)(1) (21 CFR 314.161(a)(1)), the agency must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness before an ANDA that refers to that listed drug may be approved. FDA may not approve an ANDA that does not refer to a listed drug.

Diazepam Autoinjector is the subject of NDA 20–124. Diazepam Autoinjector is an automatic injection drug product indicated for the management of anxiety disorders and the treatment of epileptic and other convulsive seizures. FDA approved NDA 20–124, held by the U.S. Army (Army), on December 5, 1990. The Diazepam Autoinjector is manufactured for the Army by Meridian Medical Technologies, Inc. (MMT), and has always been listed in the ''Discontinued Drug Product List'' of the Orange Book because it is not commercially available.

On November 30, 2001, MMT submitted a citizen petition (Docket No. 01P–0542/CP1) under 21 CFR 10.30 requesting that the agency determine whether Diazepam Autoinjector was withdrawn from sale for reasons of safety or effectiveness.

The agency has determined that Diazepam Autoinjector was not withdrawn from sale for reasons of safety or effectiveness. The Army has never commercially marketed Diazepam Autoinjector. In previous instances (see, e.g., 61 FR 25497, May 21, 1996 (addressing a relisting request for glyburide tablets)), FDA has concluded that, for purposes of §§ 314.161 and 314.162, never marketing an approved drug product is equivalent to withdrawing the drug from sale. There is no indication that the Army's decision not to market Diazepam Autoinjector commercially is a function of safety or effectiveness concerns, and the petitioner has identified no data or other information suggesting that Diazepam Autoinjector poses a safety risk. FDA's independent evaluation of relevant information has uncovered nothing that would indicate this product was withdrawn for reasons of safety or effectiveness.

After considering the citizen petition and reviewing agency records, FDA has determined that, for the reasons outlined previously, Diazepam Autoinjector was not withdrawn from sale for reasons of safety or effectiveness. Accordingly, the agency will continue to list Diazepam Autoinjector (diazepam for injection) 5 mg/mL in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to Diazepam Autoinjector (diazepam for injection) 5 mg/mL may be approved by the agency.

Dated: December 19, 2002.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 02–32851 Filed 12–27–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4739–N–50]

Notice of Proposed Information Collection: Comment Request; Home Mortgage Disclosure Act (HMDA) Loan/Application Register

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be 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:* February 28, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410 or *Wayne_Eddins@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Judith V. May, Director, Office of Evaluation, Office of Finance and Budget, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 755–7500 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection 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; (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 the use of appropriate automated collection techniques or other forms of

information technology, *e.g.,* permitting electronic submission of responses.

This Notice Also Lists the Following Information

Title of Proposal: Home Mortgage Disclosure Act (HMDA) Loan/Application Register.

OMB Control Number, if applicable: 2502–0539.

Description of the need for the information and proposed use: The HMDA Loan/Application Register collects information from mortgage lenders on application for, and originations and purchases of, mortgage and home improvement loans. Non-depository mortgage lending institutions are required to use the information generated as a running log throughout the calendar year, and send the information to HUD by March 1 of the following calendar year.

Agency form numbers, if applicable: FR HMDA–LAR.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated total number of hours needed to prepare the information collection is 177,777; the number of respondents is 1,800 generating approximately 1,800 annual responses; the frequency of response is on occasion and annually; and the estimated time needed to prepare the response varies from 10 hours to 15,000 hours with an average of 98.75 hours.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: December 20, 2002.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 02–32833 Filed 12–27–02; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4739–N–51]

Notice of Proposed Information Collection: Comment Request; Request for Acceptance of Changes in Approved Drawings and Specifications

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be 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:* February 28, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, L'Enfant Plaza Building, Room 8003, Washington, DC 20410 or *Wayne_Eddins@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Vance T. Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–2121 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection 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; (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 the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice Also Lists the Following Information

Title of Proposal: Request for Acceptance of Changes in Approved Drawings and specifications.

OMB Control Number, if applicable: 2502–0117.

Description of the need for the information and proposed use: Builders who request changes to HUD's accepted drawings and specifications for proposed construction properties as required by homebuyers, or determined by the builder use the information collection. The lender reviews the changes and amends the approved exhibits. These changes may affect the value shown on the HUD commitment. HUD requires the builder to use form HUD–92577 to request changes for proposed construction properties. HUD's collection of this information is for the purpose of ascertaining that HUD does not insure a mortgage on property that poses a risk to health or safety of the occupant.

Agency form numbers, if applicable: HUD–92577.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated total number of hours needed to prepare the information collection is 5,000; the number of respondents is 10,000 generating approximately 10,000 annual responses; the frequency of response is on occasion; and the estimated time needed to prepare the response is 30 minutes.

Status of the proposed information collection: Reinstatement, without change, of a previously approved collection for which approval has expired.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: December 20, 2002.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 02–32834 Filed 12–27–02; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4734–N–74]

Notice of Submission of Proposed Information Collection to OMB: Hispanic-Serving Institutions Assisting Communities

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 29, 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 (2528–0198) 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: Hispanic-Serving Institutions Assisting Communities.

OMB Approval Number: 2528–0198.

Form Numbers: HUD–424, HUD–424–B, HUD–424–C, HUD–2880, HUD–2990, HUD–2991, HUD–2992, HUD–2993, HUD–2994, HUD–3004, HUD–50070, HUD–50071, and Standard Form–LLL.

Description of the Need for the Information and its Proposed use: Grants to assist Hispanic-serving institutions expand their role and effectiveness in addressing community development needs in their localities, including neighborhood revitalization.

Respondents: Individuals or households, Not-for-profit institutions.

Frequency of Submission: On occasion, Semi-annually, Other once per application.

	Number of respondents	×	Annual responses	×	Hours per response	=	Burden hours
Reporting burden	40		2.5		41.6		4,160

Total Estimated Burden Hours: 4,160.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: December 19, 2002.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 02–32836 Filed 12–27–02; 8:45 am]

BILLING CODE 4210–72–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4734–N–75]

Notice of Submission of Proposed Information Collection to OMB: Repayment Agreement

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 29, 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 (2502–0483) 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: Repayments Agreement.

OMB Approval Number: 2502–0483.

Form Numbers: HUD–56146.

Description of the Need for the Information and its Proposed use: Once a Debt Servicing Representative has a clear understanding of the debtor's attitude about repayment, and the debtor's ability to repay the debt; attempts should be made to secure a signed repayment agreement.

Respondents: On occasion, Annually.

Frequency of Submission: Individuals or households.

Reporting Burden:

	Number of respondents	×	Annual responses	×	Hours per response	=	Burden hours
Information collection	500		1		0.5		250

Total Estimated Burden Hours: 250.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: December 19, 2002.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 02–32837 Filed 12–27–02; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4734–N–77]

Notice of Submission of Proposed Information Collection to OMB: Housing Agency Calculation of Occupancy Percentage for Requested Budget Year PHA-Owned Rental Housing, Performance Funding System

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 29, 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 (2577–0066) 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: Housing Agency Calculation of Occupancy. Percentage for Requested Budget Year PHA-Owned Rental Housing, Performance Funding System.

OMB Approval Number: 2577–0066.

Form Numbers: HUD–52728.

Description of the Need for the Information and its Proposed use:

Housing Agencies provide information developing an appropriate and justifiable projection of occupancy for the requested budget year. The project occupancy percentage that is developed will be used as one element in the calculation of operating subsidy under the Performance Funding System.

Respondents: State, Local or Tribal Government.

Frequency of Submission: Annually.

Reporting Burden:

	Number of respondents	×	Annual responses	×	Hours per response	=	Burden Hours
Information collection	3,100		1		2		6,200

Total Estimated Burden Hours: 41,385.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: December 20, 2002.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 02–32838 Filed 12–27–02; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4734–N–76]

Notice of Submission of Proposed Information Collection to OMB: Public Housing Homeownership Program

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 29, 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: Public Housing Homeownership Program.

OMB Approval Number: 2577–0233.

Form Numbers: None.

Description of the Need for the Information and its Proposed use: Under the Public Housing Homeownership Program, Public Housing Agencies (PHAs) make available public housing dwelling units; public housing projects, and other housing projects available for purchase by low-income families for use as principal residences by such families. Families who are interested in purchasing a unit must submit applications to the PHA or purchase and resale entities (PREs). A PRE must prepare and submit to the PHA and HUD a homeownership program before the PRE may purchase any public housing units or projects. The PRE must demonstrate legal and practical capability to carry out the program, provide a written agreement that specifies the respective rights and obligations of the PHA and the PRE. The PHA must develop a homeownership program and obtain HUD approval before it can be implemented, provide supporting documentation and additional supporting documentation for acquisition of nonpublic housing for homeownership. PHA applications can be submitted electronically via the Internet. PHAs will be required to maintain report annually on the public homeownership program.

Respondents: Local and State Governments; individuals and households.

Frequency of Submission: Annually and on occasion.

Estimation of the Total Number of Hours Needed To Prepare the Information Collection Including Number of Respondents, Frequency of Response, and Hours or Response

Section reference	No. of respondents	Frequency of responses	Est. average response time (hrs)	Est. annual burden hours
906.17 Family application	1,000	1	4	4,000
906.19 Purchase and resale entity capacity	16	1	4	640
906.33 Recordkeeping and reporting Annual performance report	63	1	40	2,520
906.39 Homeownership program application	16	1	80	1280
906.40 Homeownership supporting documentation	16	1	40	640
906.41 Acquisition supporting documentation	16	1	40	640
Total Reporting Burden:				9,720

Total Estimated Burden Hours: 9,720.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: December 20, 2002.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 02–32839 Filed 12–27–02; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4807–N–01]

Draft Model Documents for Mixed-Finance Transactions

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of meeting and opportunity to comment.

SUMMARY: The Department of Housing and Urban Development (HUD), invites interested parties to attend a one-day meeting to discuss a set of model documents developed to facilitate the preparation and review of certain evidentiary materials required for mixed-finance transactions. The meeting will be held on January 7, 2003 in Washington, DC. Interested parties may also submit written comments prior to the meeting.

DATES: *Comment Due Date: Comments must be submitted on or before January 3, 2003. Meeting Date:* Tuesday, January 7, 2003, 9 a.m.–4:30 p.m., in Washington, DC.

ADDRESSES: The meeting will be held on Tuesday, January 7, 2003 from 9 a.m.–4:30 p.m. Marriott Metro Center, 775 12th Street, NW, Washington DC.

In advance of the meeting, HUD welcomes and encourages written comments on the documents. The model documents and a form for comment submission and meeting registration are available at *www.hud.gov/offices/pih/programs/ph/hope6/mfph/mf_modeldocs.cfm.* Comments may be submitted via fax, mail, or email to: Cynthia Demitros, Department of Housing and Urban Development, Office of Public Housing

Investments, 451 Seventh Street SW., Room 4130, Washington, DC 20410, fax: (617) 349–2701, e-mail, *Cynthia_J._Demitros@hud.gov.* Please submit all comments no later than January 3, 2003 . Although registration is not required, space is limited to 80 attendees. Those interested in attending are urged to complete the section of the comment form indicating the number of participants from their organization that plan to attend.

FOR FURTHER INFORMATION CONTACT: Cynthia J. Demitros, Department of Housing and Urban Development, Office of Public Housing Investments, 451 Seventh Street SW., Room 4130, Washington, DC 20410, telephone, (202) 708–0282 (this is not a toll-free number), e-mail: *Cynthia_J._Demitros@hud.gov.* For hearing- and speech-impaired persons, this telephone number may be accessed via TTY (text telephone) by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: HUD invites all interested parties to attend a one-day meeting to discuss a set of model documents developed to facilitate the preparation and review of certain evidentiary materials required for mixed-finance transactions pursuant to 24 CFR part 941 subpart F. The model documents may be viewed at *http:www.hud.gov/offices/pih/programs/ph/hope6/mfph/mf_modeldocs.cfm.* The meeting will be held on Tuesday, January 7, 2003, 9 am–4:30 pm, at Marriott Metro Center, 775 12th Street NW., Washington DC. A panel of HUD staff will conduct this meeting to provide participants an opportunity to present comments and ask questions about the documents. In advance of the meeting, HUD welcomes and encourages written comments on the documents.

Dated: December 20, 2002.

Michael M. Liu,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 02–32835 Filed 12–27–02; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Delaware and Lehigh National Heritage Corridor Commission Meeting

AGENCY: Department of the Interior, Office of the Secretary.

ACTION: Notice of meeting.

SUMMARY: This notice announces an upcoming meeting of the Delaware and Lehigh National Heritage Corridor Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463).

MEETING DATE AND TIME: Friday, January 10, 2003, Time 2:30 p.m. to 4 p.m.

ADDRESSES: Glasbern, 2141 Pack House Road, Fogelsville, PA 18051.

The agenda for the meeting will focus on implementation of the Management Action Plan for the Delaware and Lehigh National Heritage Corridor and State Heritage Park. The Commission was established to assist the Commonwealth of Pennsylvania and its political subdivisions in planning and implementing an integrated strategy for protecting and promoting cultural, historic and natural resources. The Commission reports to the Secretary of the Interior and to Congress.

SUPPLEMENTARY INFORMATION: The Delaware and Lehigh National Heritage Corridor Commission was established by Public Law 100–692, November 18, 1988 and extended through Pub. L. 105–355, November 13, 1998.

FOR FURTHER INFORMATION CONTACT: C. Allen Sachse, Executive Director, Delaware and Lehigh National Heritage Corridor Commission, 1 South Third Street, 8th Floor, Easton PA 18042, (610) 923–3548.

Dated: December 23, 2002.

C. Allen Sachse,

Executive Director, Delaware and Lehigh National Heritage Corridor Commission.

[FR Doc. 02–32962 Filed 12–27–02; 8:45 am]

BILLING CODE 6820–PE–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Submission of Information Collections to the Office of Management and Budget for Review Under the Paperwork Reduction Act

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice announces the Information Collection Requests for the Grants Application for Community Colleges and the Grant Tribal Colleges and Universities Annual Report Form has been submitted to the Office of Management and Budget for approval and renewal under provision of the Paperwork Reduction Act. You may submit comments on this information collection. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for these collections are 1076–0018 and 1076–0105.

DATES: Please submit your comments and suggestions on or before January 29, 2003.

ADDRESSES: Send comments or suggestions directly to the Office of Management and Budget, Office of Regulatory Affairs, Attention: Desk Officer for the Department of the Interior, 725 17th Street, NW., Washington, DC 20503.

Send a copy of your comments to Garry R. Martin, Bureau of Indian Affairs, Office of Indian Education Programs, 1849 C Street, NW., MS 3512–MIB, Washington, DC 20240–0001. Telephone number 202–208–3478.

SUPPLEMENTARY INFORMATION:

I. Abstract

These information collections are necessary to assess the need for tribally controlled community college programs as required by 25 CFR part 41 and Public Law 95–471. A 60-day request for public comments on this information collection was published in the **Federal Register** on Wednesday, August 28, 2002 (67 FR 55271). No comments were received. Copies of the collection of information may be obtained by contacting the Bureau's clearance officer at 202–208–2574.

II. Request for Comments

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of the information on the respondents, including through the use of automated collection techniques or other forms of information technology.

If you wish your name or address withheld from public review of comments, you must state this prominently at the beginning of your comments. We will honor your request as allowed by law.

The Office of Management and Budget (OMB) has up to 60 days to approve or disapprove the information collection but may respond after 30 days; therefore, comments submitted in response to this notice should be submitted to OMB within 30 days in

order to assure their maximum consideration.

All comments received are subject to public inspection. If you wish to have your name and address withheld from the public, you must state this prominently at the beginning of your comment. The requested information to be withheld will be honored to the extent of the law.

III. Data

Title: Grants Application for Community Colleges Form.
OMB approval number: 1076–0018.
Frequency: Annually.
Description of respondents: Tribal Boards, Tribal College Administrators.
Estimated completion time: 1 hour.
Annual responses: 25.
Annual Burden hours: 25 hours.
Title: Grants, Tribal Colleges and Universities Annual Report Form.
OMB approval number: 1076–0105.
Frequency: Annually.
Description of respondents: Tribal Boards, Tribal College Administrators.
Estimated completion time: 3 hours.
Annual responses: 25.
Annual Burden hours: 75 hours.

Dated: November 18, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–32949 Filed 12–27–02; 8:45 am]

BILLING CODE 4310–6W–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Notice of Workshop

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of meeting/workshop.

SUMMARY: This notice announces that MMS will hold the International Offshore Pipeline Workshop 2003 *(http://www.projectconsulting.com/workshop2003/index.htm).* MMS will co-host the workshop with the U.S. Department of Transportation (DOT), Research and Special Programs Administration, Office of Pipeline Safety. The workshop is also supported by major oil and gas companies, offshore pipeline contractors, offshore service companies, and other related entities. The objective of the workshop is to bring together worldwide experience in operating and regulating offshore oil and gas activities in order to identify/disseminate pipeline issues and knowledge for continued safe and pollution free operations.

DATES: The workshop will be held on February 26–28, 2003, starting at 8 a.m. and ending at 5 p.m. on the first two days. The third day will be a half day with hours from 8:30 a.m. to noon. It will be held at the location listed in the **ADDRESSES** section.

ADDRESSES: New Orleans Marriott Hotel, 555 Canal Street, New Orleans, Louisiana 70130, U.S.A.

FOR FURTHER INFORMATION CONTACT: Ms. Tracy Olive, 3300 W. Esplanade Ave. S., Suite 500, Metairie, LA 70002, Phone: 504–833–5321, Fax: 504–833–4940, e-mail: *workshop2003@projectconsulting.com.*

SUPPLEMENTARY INFORMATION: The workshop, through its keynote addresses, theme presentations, working groups and networking will share worldwide pipeline operating knowledge and identify what critical pipeline issues still need to be addressed. The workshop will be 2.5 days in duration and structured to allow maximum interface among industry experts and general attendees to discuss major issues that affect the offshore pipeline industry worldwide. This will be accomplished by breaking out the attendees into various Working Groups to facilitate parallel discussions of all major industry issues. Working groups will be further broken down into sub-groups to maximize the coverage of major issues. This will allow individual attendees ample opportunity to provide their input and insights to actively participate in workgroup discussion. Participation will include international pipeline interest from the following: Government Agencies, Oil and Gas Industry, Consulting Firms, Construction Contractors, Fabrication Contractors, Manufacturers, Academic and Research Institutions, Other Related Entities.

Dated: December 19, 2002.

Bud Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 02–32936 Filed 12–27–02; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–473]

In the Matter of Certain Video Game Systems, Accessories, and Components Thereof; Issuance of Limited Exclusion Order and Cease and Desist Order; Termination of Investigation

AGENCY: U.S. International Trade Commission.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has terminated the above-captioned investigation and issued a limited exclusion order and a cease and desist order.

FOR FURTHER INFORMATION CONTACT: David I. Wilson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, DC 20436, telephone 202–708–2310. Copies of the limited exclusion order and cease and desist order, the Commission opinion in support thereof, and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol.public*. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission voted to institute this investigation, which concerns allegations of unfair acts in violation of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, in the importation and sale of certain video game accessories on July 19, 2002. 67 FR 48949 (July 26, 2002). On August 21, 2002, complainant Microsoft Corporation, Redmond, Washington, (Microsoft) moved, pursuant to 19 U.S.C. § 1337(a)(1) and 19 CFR § 210.16, for an order directing the only respondent, Ultimate Game Club Ltd. (UGC), to show cause why it should not be found in default for failure to respond to Microsoft's complaint. The Commission investigative attorney (IA) supported Microsoft's motion. The presiding administrative law judge (ALJ) issued Order No. 4 on September 5, 2002, directing UGC to show cause why it should not be found in default. UGC did not respond to that order.

On October 9, 2002, the ALJ issued an initial determination (ID) finding UGC in default pursuant to 19 CFR § 210.16, and ruling that UGC had waived its rights to appear, to be served with documents, and to contest the allegations at issue in the investigation. No petitions for review of the ID were filed. The Commission decided not to review the ID on October 23, 2002, 67 FR 66002 (October 29, 2002), and the ID

became the Commission's final determination under 19 CFR § 210.42. On October 23, 2002, the Commission issued a notice requesting a briefing on the issues of remedy, the public interest, and bonding. 67 FR 66002 (October 29, 2002). On November 5, 2002, pursuant to 19 U.S.C. § 1337(g)(1) and 19 CFR. § 210.16(c)(1), complainant Microsoft filed a declaration seeking limited relief against the defaulting respondent. In its declaration, Microsoft requested that the Commission issue a limited exclusion order and a cease and desist order against UGC.

The Commission solicited comments from the parties, interested government agencies, and other persons concerning the issues of remedy, the public interest, and bonding. 67 FR 66002 (October 29, 2002). Complainant and the IA filed proposed remedial orders and addressed the issues of remedy, the public interest, and bonding. No comments were filed by government agencies or other interested persons.

Section 337(g)(1) of the Tariff Act of 1930 provides that the Commission shall presume the facts alleged in a complaint to be true, and upon request issue a limited exclusion order and/or cease and desist order if: (1) A complaint is filed against a person under section 337, (2) the complaint and a notice of investigation are served on the person, (3) the person fails to respond to the complaint and notice or otherwise fails to appear to answer the complaint and notice, (4) the person fails to show good cause why it should not be found in default, and (5) the complainant seeks relief limited to that person. Such an order shall be issued unless, after considering the effect of such exclusion, the Commission finds that such exclusion should not be issued.

The Commission determined that each of the statutory requirements for the issuance of a limited exclusion order and a cease and desist order were met with respect to defaulting respondent UGC. The Commission further determined that the public interest factors enumerated in sections 337(d) and 337(f) did not preclude the issuance of such relief. Finally, the Commission determined that the bond during the Presidential review period shall be in the amount of 100 percent of the entered value of the imported articles.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, and section 210.16 (c) of the Commission's Rules of Practice and Procedure, 19 CFR § 210.16.

By order of the Commission.

Issued: December 24, 2002.

Marilyn R. Abbott,

Secretary.

[FR Doc. 02–32892 Filed 12–27–02; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of the Attorney General

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day emergency notice of information collection under review: New information collection; Application for Representative Payee.

The Department of Justice, Office of the Attorney General has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with emergency review procedures of the Paperwork Reduction Act of 1995. OMB approval has been requested by January 3, 2003. The proposed information collections is published to obtain comments from the public and affected agencies. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer (202) 395–6466, Washington, DC 20503.

During the first 60 days of this same review period, a regular review of this information collection also being undertaken. All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to the Victim Compensation Fund, PO Box 18698, Washington, DC 20036–8698.

Request written comments and suggestions from the public, and affected agencies concerning the proposed collection of information. 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 agencies estimates 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:

(1) *Type of information collection:* New information collection.

(2) *The title of the form/collection:* Application for Representative Payee.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* Form Number: Non. Office of the Attorney General U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals. Other: None. Abstract: The Application for Representative Payee will collect information about applicants regarding their eligibility to serve as a Representative Payee and therefore receive funds directly on behalf of minor children.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* There are approximately 2,000 respondents who will each require an average of 30 minutes to respond.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual public burden hours for this information collection is estimated to be 1,000 hours.

If additional information is required contact: Brenda E. Dyer, Deputy Department Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, 601 D Street NW., Patrick Henry Building, Suite 1600, Washington, DC 20530.

Dated: December 24, 2002.

Brenda E. Dyer,

Deputy Department Clearance Officer, United States Department of Justice.

[FR Doc. 02–32956 Filed 12–27–02; 8:45 am]

BILLING CODE 4410–19–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–11055, et al.

Proposed Exemptions; Deutsche Bank AG (Duetsche Bank)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this Federal Register Notice. Comments and requests for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration (PWBA), Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. ____, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to PWBA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: *''moffittb@pwba.dol.gov'',* or by FAX to (202) 219–0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Deutsche Bank AG (Deutsche Bank)

Located in Germany, with Affiliates in New York, New York and Other Locations

[Application Number D–11055]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).

Section I. Covered Transactions

If the proposed exemption is granted, effective December 11, 2001, the restrictions of section 406(a)(1)(A) through (D) and 406(b)(1) and (b)(2) of the Act, and the taxes imposed by section 4975(a) and (b) of Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the following foreign exchange transactions between Deutsche Bank AG or a foreign affiliate thereof that is a bank or broker-dealer (collectively, DBAG), and an employee benefit plan with respect to which DBAG is a trustee, custodian, fiduciary or other party in interest, pursuant to a standing instruction, if the conditions set forth in section II below are met:

(1) An income item conversion; or

(2) A *de minimis* purchase or sale transaction.

Section II. Conditions

(a) At the time the foreign exchange transaction is entered into, the terms of the transaction are not less favorable to the plan than the terms generally available in comparable arm's-length foreign exchange transactions between unrelated parties.

(b) At the time the foreign exchange transaction is entered into, the terms of the transaction are not less favorable to the plan than the terms afforded by DBAG in comparable arm's-length foreign exchange transactions involving unrelated parties.

(c) DBAG does not have any discretionary authority or control with respect to the investment of the plan assets involved in the transaction and does not render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to the investment of those assets.

(d) DBAG maintains at all times written policies and procedures regarding the handling of foreign exchange transactions for plans with respect to which DBAG is a trustee, custodian, fiduciary or other party in interest or disqualified person which assure that the person acting for DBAG knows that he or she is dealing with a plan.

(e) The covered transaction is performed under a written authorization executed in advance by a fiduciary of the plan whose assets are involved in the transaction, which plan fiduciary is independent of DBAG. The written authorization must specify:

(1) The identities of the currencies in which covered transactions may be executed; and

(2) That the authorization may be terminated by either party without penalty on no more than ten days notice.

(f)(1) Income item conversions are executed within no more than one business day from the date of receipt of notice by DBAG that such items are good funds, and a foreign custodian which is an affiliate of DBAG, provides such notice to DBAG within ''one business day'' of its receipt of good funds;

(2) *De minimis* purchase and sale transactions are executed within no more than one business day from the date that either DBAG receives notice

from a foreign custodian that the proceeds of a sale of foreign securities dominated in foreign currency are good funds, or the direction to acquire foreign currency was received by DBAG and a foreign custodian which is an affiliate of DBAG provides such notice to DBAG within one business day of its receipt of good funds from a sale.

(g)(1) At least once each day, at the time(s) specified in its written policies and procedures, DBAG establishes either a rate of exchange or a range of rates to be used for income item conversions and *de minimis* purchase and sale transactions covered by this exemption.

(2) Income item conversions are executed at the next scheduled time for conversions following receipt of notice by DBAG from the foreign custodian that such funds are good funds. If it is the policy of DBAG to aggregate small amounts of foreign currency until a specified minimum threshold amount is received, then the conversion may take place at a later time but in no event more than 24 hours after receipt of notice.

(3) *De minimis* purchase and sale transactions are executed at the next scheduled time for such transactions following receipt of either notice that the sales proceeds denominated in foreign currency are good funds, or a direction to acquire foreign currency. If it is the policy of DBAG to aggregate small transactions until a specified threshold amount is received, then the execution may take place at a later time but in no event more than 24 hours after receipt of either notice that the sales proceeds have been received by the foreign custodian as good funds, or a direction to acquire foreign currency.

For purposes of this paragraph (g), the range of exchange rates established by DBAG for a particular foreign currency cannot deviate by more than three percent [above or below] the interbank bid and asked rates as displayed on Reuters or another nationally recognized independent service in the foreign exchange market (provided that the independent service chosen will be consistently used in determining whether the deviation limitation has been met) for such currency at the time such range or rates is established by DBAG;

(h) Prior to the execution of the authorization referred to in paragraph (e), DBAG provides the independent fiduciary with a copy of DBAG's written policies and procedures regarding the handling of foreign exchange transactions involving income item conversions and *de minimis* purchase and sale transactions. The policies and procedures must, at a minimum, contain the following information:

(1) Disclosure of the time(s) each day that DBAG will establish the specific rate of exchange or the range of exchange rates for the covered transactions to be executed and the time(s) that such covered transactions will take place. DBAG shall include a description of the methodology that DBAG uses to determine the specific exchange rate or range of exchange rates;

(2) Disclosure that income item conversions and *de minimis* purchase and sale transactions will be executed at the first scheduled transaction time after notice that good funds from an income item conversion or a sale have been received, or a direction to purchase foreign currency has been received. To the extent that DBAG aggregates small amounts of foreign currency until a specified minimum threshold amount is met, a description of this practice and disclosure of the threshold amount; and

(3) A description of the process by which DBAG's foreign exchange policies and procedures for income item conversions and *de minimis* purchase and sale transactions may be amended and disclosed to plans.

(i) DBAG furnishes to the independent fiduciary a written confirmation statement with respect to each covered transaction not more than five business days after execution of the transaction.

(1) With respect to income item conversions, the confirmation shall disclose the following information:

(A) Account name;

(B) Date of notice that good funds were received;

(C) Transaction date;

(D) Exchange rate;

(E) Settlement date;

(F) Identity of foreign currency;

(G) Amount of foreign currency sold;

(H) Amount of U.S. dollars or other currency credited to the plan; and

(2) With respect to *de minimis* purchase and sale transactions, the confirmation shall disclose the following information:

(A) Account name;

(B) Date of notice that sales proceeds denominated in foreign currency are received as good funds or direction to acquire foreign currency was received;

(C) Transaction date;

(D) Exchange rate;

(E) Settlement date;

(F) Currencies exchanged:

i. Identity of the currency sold;

ii. Amount sold;

iii. Identity of the currency purchased; and

iv. Amount purchased.

(j) DBAG—

(1) Agrees to submit to the jurisdiction of the United States;

(2) Agrees to appoint an agent for service of process in the United States, which may be an affiliate (the Process Agent);

(3) Consents to service of process on the Process Agent;

(4) Agrees that it may be sued in the United States Courts in connection with the transactions described in this proposed exemption;

(5) Agrees that any judgment may be collectable by an employee benefit plan in the United States from Deutsche Bank; and

(6) Agrees to comply with, and be subject to, all relevant provisions of the Act.

(k) DBAG maintains, within territories under the jurisdiction of the United States Government, for a period of six years from the date of the transaction, the records necessary to enable the persons described in paragraph (l) of this section to determine whether the applicable conditions of this exemption have been met, including a record of the specific exchange rate or range of exchange rates DBAG established each day for foreign exchange transactions effected under standing instructions for income item conversions and *de minimis* purchase and sale transactions. However, a prohibited transaction will not be considered to have occurred if, due to circumstances beyond DBAG's control, the records are lost or destroyed prior to the end of the six-year period, and no party in interest other than DBAG shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or the taxes imposed by section 4975(a) and (b) of the Code, if the records, are not maintained by DBAG, or are not made available for examination by DBAG, or its affiliate as required by paragraph (l) of this section.

(l)(1) Except as provided in subparagraph (2) of this paragraph and notwithstanding any provisions of subsection (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (k) of this section are available at their customary location for examination, upon reasonable notice, during normal business hours by:

(A) Any duly authorized employee or representative of the Department of Labor or the Internal Revenue Service.

(B) Any fiduciary of a plan who has authority to acquire or dispose of the assets of the plan involved in the foreign exchange transaction or any duly authorized employee or representative of such fiduciary.

(C) Any contributing employer to the plan involved in the foreign exchange transaction or any duly authorized employee or representative of such employer.

(2) None of the persons described in subparagraphs (B) and (C) shall be authorized to examine DBAG's trade secrets or commercial or financial information of DBAG, which is privileged or confidential.

Section III. Definitions and General Rules

For purposes of this exemption,

(a) A ''foreign exchange'' transaction means the exchange of the currency of one nation for the currency of another nation.

(b) The term ''standing instruction'' means a written authorization from a plan fiduciary, who is independent of DBAG, to DBAG to effect the transactions specified therein pursuant to the instructions provided in such authorization.

(c)(1) The term ''independent of DBAG'' means a plan fiduciary who is unrelated to, and independent of, DBAG. For purposes of this exemption, a plan fiduciary will be deemed to be unrelated to, and independent of, DBAG if such fiduciary represents that neither such fiduciary, nor any individual responsible for the decision to authorize or terminate authorization for transactions described in section I, is an officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of DBAG and represents that such fiduciary shall advise DBAG if those facts change.

(2) Notwithstanding anything to the contrary in this section III (c), a fiduciary is not independent if:

(i) such fiduciary directly or indirectly controls, is controlled by, or is under common control with DBAG;

(ii) such fiduciary directly or indirectly receives any compensation or other consideration from DBAG for his own personal account in connection with any transaction described in this exemption;

(iii) any officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of DBAG, responsible for the transactions described in section I, is an officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the plan sponsor or of the fiduciary responsible for the decision to authorize or terminate authorization for transactions described in section I. However, if such individual is a director of the plan sponsor or of the responsible fiduciary, and if he or she abstains from participation in (A) the choice of DBAG as a directed trustee or custodian and (B) the decision to authorize or terminate authorization for transactions described in section I, then section III(c)(2)(iii) shall not apply.

(3) The term ''officer'' means a president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), or any other officer who performs a policy-making function for the entity.

(d) The term ''control'' means the power to exercise a controlling influence over the management of policies of a person other than an individual.

(e) An ''income item conversion'' means: (1) The conversion into U.S. dollars of an amount which is the equivalent of no more than 300,000 U.S. dollars of interest, dividends or other distributions or payments with respect to a security, tax reclaims, proceeds from dispositions of rights, fractional shares or other similar items denominated in the currency of another nation that are received by DBAG on behalf of the plan from the plan's foreign investment portfolio; or (2) the conversion into any currency as required and specified by the standing instruction of an amount which is the equivalent of no more than 300,000 U.S. dollars of interest, dividends, or other distributions or payments with respect to a security, tax reclaims, proceeds from dispositions of rights, fractional shares or other similar items denominated in the currency of another nation that are received by DBAG on behalf of the plan from the plan's foreign investment portfolio, provided that the converted funds are either transferred to an interest bearing account which provides a reasonable rate of interest within 24 hours of the conversion and held therein pending reinvestment by the plan or the bank reinvests such proceeds within 24 hours of the conversion at the direction of the plan.

(f) A ''*de minimis* purchase or sale transaction'' means the purchase or sale of foreign currencies in an amount of no more than 300,000 U.S. dollars or the equivalent thereof in connection with the purchase or sale of foreign securities by a plan.

(g) For purposes of this exemption the term ''employee benefit plan'' refers to a pension plan described in 29 CFR Sec. 2510.3–2 and/or a welfare benefit plan described in 29 CFR Sec. 2510.3–1.

(h) For purposes of this exemption, the term ''good funds'' means funds immediately available in cash with no sovereign or other governmental impediments or restrictions to the exchange or transfer of such funds.

(i) For purposes of this exemption, the term ''business day'' means a banking day as defined by federal or state banking regulations.

(j) For purposes of this exemption, a ''foreign affiliate'' of Deutsche Bank means any non-U.S. entity that is directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with Deutsche Bank.

(k) For purposes of this exemption, the term ''bank'' means a foreign affiliate of Deutsche Bank: (1) That is a banking institution supervised and examined by the German banking authorities (currently, the Bundesanstalt fur Finanzdienstleistungsaufsicht (the BAFin), in cooperation with the Deutsche Bundesbank (the Bundesbank)), or is subject to regulation by similar governmental banking authorities located in the same country as such affiliate; and (2) whose activities are monitored and controlled pursuant to the statutory and regulatory standards of German law applicable to the foreign affiliates of Deutsche Bank engaged in banking activities.

(l) For purposes of this exemption, the term ''broker-dealer'' means a foreign affiliate of Deutsche Bank: (1) Engaged in the business of effecting transactions in securities for the account of others, or regularly engaged in the business of buying and selling securities for its own account through a broker or otherwise; and (2) supervised by the German authorities responsible for regulating the activities described in (1) of this paragraph, or subject to regulation by similar governmental authorities located in the country in which such affiliate is located.

Effective Date: December 11, 2001.

Summary of Facts and Representations

1. Deutsche Bank is a German banking corporation and commercial bank that provides a wide range of services to various types of entities worldwide. Deutsche Bank is one of the largest financial institutions in the world in terms of assets held, managing over $585 billion in assets either through collective trusts, separately managed accounts, or mutual funds.

Bankers Trust Company (Bankers Trust) is a commercial bank that provides a wide range of services to various types of entities worldwide.[1]

[1] Within the United States, the New York branch of Deutsche Bank is regulated and supervised by the New York State Banking Department. In addition,

Continued

Trust is a wholly-owned subsidiary of Bankers Trust Corporation, which, in turn, is a wholly-owned indirect subsidiary of Deutsche Bank.

2. The applicant seeks an exemption to permit employee benefit plans to engage in certain foreign exchange transactions with Deutsche Bank and its non-U.S. banking affiliates. Specifically, the applicant is requesting an exemption for plans to engage, pursuant to an independent fiduciary's written authorization and the instructions contained therein (*i.e.*, a standing instruction), in foreign exchange transactions involving income item conversions and *de minimis* purchase or sale transactions (hereinafter, either, a foreign exchange transaction) with Deutsche Bank or its foreign affiliates (DBAG).[2] The applicant notes that no relief is being sought with respect to transactions where DBAG has discretionary authority or control over the investment of the assets involved, or provides investment advice with respect to such assets.

The applicant describes an income item conversion as the conversion into any currency (including U.S. dollars) of interest, dividends or other distributions or payments with respect to a security, tax reclaims, proceeds from dispositions of rights, fractional shares or other similar items denominated in the currency of another nation. The applicant states that for purposes of this proposed exemption, the amount of such conversion will not exceed the equivalent of 300,000 U.S. dollars. The applicant describes a *de minimis* purchase or sale transaction as the purchase or sale of foreign currencies in an amount of no more than the equivalent of 300,000 U.S. dollars in connection with the purchase or sale of foreign securities by a plan.

3. According to the applicant, income item conversions and purchase or sale transactions of less than $300,000 are integral components to any plan's foreign investment activities. In this regard, the applicant states that upon a plan's receipt of a distribution in a foreign currency, an income item conversion may be necessary to convert such distribution to U.S. dollars or another foreign currency. Conversions to U.S. dollars may be necessary, the applicant states, for assets to be repatriated in a form usable for distribution, domestic reinvestment, or other purposes. Conversions to another foreign currency, meanwhile, may be necessary to enable plans to engage in additional foreign investments. Similarly, conversations may be necessary in connection with the proceeds from the purchase and sale of foreign securities by plans.

4. The applicant states that the proposed exemption is necessary given the amounts of assets involved, the continuously fluctuating nature of foreign exchange rates, and the currency restrictions in place in certain markets. According to the applicant, when DBAG acts as a custodian with respect to a plan, a foreign exchange transaction involving a relatively small amount of assets is often more efficiently transacted between the plan and DBAG than on the open market. Additionally, the applicant states, the proposed exemption, in allowing plans to engage in the covered transactions pursuant to a prior written authorization executed by an independent plan fiduciary, avoids certain delays that may be costly to such plans. Finally, the applicant states, trading with a DBAG custodian or affiliated sub-custodian may be necessary in certain markets that restrict the sale or purchase of the local currency.

5. The applicant states that Prohibited Transaction Class Exemption (PTE) 98–54 (63 FR 63503 (November 13, 1998)) grants relief for foreign exchange transactions that are similar in nature to those contained in this proposed exemption. The applicant notes, however, that in providing relief for an income item conversion and a *de minimis* purchase and sale transaction between a ''bank'' and an employee benefit plan, the class exemption requires that such ''bank'' (or any domestic affiliate thereof), be ''supervised by the United States or a State thereof.'' [3] The applicant states that, when operating outside the United States, Deutsche Bank is not supervised by a State or by the United States.[4]

6. The applicant represents that plans will be protected to the extent that DBAG is allowed to participate in the types of foreign exchange transactions described herein. In this regard, the applicant states that Deutsche Bank is subject to a comprehensive system of regulatory oversight and a mandatory insurance program. With respect to the regulatory and supervisory requirements applicable to Deutsche Bank, the applicant states that Deutsche Bank, its branches, and its subsidiary banks worldwide are subject to regulatory requirements and protections that are, qualitatively, at least equal to those imposed on U.S.-domiciled banks.[5] With respect to Deutsche Bank itself, globally, the bank is regulated and supervised by the BAFin, in cooperation with the Bundesbank. The BAFin is a federal institution with ultimate responsibility to the German Ministry of Finance. The Bundesbank, in turn, is the central bank of the Federal Republic of Germany and a part of the European Central Banks.

The applicant states that the BAFin requires that Deutsche Bank have procedures for monitoring and controlling its worldwide activities through the implementation of various statutory and regulatory standards. Among those standards are requirements for adequate internal controls, oversight, administration, and financial resources. The BAFin reviews compliance with these operational and internal control standards through an annual audit performed by the year-end auditor and through special audits ordered by the BAFin.

In addition to the regulatory and supervisory arrangements described above, the applicant states that Deutsche Bank and its foreign branches are covered under a mandatory deposit insurance program.[6] According to the applicant, this insurance program is maintained by an institution separate from Deutsche Bank and is supervised by the BAFin. The program insures

certain activities of Deutsche Bank's New York branch are regulated and supervised by the Federal Reserve Bank of New York.

[2] The Department notes that the Acts general standards of fiduciary conduct would apply to the standing instruction arrangements permitted by this proposed exemption, if granted. In this regard, section 404 of the Act requires, among other things, a fiduciary to discharge his duties respecting a plan solely in the interest of the plans participants and beneficiaries and in a prudent manner. Accordingly, an independent plan fiduciary must act prudently with respect to: (1) The decision to enter into an arrangement described herein; and (2) the negotiation of the terms of such an arrangement, including, among other things, the specific terms by which DBAG will engage in foreign exchange transactions on behalf of the plan. The Department further emphasizes that it expects plan fiduciaries, prior to entering into foreign exchange transactions pursuant to standing instructions, to fully understand the benefits and risks associated with such transactions and instructions, following disclosure by DBAG of all relevant information. In addition, the Department notes that such plan fiduciaries must periodically monitor, and have the ability to so monitor, the services provided by DBAG.

[3] Part IV(c), 63 FR at 63510.

[4] Although Bankers Trust qualifies as a ''bank'' under PTE 98–54, the principal foreign exchange desk for Bankers Trust is the London Branch of Deutsche Bank.

[5] In support of this, the applicant notes that the U.S. Department of Treasury has accorded national treatment to German bank branches, and the German Ministry of finance has granted relief to branches of U.S. banks in Germany, in particular with respect to ''dotation'' or endowment capital requirements and capital adequacy standards.

[6] The applicant states that, in addition, Deutsche Bank and its foreign branches are covered by a voluntary deposit protection program called the Deposit Protection Fund that safeguards liabilities in excess of the thresholds guaranteed by the European Union Program discussed above.

deposits denominated in the currency of a European Economic Area member state up to the lesser of 90% of the deposit amount or 20,000 euros.

7. The applicant represents that the conditions contained in this proposed exemption are protective of plans engaging in a conversion or transaction with DBAG. In this regard, the applicant states that any time a plan enters into an income item conversion and/or a *de minimis* purchase and sale transaction, the terms of the conversion and/or transaction will be no less favorable to the plan than: (a) The terms generally available in a comparable arm's-length transaction between unrelated parties; and (b) the terms afforded by DBAG in a comparable arm's-length transaction involving unrelated parties. In addition, the applicant states that DBAG will not have any discretionary authority or control, or render investment advice, with respect to the investment of the plan assets involved in the transaction. Further, DBAG will maintain certain written policies and procedures to assure that the person acting for DBAG knows that he or she is dealing with a plan.

With respect to the execution of an income item conversion, the applicant represents that each such conversion will be executed within ''one business day'' from the date of receipt of notice by DBAG that such items are good funds.[7] Such notice, in turn, will be provided by a foreign custodian that is an affiliate of DBAG within ''one business day'' of the actual receipt of good funds. With respect to *de minimis* purchase and sale transactions, the applicant represents that each such transaction will be executed within ''one business day'' from the date that either Deutsche Bank receives notice from a foreign custodian that the proceeds of a sale of foreign securities dominated in foreign currency are good funds, or the direction to acquire foreign currency was received by Deutsche Bank and a foreign custodian that is an affiliate of Deutsche Bank provides such notice within one business day of its receipt of good funds from a sale. Moreover, the applicant states, at least once each day, DBAG will establish either a rate of exchange or a range of rates to be used for the transactions covered by this exemption.[8]

The applicant represents that plans will be further protected in that prior to the execution discussed above, DBAG will provide the independent fiduciary with a copy of DBAG's written policies and procedures regarding the handling of foreign exchange transactions involving income item conversions and *de minimis* purchase and sale transactions. Among other things, the policies and procedures must: disclose the methodology that DBAG uses to determine the specific exchange rate or range of exchange rates; and describe the process by which DBAG's foreign exchange policies and procedures for income item conversions and *de minimis* purchase and sale transactions may be amended and disclosed to plans. In addition, not more than five business days after execution of the transaction, DBAG must furnish an independent with a written confirmation statement with respect to each covered transaction. According to the applicant, with respect to income item conversions, such confirmation will contain, among other things, the exchange rate; the settlement date; and the identity and amount of foreign currency sold. With respect to *de minimis* purchase and sale transactions, such confirmation will contain, among other things, the transaction date; the exchange rates; the settlement date; the currencies exchanged; and the amount of foreign currency sold.

Finally, DBAG: (a) agrees to submit to the jurisdiction of the courts of the United States; (b) agrees to appoint a Process Agent for service of process in the United States, which may be an affiliate; (c) consents to service of process on the Process Agent; (d) agrees that it may be sued in the courts of the United States in connection with transactions described in this proposed exemption; (e) agrees that any judgment may be collectable by an employee benefit plan in the United States from Deutsche Bank; and (f) agrees to comply with, and be subject to, all relevant provisions of the Act.

8. In summary, the applicant represents that the proposed transactions satisfy the statutory criteria for an exemption under section 408(a) of the Act since, among other things:

(a) At the time the foreign exchange transaction is entered into, the terms of the transaction will be no less favorable to the plan than the terms generally available in comparable arm's-length foreign exchange transactions between unrelated parties;

(b) At the time the foreign exchange transaction is entered into, the terms of the transaction will be no less favorable to the plan than the terms afforded by DBAG in comparable arm's-length foreign exchange transactions involving unrelated parties;

(c) DBAG will not have any discretionary authority or control with respect to the investment of the plan assets involved in the transaction and will not render investment advice with respect to the investment of those assets;

(d) DBAG will maintain at all times written policies and procedures regarding the handling of foreign exchange transactions for plans with respect to which the bank or broker-dealer is a trustee, custodian, fiduciary or other party in interest or disqualified person which assure that the person acting for DBAG knows that he or she is dealing with a plan;

(e) A covered transaction will be performed under a written authorization executed in advance by a fiduciary of the plan whose assets are involved in the transaction, which plan fiduciary is independent of DBAG;

(f) Income item conversions will be executed within no more than one business day from the date of receipt of notice by DBAG that such items are good funds, and a foreign custodian which is an affiliate of DBAG, will provide such notice to DBAG within ''one business day'' of its receipt of good funds;

(g) *De minimis* purchase and sale transactions will be executed within no more than one business day from the date that either DBAG receives notice from a foreign custodian that the proceeds of a sale of foreign securities dominated in foreign currency are good funds, or the direction to acquire foreign currency was received by DBAG and a foreign custodian which is an affiliate of DBAG provides such notice to DBAG within one business day of its receipt of good funds from a sale;

(h) At least once each day, at the time(s) specified in its written policies and procedures, DBAG will establish either a rate of exchange or a range of rates to be used for income item conversions and *de minimis* purchase and sale transactions covered by this exemption;

(i) With limited exceptions, income item conversions will be executed at the next scheduled time for conversions following receipt of notice by DBAG from the foreign custodian that such funds are good funds, and *de minimis* purchase and sale transactions will be executed at the next scheduled time for

[7] According to the applicant, if it is the policy of DBAG to aggregate small amounts of foreign currency until a specified minimum threshold amount is received, then a conversion may in no event take place more than 24 hours after receipt of notice.

[8] The applicant states that such range of exchange rates established by DBAG for a particular foreign currency will not deviate by more than three percent [above or below] the interbank bid and asked rates as displayed on Reuters or another nationally recognized independent service in the foreign exchange market, for such currency at the time such range or rates is established by DBAG.

such transactions following receipt of either notice that the sales proceeds denominated in foreign currency are good funds, or a direction to acquire foreign currency;

(j) The range of exchange rates established by DBAG for a particular foreign currency cannot deviate by more than three percent [above or below] the interbank bid and asked rates as displayed on Reuters or another nationally recognized independent service in the foreign exchange market (provided that the independent service chosen will be consistently used in determining whether the deviation limitation has been met) for such currency at the time such range or rates is established by DBAG;

(k) Prior to the execution of the authorization referred to above, DBAG will provide the independent fiduciary with a copy of DBAG's written policies and procedures regarding the handling of foreign exchange transactions involving income item conversions and *de minimis* purchase and sale transactions;

(l) DBAG will furnishes to the independent fiduciary a written confirmation statement with respect to each covered transaction not more than five business days after execution of the transaction; and

(m) DBAG—

(1) Agrees to submit to the jurisdiction of the United States;

(2) Agrees to appoint a Process Agent, which may be an affiliate;

(3) Consents to service of process on the Process Agent;

(4) Agrees that it may be sued in the United States Courts in connection with transactions described in this proposed exemption;

(5) Agrees that any judgment may be collectable by an employee benefit plan in the United States from Deutsche Bank; and

(6) Agrees to comply with, and be subject to, all relevant provisions of the Act.

For Further Information Contact: Christopher Motta, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, telephone (202) 693–8544. (This is not a toll-free number.)

Reagent Chemical & Research, Inc. Employees' Profit Sharing Plan and Trust (the Plan), Located in Middlesex, New Jersey

[Application No. D–11095]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale of a 73.4815% tenancy-in-common interest (the Property Interest) by the Plan to Brian Skeuse, a vice president and shareholder of Reagent Chemical & Research, Inc. (RCR), and his spouse, Jan Skeuse (hereinafter sometimes referred to collectively as the ''Skeuses''), parties in interest with respect to the Plan, provided that the following conditions are satisfied:

(a) the sale is a one-time cash transaction;

(b) the Plan receives the greater of either: (i) $180,029.68; or (ii) the current fair market value for the Property Interest established at the time of the sale by an independent qualified appraiser; and

(c) the Plan pays no commissions or other expenses associated with the sale.

Summary of Facts and Representations

(1) The Plan was adopted on December 12, 1962. RCR is the sponsor of the Plan. RCR is a subchapter ''S'' corporation organized under the laws of State of Delaware. RCR is in the business of the manufacture, distribution and sale of specialty chemicals. The Plan's current trustees are John T. Skeuse, brother of Brian Skeuse, and Stephen T. Finney, brother-in-law of Brian Skeuse.

The Plan is a defined contribution plan with approximately 320 participants. As of April 15, 2002, the Plan had approximately $31,000,000.00 in total assets. The value of the Property Interest to be sold in the proposed transaction is 0.5806% of the total fair market value of the Plan's assets. At the time of the acquisition of the Property Interest by the Plan, such interest constituted 3.188% of the Plan's overall portfolio of assets.

2. On November 3, 1980, the Plan purchased approximately 34.58 acres of land (the Land) from Joe and Wenona Russo, unrelated third parties, for $225,000, which was $6,506.65 per acre. The sale consisted of a 34.58 acre parcel of which the Property Interest is a part. The purchase price for the Land was paid in full in cash. The Plan sold portions of the Land to the Skeuses on January 23, 1987 and April 3, 2001, pursuant to the terms and conditions of Prohibited Transaction Exemption (PTE) 87–17, 52 FR 2630 and PTE 01–12, 66 FR 17740 [9]. The Property Interest consists of approximately 19.52 acres and is described as Block 41, Lot 38, Raritan Township, Hunterdon County, New Jersey.

The Property Interest is adjacent to the Skeuses' personal family residence. It is represented that the decision to purchase the Land as an investment for the Plan was made by Robert Dallas and Thomas Skeuse, Sr., who were the Plan's trustees at the time of the transaction [10].

3. The Skeuses propose to pay a purchase price for the Property Interest in the amount of $180,029.68, which would be paid in full in cash at a closing to be held subsequent to the granting of the proposed exemption. This amount represents 73.4815% of the appraised fair market value of the Land, which has been determined to be $245,000.

The remaining 26.5185% tenancy-in-common interest in the Property Interest is owned by The Dallas Group of America, Inc. Employees' Profit Sharing Plan and Trust (the ''Dallas Plan''). The Dallas Plan acquired its interest in the Property Interest from the Plan in connection with a Plan of Reorganization of the Employer, which resulted in the creation and spin-off of The Dallas Group of America, Inc., a New Jersey corporation. Pursuant to the said Plan of Reorganization and related Spin-off of Assets of The Reagent Chemical & Research, Inc. Employees' Profit Sharing Plan & Trust to the Dallas Plan, the Plan transferred 26.5185% of its assets to the Dallas Plan, including the Property Interest.[11] If this proposed exemption is granted, the Dallas Plan will also sell its interest in the Property Interest to the Skeuses based upon the same appraised fair market value and upon the same terms. The applicant represents that the Skeuses are not parties in interest with respect to the Dallas Plan and, therefore, is not requesting relief for that transaction.

4. The applicant states that the Property Interest has not been an income-producing asset and has been held for possible appreciation. The Plan has paid for taxes, insurance and maintenance on the Property Interest

[9] The Department is providing no opinion herein as to whether the conditions of PTE 87–17 or PTE 01–12 were met.

[10] The Department is not providing any opinion in this proposed exemption as to whether the acquisition and holding of the Land, and the acquisition of the Property Interest, by the Plan violates any of the provisions of Part 4 of Title I of the Act.

[11] The applicant represents that said plan spin-off was effectuated by the transfer of a pro-rata portion of each of the assets and each of the liabilities of the Plan to the Dallas Plan.

since the acquisition (the Holding Costs). Specifically, the Plan has paid the following Holding Costs since its acquisition of the Property Interest in November, 1980: (i) Real estate taxes, $2,480.00; (ii) Insurance, $4,300.00; (iii) Appraisal and other professional fees, $3,150.00. The Plan's budgeted holding costs for holding the Property Interest for the current Plan year, consisting of, primarily, taxes, insurance and appraisal fees, is $1,240.00. The applicant states that the Holding Costs for the Property Interest have been approximately $11,170. Therefore, the total cost for the Property Interest (*i.e.*, the acquisition price of $127,009, plus the Holding Costs of approximately $11,170) is approximately $138,179 as of April 2002.

5. The Property Interest was appraised on May 19, 2002, as having a fair market value of $180,029.68 (the Appraisal). The Appraisal was prepared by George A. Copeland, Jr., MAI (Mr. Copeland), who is an independent, qualified real estate appraiser in the State of New Jersey. Mr. Copeland is employed by Copeland Appraisal Associates, Inc.

Mr. Copeland states that consideration was given in the Appraisal to three approaches to value, *i.e.*, the cost approach, sales comparison approach, and income approach. However, Mr. Copeland relied on the sales comparison approach to determine the fair market value of the Property Interest. Mr. Copeland rendered an opinion as to whether and the extent to which the Property Interest has a greater value to the Skeuses (as compared to its value in the hands of an unrelated third party buyer) by reason of its proximity to the Skeuses' residential property. Mr. Copeland represented that he did not believe this to be the case because he believes that the Property Interest would not merit a premium above its fair market value in any sale to an adjacent property owner. In addition, Mr. Copeland represents that an undivided interest within the fee simple title of the Land is neither diminished nor enhanced in proportionate value under an assumed unified sale of the full fee simple title. Hence, in this circumstance, Mr. Copeland represents that the value of an undivided interest of the Land is directly consistent with the appropriate designated percentage of ownership.

6. The applicant now proposes that the Skeuses purchase the Property Interest from the Plan in a one-time cash transaction. The applicant represents that the proposed transaction would be in the best interest and protective of the Plan. The Plan will pay no commissions or other expenses associated with the sale. The Skeuses will pay the Plan the greater of either: (a) $180,029.68; or (b) the current fair market value of the Property Interest, as established by a qualified, independent appraiser at the time of the transaction.

The sale of the Property Interest will enable the Plan to sell an illiquid non-income producing asset and reinvest the sale proceeds in assets that may yield higher returns. The Plan has been attempting to liquidate its real estate investments and believes that the proposed transaction will occur during what appears to be a market peak, and the Plan should, accordingly, be able to maximize its gain from this real estate investment.

7. In summary, the applicant represents that the transaction will satisfy the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because: (a) The proposed sale will be a one-time cash transaction; (b) the Plan will receive the greater of either: (i) $180,029.68; or (ii) the current fair market value for the Property Interest, as established at the time of the sale by an independent qualified appraiser; (c) the Plan will pay no fees, commissions or other expenses associated with the sale; and (d) the sale will enable the Plan to divest itself of a non-income producing asset and acquire investments which may yield higher returns.

Notice To Interested Persons: Notice of the proposed exemption shall be given to all interested persons in the manner agreed upon by the applicant and Department within 15 days of the date of publication in the **Federal Register**. Comments and requests for a hearing are due forty-five (45) days after publication of the notice in the **Federal Register**.

For Further Information Contact: Khalif I. Ford of the Department at (202) 693–8540. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 24th day of December, 2002.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor

[FR Doc. 02–32894 Filed 12–27–02; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 2002–55; Exemption Application No. D–10958, et al.]

Grant of Individual Exemptions; Fidelity Management Trust Company and Its Affiliates (Collectively Fidelity)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or

the Internal Revenue Code of 1986 (the Code).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

Fidelity Management Trust Company and Its Affiliate (Collectively Fidelity) Located in Boston, Massachusetts

[Prohibited Transaction Exemption 2002–55; Application No. D–10958]

Exemption

Section I—Covered Transactions

The restrictions of section 406(a)(1)(A) through (D) of ERISA and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, to certain lines of credit (the Line of Credit or Lines of Credit), and the Loan and repayment of funds, including accrued interest, thereunder (the Loan or Loans), involving certain employee benefit plans (the Plan or Plans) with respect to which Fidelity acts as directed trustee, investment manager or other administrative service provider; provided that the following conditions are satisfied.

Section II—General Conditions

(a) Each Loan is made to the Plan in connection with the administration of a unitized fund (Unitized Fund) as defined in section III (e) in order to facilitate redemptions from the Unitized Fund.

(b) Each Line of Credit will be negotiated by Fidelity on behalf of the Plan with a bank, as defined under the Investment Advisers Act of 1940, as amended, having total assets of at least $5 billion (the Lender or Lenders);

(c) Each Loan is initiated, accounted for and administered by Fidelity, which will monitor the transactions on behalf of the Plans to ensure that the terms and conditions of the exemption are met at all times;

(d) The Line of Credit provides that each Loan thereunder, including accrued interest thereon, will be repaid by the Unitized Fund promptly in the ordinary course of business upon settlement of the transaction that triggered the need for the Loan;

(e) The maximum amount loaned with respect to a Unitized Fund on any business day that a Loan is initiated does not, after the Loan is made, exceed 25% of the total fair market value of the Unitized Fund (such value determined as of the most recent close of the New York Stock Exchange or as otherwise provided in the applicable Line of Credit, provided such determination is substantially contemporaneous with the Loan);

(f) The fair market value of the assets in the Unitized Fund is determined by an objective method specified in the Line of Credit;

(g) The Lender's recourse with respect to any Loan from a Unitized Fund is limited to the assets of such Unitized Fund. No commitment fees, or commissions are paid by the Plan and no compensating balance is required by the Lenders in connection with these loans. Any set-off will be limited to the assets of the Unitized Fund borrowing the funds;

(h) Interest payable by the Plan on each Loan is based on rates quoted to Fidelity by the Lenders under the Lines of Credit and accepted by Fidelity on behalf of the Plan in accordance with the Lines of Credit;

(i) The Plan enters into a written agreement with Fidelity pursuant to which Fidelity is authorized to borrow on behalf of the Plan. Prior to borrowing on behalf of a Plan pursuant to this exemption, Fidelity provides the Plan with written notice explaining the Line of Credit program. The notice shall state that Fidelity agrees to act as a fiduciary on behalf of the Plan in connection with the following activities involving the Line of Credit agreements with the Lenders: the negotiation of the Plan's participation in the Line of Credit agreements; the negotiation of interest rates; the terms of the Loans, and the terms of repayment under the Lines of Credit agreements. The notice shall set forth Fidelity's objective methodology for allocating favorable interest rates or credit availability equitably among those Unitized Funds seeking to borrow under the Line of Credit agreements on any given day, *i.e.*, ''the applicable ordering rules and limitations.'' Each notice shall also address under what circumstances Fidelity may exclude the Plan from participation in the program, either temporarily or permanently;

(j) Fidelity, on behalf of the Plan, enters into a written agreement with each of the Lenders offering these Line of Credit Agreements to the Plan. The agreement shall address, among other things, the maximum Line of Credit available, the terms for the Loan and repayment, the formula or method for determining the interest rate payable with respect to each Loan, and the conditions for terminating the agreement;

(k) The Plan may elect to terminate participation in the Lines of Credit at any time, without penalty and subject to the Plan's repayment of any outstanding Loan;

(l) No later than 15 business days after month end, Fidelity shall provide the Plan Sponsor of each Plan that has any outstanding Loan during a calendar month with a written report showing the Plan's outstanding Loans on each day during such month, the amount repaid on each such day, the interest rate and the amount of interest paid on each such day, the aggregate balance of all Loans outstanding on the last business day of such month and the aggregate amount of interest paid during such month;

(m) The Loans are made on terms at least as favorable to the Plan as those the Plan could obtain in an arm's-length transaction with an unrelated party;

(n) Each Lender is not related to Fidelity and is a party in interest (including a fiduciary), solely by reason

of providing services to the Plan, or solely by reason of a relationship to a service provider to the Plan described in section 3(14)(F), (G), (H) or (I) of the Act;

(o) The agreements and the any loans contemplated thereunder are not a part of an agreement, arrangement, or understanding designed to benefit any party in interest with respect to any plan;

(p) No fees, or other compensation are paid to Fidelity in connection with the Loans by either the Plan or the Lenders;

(q) Where a Unitized Fund covered by this exemption invests in employer securities, such securities constitute ''qualifying employer securities'' as defined in section 407(d)(5) of the Act (QES) for which market quotations are readily available from independent sources within the meaning of Rule 17a–7, of the Investment Advisers Act of 1940, 17 CFR 270.17a–7. The exemption shall also apply to convertible preferred stock that qualifies as QES and is convertible, under an objective formulation, into securities for which market quotations are readily available as described above.

(r) Where a Unitized Fund, other than an employer securities fund or a stable value fund, invests directly or indirectly in securities, no less than 75 percent of such securities are securities for which market quotations are readily available from independent sources, within the meaning of Rule 17a–7, of the Investment Advisers Act of 1940, 17 CFR 270.17a–7;

(s) Fidelity maintains for a period of six years, in a manner that is accessible for audit and examination, the records necessary to enable the persons described in paragraph (t) to determine whether the conditions of this exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Fidelity, such records are lost or destroyed prior to the end of such six year period; and

(2) No party in interest, other than Fidelity, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or the taxes imposed by sections 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (t);

(t)(1) Except as provided in paragraph (t)(2) and notwithstanding anything to the contrary in sections 504(a)(2) and (b) of the Act, the records referred to in paragraph (s) are unconditionally available for examination during normal business hours by—

(A) Any duly authorized employees or representatives of the Department or the Internal Revenue Service;

(B) Any fiduciary of the Plan or any duly authorized employee or representative of such fiduciary;

(C) Any employer of participants and beneficiaries in the Plan and any employee organization whose members are covered by the Plan, or any authorized employee or representative of these entities; and

(D) Any participant or beneficiary of the Plan or any duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described above in paragraph (t)(1)(B), (C) or (D) shall be authorized to examine the trade secrets of Fidelity or commercial or financial information that is privileged or confidential;

(3) Should Fidelity refuse to disclose information on the basis that such information is exempt from disclosure pursuant to paragraph (t)(2) above, Fidelity shall, by the close of the thirtieth (30th) day following the request, provide a written or electronic notice advising that person (i) of the reasons for the refusal and (ii) that the Department may request such information.

Section III—Definitions

(a) ''Fidelity'' refers to Fidelity Management Trust Company and its affiliates.

(b) ''Affiliate'' means (i) any person, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person; (ii) any officer, director, or partner, employee or relative (as defined in section 3(15) of the Act) of such other person; and (iii) any corporation or partnership of which such other person is an officer, director or partner.

(c) ''Control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) Fidelity is ''related'' to a Lender if the Lender (or a person controlling, or controlled by, the Lender) owns a five percent or more interest in Fidelity or if Fidelity (or a person controlling, or controlled by, Fidelity) owns a five percent or more interest in the Lender. For purposes of this definition: (1) The term ''interest'' means with respect to ownership of an entity (A) the combined voting power of all classes of stock entitled to vote or the total value of the shares of all classes of stock of the entity if the entity is a corporation, (B) the capital interest or the profits interest of the entity if the entity is a partnership, or (C) the beneficial interest of the entity if the entity is a trust or unincorporated enterprise; and (2) a person is considered to own an interest held in any capacity if the person has or shares the authority (A) to exercise any voting rights or to direct some other person to exercise the voting rights relating to such interest, or (B) to dispose or to direct the disposition of such interest.

(e) A ''Unitized Fund'' is a fund that, to facilitate trading and/or accounting, has established ''units'' representing undivided interests in all of the assets of such fund.

EFFECTIVE DATE: The exemption is effective as of the date this notice of final exemption is published in the **Federal Register**.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption (the Proposal) published on October 8, 2002, at 67 FR 62818.

Clarification: Based on discussions with the applicant, the Department hereby wishes to clarify that all written communications that may be made by Fidelity pursuant to the requirements of this exemption can be made electronically (*e.g.*, e-mail) in lieu of regular mail, provided that the Plans agree to receive such communications in that form.

Notice to Interested Persons: The Proposal indicated that notice would be provided to interested persons by first class mail (see 67 FR at 62822, column 2). However, the applicant informed the Department after the publication of the Proposal that it also wished to provide notice to interested persons electronically via electronic mail on or before November 2, 2002. In this regard, the Department notes that all interested persons were notified of the Proposal and informed of their right to comment thereon, either by first class mail or electronic mail, by November 2, 2002. No written comments on the Proposal were received by the Department. Accordingly, the Department hereby grants the exemption as proposed.

For Further Information Contact: Ms. Andrea W. Selvaggio of the Department, telephone (202) 693–8540. (This is not a toll-free number.)

The Profit Sharing Trust of Dr. Ferdinand G. Mainolfi (the Plan) Located in Baltimore, MD

[Prohibited Transaction Exemption 2002–56 Exemption Application No. D–11108]

Exemption

The sanctions resulting from the application of section 4975 of the Code,

by reason of section 4975(c)(1)(A) through (E) of the Code [1] shall not apply to the sale of parcels of improved real property (the Property) by the Plan to Ferdinand G. Mainolfi, a disqualified person with respect to the Plan; provided that: (1) The sale will be a one-time transaction for cash; (2) as a result of the sale, the Plan will receive the fair market value of the Property, as determined by an independent, qualified appraiser, as of the date of the transaction; (3) the Plan will pay no commissions, fees, or other expenses in connection with the sale; and (4) the terms of the sale will be no less favorable to the Plan than terms it would have received under similar circumstances in arm's length negotiations with unrelated third parties.

After giving full consideration to the entire record, the Department has decided to grant the exemption, as described above. The complete application file, including all supplemental submissions received by the Department, is made available for public inspection in the Public Documents Room of the Pension Welfare Benefits Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice of Proposed Exemption published on November 18, 2002, at 67 FR 69569.

For Further Information Contact: Angelena C. Le Blanc of the Department, telephone (202) 693–8540 (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed in Washington, DC, this 24th day of December, 2002.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 02–32895 Filed 12–27–02; 8:45 am]

BILLING CODE 4510–29–P

[1] Pursuant to 29 CFR 2510.3–2(d), the Plan is not within the jurisdiction of Title I of the Act. However, there is jurisdiction under Title II of the Act, pursuant to section 4975 of the Code.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before February 13, 2003. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–837–3698 or by e-mail to *records.mgt@nara.gov*. Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Paul M. Wester, Jr., Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–3120. E-mail: *records.mgt@nara.gov*.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of

origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Commerce, Office of the Secretary (N1–40–03–1, 1 item, 1 temporary item). Duplicate copies of congressional correspondence maintained in the Office of Legislative Affairs.

2. Department of Commerce, Bureau of Industry and Security (N1–476–02–4, 22 items, 14 temporary items). Records of the Office of Strategic Trade and Policy Controls, including such files as annual military critical technologies lists, commodity control and information request case files, seizures and detentions advice files, jurisdiction files, subject files, advisory committee files, retail product files, cables, foreign policy report files, chronological files, and licensing files. Also included are electronic copies of records created using electronic mail and word processing. Records proposed for permanent retention include recordkeeping copies of policy review files, country files, encryption records, high performance computer files, controlled correspondence files, and litigation and appeals files.

3. Department of Defense, Defense Threat Reduction Agency (N1–374–02–6, 10 items, 5 temporary items). Records relating to special weapons research, including raw data, planning records, and files on disapproved or cancelled projects. Also included are electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of long range planning records, committee files, and records relating to weapons testing.

4. Department of Energy, Bonneville Power Administration, (N1–305–02–2, 18 items, 18 temporary items). Administrative records documenting planned systems and processes to maximize efficiencies in forecasting, marketing, and scheduling power products. Included are records relating to generation distribution and management, system streamlining, load and revenue forecasting, meters analysis, transaction scheduling, and data sharing. Also included are electronic copies of documents created using electronic mail and word processing. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

5. Department of Justice, United States Marshals Service, (N1–527–03–1, 3 items, 2 temporary items). Electronic copies of documents created using electronic mail and word processing that relate to the agency's official newsletter. Recordkeeping copies of the newsletter are proposed for permanent retention.

6. Department of Labor, Employment Standards Administration (N1–448–03–1, 4 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that are associated with subject files and chronological files accumulated by the Office of the Assistant Secretary for Employment Standards. Recordkeeping copies of these files are proposed for permanent retention.

7. Department of the Treasury, Offices of the Secretary (N1–56–03–1, 17 items, 16 temporary items). Records relating to educational and community outreach efforts, including such files as student information worksheets, inventories of student outreach efforts, Eagle Scout letters, casework referral files, policy and information letters, and bills of exchange. Also included are electronic copies of records created using electronic mail and word processing. Recordkeeping copies of monthly update reports are proposed for permanent retention.

8. Department of the Treasury, Bureau of the Public Debt, (N1–53–03–2, 48 items, 38 temporary items). Records relating to general program information, press/media coverage, proposed regulations, and testimony. Also included are electronic copies of documents created using electronic mail and word processing. Records are accumulated by the Government Securities Regulation Staff. Recordkeeping copies of important data files, regulations and public comment letters, and files relating to legislation are proposed for permanent retention.

9. Administrative Office of the U.S. Courts, Office of Facilities and Security (N1–116–03–2, 3 items, 3 temporary items). Long range facilities plans, which include data regarding personnel, caseload, and space. Also included are electronic copies of documents created using electronic mail and word processing.

10. Arms Control and Disarmament Agency, Office of the Director (N1–383–03–2, 1 item, 1 temporary item). The Executive Secretary's Paperwork Retrieval and Tracking System, which contains scanned images of selected documents accumulated by the Office of the Director, 1992–1999.

11. Central Intelligence Agency, Information Management Services (N1–263–02–1, 7 items, 2 temporary items). Sound recordings and commercially produced films and videos relating to the Intelligence Community's STAR GATE program. General program files, reports and studies, slide presentations, and related records are proposed for permanent retention.

12. Environmental Protection Agency, Office of Research and Development (N1–412–01–3, 4 items, 2 temporary items). Software programs for the National Emissions Inventory System. Also included are electronic copies of documents created using electronic mail and word processing. Electronic data and the related documentation are proposed for permanent retention.

13. Peace Corps, Crisis Corps (N1–490–02–3, 8 items, 6 temporary items). Recruitment and application files, subject files, and publications background files. Also included are electronic copies of documents created using word processing and electronic mail. Proposed for permanent retention are recordkeeping copies of history files and recruitment/volunteer publications.

Dated: December 20, 2002.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 02–32819 Filed 12–27–02; 8:45 am]

BILLING CODE 7515–01–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Employees' Group Life Insurance Program: New Age Bands and New Premiums

AGENCY: Office of Personnel Management.

ACTION: Notice of new age bands and premiums for the Federal Employees' Group Life Insurance Program.

SUMMARY: The Office of Personnel Management (OPM) has completed a study of funding and claims experience within the Federal Employees' Group Life Insurance (FEGLI) Program. OPM is announcing additional age bands for Optional insurance and revised premiums throughout the Program. This information will be maintained on the FEGLI Web site at *www.opm.gov/insure/life.*

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Kathleen Healy, (202) 606–0004.

SUPPLEMENTARY INFORMATION: OPM is issuing interim regulations in a separate **Federal Register** publication removing the Federal Employees' Group Life Insurance (FEGLI) premiums and age bands from 5 CFR 870 to streamline the process OPM uses to announce premium changes. The premium rates for all coverage categories within the FEGLI Program are specific to the experience of the group and are not based on mortality rates within the general population. The rates represent actuarial estimates of premium income necessary to pay future expected benefits costs. In 1999, OPM made premium changes for all FEGLI options. Most premiums remained unchanged or were lowered. A few rates increased due to the experience of the group and were necessary to sufficiently fund the projected future increases.

The Federal Employees Life Insurance Improvement Act, Pub. L. 105–311, (112 Stat. 2950) provided expanded choices for employees, retirees, and compensationers under Option B and Option C coverage. Eligible employees upon retirement or entitlement to receipt of compensation, may elect unreduced Option B and Option C coverage by paying the full premium for unreduced coverage after age 65. Previously, the Option B and Option C coverage of annuitants began to reduce at age 65, and premiums stopped. Since most covered individuals over age 65 were annuitants whose coverage was reducing, there was not need for an upper age band beyond age 60 prior to the enactment of Public Law 105–311. This change will necessitate a premium adjustment since former rates were based on coverage declaining 2 percent per month after age 65 for 50 months, at which point the coverage ended. The expanded coverage now available to retired enrollees has changed the demographic make-up of the 60+ age band.

Current premium levels for older enrollees in the Option B and Option C category are insufficient to meet the cost of the expanded coverage. The legislative structure of the FEGLI Program assumes that we set premiums for each age band independently of the other bands, so that each age band is financially self-supporting. The additional Option C age bands (Ages 65–69, and Ages 70 and Over) were implemented by OPM effective April 24, 2000. The addition of Option B and Option C new premium levels at older age bands will eliminate the need for younger enrollees to subsidize the cost of insuring older enrollees. Without them, younger FEGLI enrollees currently in the 60+ age band will disproportionately bear the premium costs for the increasing number of older Option B and Option C (those 65 and over) enrollees. This is required to ensure long term premium adequacy as the average age of Federal employees increases and there is a boom in Federal retirements in the coming years. The number of enrollees who are over age 65 is projected to grow by 400% within twenty years.

Premiums will be lower for Basic insurance, the post-65 No Reduction election, and for the majority of enrollees in Option B. There are not changes to the Option A premiums. Annuitants with the post-65 50% Reduction election will have a small increase in their premiums. Older enrollees (age 65 and above) in Option B will see their premiums increases. However, Option B enrollees between age 45 and 64 will have a decrease in premiums. The oldest enrollees (age 75 and above) in Option C will also experience a premium increase.

Premiums for the new Option B age bands (Ages 65–69), (Ages s70–74), (Ages 75–79) and Ages 80 & Over) are being phased-in over a 3-year period. This **Federal Register** Notice reflects the premiums for phase one. Future **Federal Register** notices will be issued for both phase 2 and phase 3. We will issue guidance to all agencies for the purpose of counseling employees and we will notify affected annuitants directly. The FEGLI premium rates will be maintained on the FEGLI Web site *www.opm.gov/insure/life.*

The new FEGLI premium rates are as follows:

FEGLI BASIC PREMIUM FOR $1,000 OF INSURANCE

	Biweekly	Monthly
Enrollee Premium	$0.1500	$0.3250
Government Premium	0.0750	0.1625
Total Premium	0.2250	0.4875

The premiums for compensationers who are paid every four weeks are two times the biweekly premium.

ANNUITANT BASIC PREMIUM PER $1,000 OF INSURANCE

Election	Monthly withholding for each $1,000 of your BIA before age 65	Monthly withholding for each $1,000 of your BIA after age 65
75% Reduction	$0.3250	(1)
50% Reduction	0.9250	$0.60

ANNUITANT BASIC PREMIUM PER $1,000 OF INSURANCE—Continued

Election	Monthly withholding for each $1,000 of your BIA before age 65	Monthly withholding for each $1,000 of your BIA after age 65
No Reduction	2.155	1.83

[1] None—Basic insurance is free.

COMPENSATIONER BASIC PREMIUM PER $1,000 OF INSURANCE

Election	Withholding every four weeks for each $1,000 of your BIA before age 65	Withholding every four weeks for each $1,000 of your BIA after age 65
75% Reduction	$0.3000	([1])
50% Reduction	0.8600	$0.5600
No Reduction	1.9800	1.680

[1] None—Basic insurance is free.

OPTION A PREMIUM PER $10,000 OF INSURANCE

Age band	Biweekly	Monthly
Under age 35	$0.30	$0.65
Ages 35–39	0.40	0.87
Ages 40–44	0.60	1.30
Ages 45–49	0.90	1.95
Ages 50–54	1.40	3.03
Ages 55–59	2.70	5.85
Age 60 & Over	6.00	13.00

The premiums for compensationers who are paid every four weeks are two times the biweekly premium.

OPTION B PREMIUM PER $1,000 OF INSURANCE

Age band	Biweekly	Monthly
Under age 35	$0.03	$0.065
Ages 35–39	0.04	0.087
Ages 40–44	0.06	0.130
Ages 45–49	0.09	0.195
Ages 50–54	0.14	0.303
Ages 55–59	0.28	0.607
Ages 60–64	0.60	1.300
Ages 65–69	0.71	1.538
Ages 70–74	0.87	1.885
Ages 75–79	1.07	2.318
Ages 80 & Over	1.27	2.752

The premiums for compensationers who are paid every four weeks are two times the biweekly premium.

OPTION C PREMIUM PER MULTIPLE OF INSURANCE

Age band	Biweekly	Monthly
Under age 35	$0.27	$0.59
Ages 35–39	0.34	0.74
Ages 40–44	0.46	1.00
Ages 45–49	0.60	1.30
Ages 50–54	0.90	1.95
Ages 55–59	1.45	3.14
Ages 60–64	2.60	5.63
Ages 65–69	3.00	6.50
Ages 70–74	3.40	7.37

OPTION C PREMIUM PER MULTIPLE OF INSURANCE—Continued

Age band	Biweekly	Monthly
Ages 75–79	4.50	9.75
Ages 80 & Over	6.00	13.00

The premiums for compensationers who are paid every four weeks are two times the biweekly premium.

U.S. Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 02–32891 Filed 12–27–02; 8:45 am]

BILLING CODE 6325–50–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25876; 812–12648]

Nicholas-Applegate Capital Management et al.; Notice of Application

December 23, 2002.

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice of application for an order under sections 6(c) and 17(b) of the Investment Company Act of 1940 (''Act'') for exemptions from section 17(a) of the Act, and under section 17(d) of the Act and rule 17d–1 thereunder to permit certain joint transactions.

SUMMARY OF APPLICATION: Applicants requests an order to permit certain registered open-end management investment companies or series thereof that are advised by Nicholas-Applegate Capital Management (each, a ''Fund'') to invest in a company organized in the Republic of Mauritius (''Mauritius Company'') that will invest in Indian securities.

APPLICANTS: Nicholas-Applegate Capital Management (''NACM'') and Nicholas-Applegate Institutional Funds (''NAIF'').

FILING DATES: The application was filed on September 27, 2001 and amended on December 23, 2002.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 17, 2003, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants: J.B. Kittredge, Esq., Ropes & Gray, One International Place, Boston, MA 02110.

FOR FURTHER INFORMATION CONTACT: Jaea F. Hahn, Senior Counsel, at (202) 942–0614, or Janet M. Grossnickle, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. NAIF, a Delaware business trust, is registered under the Act as an open-end management investment company and has 16 series, three of which currently intend to invest in the Mauritius Company: Nicholas-Applegate International Growth Opportunities Fund, Nicholas-Applegate International Core Growth Fund, and Nicholas-Applegate Emerging Countries Fund.[1] The investment objective of each of these series is to maximize long-term capital appreciation. NACM, a California limited partnership, is registered as an investment adviser under the Investment Advisers Act of 1940. NACM serves as investment adviser pursuant to an advisory agreement between NACM and the relevant Fund (each, an ''Advisory Agreement''). As investment adviser, NACM is responsible for making investment decisions for a Fund and managing the Fund's other affairs and business, subject to the policies established by the board of directors of the relevant Fund (each a ''Board''). Under the terms of each Advisory Agreement, NACM receives monthly management fees from the Fund or the Fund's adviser, as the case may be, at specified annual rates.

2. The Funds desire to purchase and sell shares of beneficial interest representing ownership interests in a limited life company organized in the Republic of Mauritius (the ''Mauritius Company''). The Mauritius Company will be formed and will operate solely for the purpose of allowing the Funds and certain pension plans and other separately managed accounts (collectively, the ''Accounts'') for which NACM or another Adviser acts as discretionary manager, to invest in debt and equity securities of Indian issuers.[2] The Mauritius Company will enable the Funds' and the Accounts' investments in India to qualify for the favorable tax treatment afforded by the Mauritius-India double taxation avoidance treaty (the ''Treaty'').

3. The Mauritius Company will be wholly-owned by the Funds and Accounts,[3] and will not be permitted to make any types of investments, or engage in any types of activities, that would not be permitted to be made or engaged in by the Funds directly in accordance with their investment objectives, policies, and limitations. All material legal and tax considerations applicable to the Mauritius Company and the Funds' investments therein will be fully set forth in each Fund's registration statement. The shares of the Mauritius Company purchased by the

[1] Each existing registered open-end management investment company that currently intends to rely on the requested relief has been named as an applicant. Applicants are also seeking relief for any registered open-end management investment company or series thereof for which an Adviser (defined below) currently, or in the future, acts as investment adviser or subadviser (included in the term ''Funds''). The term ''Adviser'' includes NACM, or any registered investment adviser controlling, controlled by, or under common control with NACM that serves as investment adviser or subadviser to a Fund. Each existing or future registered open-end management investment company or Adviser that may rely on the requested relief in the future will do so only in accordance with the terms and conditions of the requested order.

[2] The Funds will not invest in Indian issuers directly (other than investments in American Depositary Receipts or Global Depositary Receipts of Indian issuers (collectively, ''Depositary Receipts'')) so long as they are able to invest in Indian securities through the Mauritius Company. For purposes of section 5 of the Act, a Fund would aggregate any Indian securities underlying Depositary Receipts owned by that Fund with that Fund's pro rata share of Indian securities held indirectly through the Mauritius Company.

[3] The Mauritius Company will be a private investment company excluded from the definition of ''investment company'' pursuant to section 3(c)(7) of the Act and the rules thereunder.

Funds and the Accounts will have identical terms, rights and conditions, will be redeemable at their net asset value next determined after receipt of the redemption request, and are expected to be liquid.[4]

4. NACM will serve as the investment adviser to the Mauritius Company and will make recommendations as to all investments of the Mauritius Company, subject to the supervision of the Mauritius Company's board of directors (the ''Mauritius Company Board''). No advisory fees will be paid to NACM by the Mauritius Company, but the Mauritius Company will pay NACM a monthly administrative fee based upon a percentage of the Mauritius Company's average daily net assets. NACM's duties will include coordinating all of the Mauritius Company's services (including auditors and legal service providers), calculating the daily net asset value per share of the Mauritius Company, overseeing compliance by the Mauritius Company with applicable requirements of the Act, maintaining the books and records of the Mauritius Company, and acting as U.S. agent for the service of process for the directors and officers of the Mauritius Company who are not U.S. citizens or residents. The Funds and the Accounts will be assessed the expenses of the Mauritius Company on a pro rata basis.[5]

5. Applicants request an order pursuant to sections 6(c), 17(b) and 17(d) of the Act and rule 17d–1 under the Act solely to the extent necessary to permit: (a) The Funds to purchase shares of beneficial interest of the Mauritius Company; (b) the Mauritius Company to sell its shares of beneficial interest to the Funds, and to redeem such shares held by the Funds, upon the demand of the Funds; and (c) The Advisers to provide investment management services to the Funds and the Mauritius Company.

Applicants' Legal Analysis

1. Section 17(a) generally provides, in part, that it is unlawful for any affiliated person of a registered investment company, or any affiliated person of such person, acting as principal, knowingly to sell or purchase any security or other property to or from such investment company. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include (a) any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with the power to vote by the other person; and (c) any person directly or indirectly controlling, controlled by, or under common control with the other person.

2. Applicants state that the Funds and the Mauritius Company are expected to be affiliated persons under section 2(a)(3) of the Act, since one or more of the Funds will own at least 5% (and, in all likelihood, more than 25%) of the outstanding voting securities of the Mauritius Company. In addition, as the investment adviser or subadviser to certain Funds and the Mauritius Company, NACM is an affiliated person of such Funds and the Mauritius Company. Further, certain of the Funds, Accounts, and the Mauritius Company arguably could be deemed to be under the common control of NACM or one of the other Advisers. Consequently, the sale of shares of beneficial interest of the Mauritius Company to the Funds, and the redemption of such shares of the Mauritius Company held by the Funds, would be prohibited under section 17(a) of the Act.

3. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned and the proposed transaction is consistent with the policies of each registered investment company involved and with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any person or transactions from any provisions of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants submit that the proposed arrangement satisfies the standards for relief under sections 17(b) and 6(c) of the Act. For the reasons discussed below, Applicants submit that the terms of the arrangement are fair and reasonable and do not involve overreaching on the part of any person concerned, and that the proposed transactions are consistent with the policy of each registered investment company concerned and with the general purposes of the Act. Applicants further submit that the Funds' participation in the Mauritius Company will be necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

5. Applicants note that NACM and its affiliates will receive no advisory fee in connection with the Funds' investment in the Mauritius Company, and shares of the Mauritius Company will not be subject to a sales load, redemption fee, distribution fee or service fee. Applicants argue that the fees payable to the Mauritius Company's service providers, including NACM, will be for distinct services, and the costs of such fees will be outweighed by the benefits to be obtained under the Treaty. Moreover, the administrative fees to be paid by the Mauritius Company to NACM will be paid only upon the determination by each Fund's Board, including a majority of its directors that are not ''interested persons'' of the Fund as defined in section 2(a)(19) of the Act (''Non-Interested Directors''), that the fees are (i) for services in addition to, rather than duplicative of, services rendered to the Funds directly and (ii) fair and reasonable in light of the usual and customary charges imposed by others for services of the same nature and quality. Each Fund and Account will be treated identically as a shareholder of the Mauritius Company, and each Fund and Account will purchase and sell shares of beneficial interest of the Mauritius Company on the same terms and on the same basis as each other Fund and Account that invests in the Mauritius Company.

6. Section 17(d) of the Act and rule 17d–1 under the Act generally prohibit joint transactions involving registered investment companies and their affiliates unless the Commission has approved the transaction. In considering whether to approve a joint transaction under rule 17d–1, the Commission considers whether the proposed transaction is consistent with the provisions, policies, and purposes of the Act, and the extent to which the participation of the investment companies is on a basis different from or less advantageous than that of the other participants. Applicant states that the Funds and the Accounts (by purchasing shares of beneficial interest of the Mauritius Company), NACM and the other Advisers (by managing the portfolio securities of the Funds at the same time that the Funds are invested

[4] In making its own determination that its investments in illiquid securities do not exceed 15% of its net assets, each Fund will aggregate any illiquid securities owned by that Fund with that Fund's pro rata share of any illiquid securities held indirectly through the Mauritius Company.

[5] The Mauritius Company's expenses will consist primarily of the administrative fee payable to NACM, the fees paid to the Mauritius Company's other service providers, local administrator fees, and the brokerage commissions paid by the Mauritius Company on its purchases and sales of portfolio securities of Indian issuers.

in shares of beneficial interest of the Mauritius Company), and the Mauritius Company (by selling its shares to, and redeeming its shares from, the Funds), could be deemed to be participants in a joint enterprise or arrangement within the meaning of section 17(d) and rule 17d–1.

7. Applicants request an order pursuant to section 17(d) and rule 17d–1 to permit the proposed transactions with the Mauritius Company. Applicants submit that the investment by the Funds in the Mauritius Company on the basis proposed is consistent with the provisions, policies and purposes of the Act, and that each Fund will invest in shares of beneficial interest of the Mauritius Company on the same basis as any other shareholder (*i.e.*, the other Funds and Accounts). Applicants further submit that all investors in shares of beneficial interest of the Mauritius Company will be subject to the same eligibility requirements imposed by the Mauritius Company, and all shares will be priced in the same manner and will be redeemable under the same terms. Moreover, investing in the Mauritius Company will offer tax advantages to the Funds that would not otherwise be available.

Applicants' Conditions

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

1. The Funds' investment in shares of the Mauritius Company will be undertaken only in accordance with the Funds' stated investment restrictions and will be consistent with their stated investment policies. For these purposes, the Funds will be treated as owning their pro rata portion of the portfolio securities of the Mauritius Company.

2. NACM and its affiliated persons will receive no advisory fee in connection with the Funds' investment in the Mauritius Company. NACM and its affiliated persons will receive no commissions, fees, or other compensation from a Fund or the Mauritius Company in connection with the purchase or redemption by the Funds of shares in the Mauritius Company. Shares of the Mauritius Company will not be subject to a sales load, redemption fee, distribution fee or service fee.

3. Administrative fees will be paid by the Mauritius Company to NACM only upon a determination by each Fund's Board, including a majority of its Non-Interested Directors, that the fees are (i) for services in addition to, rather than duplicative of, services rendered to the Funds directly, and (ii) fair and reasonable in light of the usual and customary charges imposed by others for services of the same nature and quality. If such determination is not made by a Fund's Board, NACM will reimburse to that Fund the amount of any administrative fee borne by that Fund as an investor in the Mauritius Company.

4. The Mauritius Company will, at all times, limit its investment in illiquid securities to no more than 15% of its assets.

5. Each Fund's Board, including a majority of the Non-Interested Directors, will determine initially and no less frequently than annually that the Fund's investments in the Mauritius Company are, and continue to be, in the best interests of the Fund and the Fund's shareholders.

6. NACM will undertake to make the accounts, books and other records of the Mauritius Company available for inspection by the SEC staff and, if requested, to furnish copies of those records to the SEC staff.

7. The Mauritius Company will comply with the requirements of sections 9, 12, 13, 17(a), 17(d), 17(e), 17(f), 17(h), 18, 21 and 36–53 of the Act and rule 22c–1 under the Act as if the Mauritius Company were an open-end management investment company registered under the Act. In addition, the Mauritius Company will comply with the requirements of the rules under section 17(f) and 17(g) of the Act. With respect to all redemption requests made by a Fund, the Mauritius Company will comply with section 22(e) of the Act. NACM will adopt procedures designed to ensure that the Mauritius Company complies with the aforementioned sections of the Act and rules under the Act. NACM will periodically review and periodically update as appropriate such procedures and will maintain books and records describing such procedures, and maintain the records required by rules 31a–1(b)(1), 31a–1(b)(2)(ii) and 31a–1(b)(9) under the Act. In addition, in connection with the review required by condition 5 above, NACM will provide annually to each Fund's Board a written report about NACM's and the Mauritius Company's compliance with this condition. All books and records required to be made pursuant to this condition will be maintained and preserved for a period of not less than six years from the end of the fiscal year in which any transaction occurred, the first two years in an easily accessible place, and will be subject to examination by the SEC and its staff.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–32913 Filed 12–27–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–25875; File No. 812–12914]

ReliaStar Life Insurance Company of New York, et al.

December 23, 2002.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of application for an order pursuant to Section 6(c) of the Investment Company Act of 1940 (the ''Act'') granting exemption from Sections 2(a)(32) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder.

APPLICANTS: ReliaStar Life Insurance Company of New York (''RLNY''), Separate Account NY–B of ReliaStar Life Insurance Company of New York (the ''Account'') and Directed Services, Inc. (''DSI'') (together, the ''Applicants'').

SUMMARY OF THE APPLICATION: Applicants seek an order of the Commission, pursuant to Section 6(c) of the Act, exempting them from Sections 2(a)(32) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder, to the extent necessary to permit the recapture of certain credits applied to premium payments made in consideration of certain deferred variable annuity contracts, described herein, that RLNY plans to issue (the ''Contracts''). Applicants also hereby apply for an order of the Commission, pursuant to Section 6(c) of the Act, exempting (1) variable annuity separate accounts that RLNY or its successors in interest may establish in the Future (''Future Accounts''), and (2) principal underwriters for such Future Accounts under common control with RLNY or its successors in interest now or in the future (''Future Underwriters''), from Sections 2(a)(32) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder, to the extent necessary to permit the recapture of certain credits applied to premium payments made in consideration of variable annuity contracts issued in the Future by RLNY or its successors in interest through a Future Account that are substantially similar in all material respects to the Contracts (''Future Contracts'').

FILING DATE: The Application was filed on December 20, 2002.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving the Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on January 20, 2003, and should be accompanied by proof of service on the Applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Applicant, c/o Linda Senker, Esq., Golden American Life Insurance Company, 1475 Dunwoody Drive, West Chester, Pennsylvania 19380.

FOR FURTHER INFORMATION CONTACT: Curtis A. Young, Esq., Senior Counsel, or Lorna J. MacLeod, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the Application. The Application is available for a fee from the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. RLNY is a stock life insurance company originally incorporated under the laws of New York (originally incorporated under the name Morris Plan Insurance Society) on June 11, 1917. RLNY is engaged in the business of writing life insurance and annuities, both individual and group, and is authorized to do business in all 50 states. RLNY is a wholly-owned subsidiary of Security-Connecticut Life Insurance Company, which is a wholly-owned subsidiary of ReliaStar Life Insurance Company. RLNY is ultimately controlled by ING Groep N.V., a global financial services holding company with approximately $624 billion in assets as of December 31, 2001. As of December 31, 2001, RLNY had assets of approximately $83.1 million. For purposes of the Act, RLNY is the depositor and sponsor of the Account as those terms have been interpreted by the Commission with respect to variable annuity separate accounts.

2. First Golden American Life Insurance Company of New York (''First Golden'') established the Account as a segregated investment account under New York law on June 13, 1996. Effective April 1, 2002, First Golden was merged into RLNY, an affiliated company of First Golden, and Separate Account NY–B became a separate account of RLNY as a result of the merger. Under New York law, the assets of the Account attributable to the Contracts and any other variable annuity contracts through which interests in the Account are issued are owned by the Account's depositor but are held separately from all other assets of the depositor, for the benefit of the owners of, and the persons entitled to payment under, Contracts issued through the Account. Consequently, such assets are not chargeable with liabilities arising out of any other business that the Account's depositor may conduct. Income, gains and losses, realized or unrealized, from each subaccount of the Account, are credited to or charged against that subaccount without regard to any other income, gains or losses of the Account's depositor. The Account is a ''separate account'' as defined by Rule 0–1(e) under the Act, and is registered with the Commission as a unit investment trust.

3. The Account currently is divided into a number of subaccounts. Each subaccount invests exclusively in shares representing an interest in a separate corresponding investment portfolio of one of several series-type open-end management investment companies. The assets of the Account support one or more varieties of variable annuity contacts, including the Contracts. The Account is registered with the Commission as a unit investment trust, and interests in the Account to be offered through the Contracts have been registered under the 1933 Act on Form N–4.

4. DSI is a wholly owned subsidiary of Equitable of Iowa. It serves as the principal underwriter of a number of RLNY and Golden American Life Insurance Company separate accounts registered as unit investment trusts under the Act, including the Account, and is the distributor of variable annuity contracts issued through such separate accounts, including the Contracts. DSI is registered as a broker-dealer under the Securities Exchange Act of 1934 and is a member of the National Association of Securities Dealers, Inc. (the ''NASD'').

5. The Contracts are deferred combination variable and fixed annuity contracts that RLNY may issue to individuals or groups on a ''non-qualified'' basis or in connection with employee benefit plans that receive favorable federal income tax treatment under Sections 401, 403(b), 408, 408A or 457 of the Internal Revenue Code of 1986, as amended (the ''Code'').

6. The Contracts make available a number of subaccounts of the Account to which owners may allocate net premium payments and associated bonus credits (described below) and to which owners may transfer contract value. The Contracts also offer fixed-interest allocation options under which RLNY credits guaranteed rates of interest for various periods. Transfers of contract value among and between the subaccounts and, subject to certain restrictions, among and between the subaccounts and the fixed-interest options, may be made at any time. The Contracts offer a variety of annuity payment options to owners. In the event of an owner's (or, in certain circumstances, an annuitant's) death prior to the annuity commencement date, beneficiaries may elect to receive death benefits in the form of one of the annuity payment options instead of a lump sum. In general, the Contracts offer all of the features typically found in variable annuity contracts today.

7. The Contracts generally may only be purchased with a minimum initial premium of $15,000 ($1,500 for certain employee benefit plans) under Option Package I and $5,000 ($1,500 for certain employee benefit plans) for Option Packages II and III. RLNY may deduct a premium tax charge from premium payments in certain states, but otherwise deducts a charge for premium taxes upon surrender or annuitization of the Contract or upon the payment of a death benefit, depending upon the jurisdiction. The Contracts provide for an annual administrative charge of $30 that RLNY deducts on each Contract Anniversary and upon a full surrender of a Contract, a daily administrative charge deducted from the assets of the Account at an annual rate of 0.15% of the Account's average daily net assets and a daily mortality and expense risk charge deducted from the assets of the Account at annual rates of 0.90% for Option Package I, 1.10% for Option Package II, and 1.25% for Option Package III, of the Account's average daily net assets. The Contracts also provide for a charge of $25 for each transfer of contract value in excess of 12 transfers per contract year. RLNY currently anticipates waiving this charge for the foreseeable future. Lastly, the Contracts have a surrender charge in the form of a contingent deferred sales charge.

8. The contingent deferred sales charge (''CDSC'') is equal to the

percentage of each premium payment surrendered or withdrawn. The CDSC is separately calculated and applied to each premium payment at any time that the payment (or part of the payment) is surrendered or withdrawn. The CDSC applicable to each premium payment diminishes as the payment ages. The schedule is as follows:

Number of full years since payment of each premium	Charge (percent)
Less than 1	6.0
2	6.0
3	6.0
4	5.0
5	4.0
6	3.0
7+	0.0

9. No CDSC applies to contract value representing an annual free withdrawal amount or to contract value in excess of aggregate premium payments (less prior withdrawals of premium payments) (''earnings''). The CDSC is calculated using the assumption that premium payments are withdrawn on a first-in, first-out basis. The CDSC also is calculated using the assumption that contract value is withdrawn in the following order: (1) The annual free withdrawal amount for that contract year, (2) premium payments, and (3) earnings. The annual free withdrawal amount is 10% of contract value, measured at the time of withdrawal, less any prior withdrawals made in that contract year. Under Option Package III, any unused percentage of the 10% free withdrawal amount from a contract year may carry forward into successive contract years, based on the percentage remaining after the last withdrawal in a contract year. However, under Option Package III, the accumulated free withdrawal amount may not exceed 30% of contract value.

10. If an owner dies before the annuity start date, the Contracts provide, under most circumstances, for a death benefit payable to a beneficiary, computed as of the date RLNY receives written notice and due proof of death. The death benefit payable to the beneficiary depends on whether the owner selected Option Package I, II or III. Each option package provides a death benefit upon the death of the owner which death benefit is based upon the highest amount payable under the separate death benefit options available under that option package. The death benefit options available under the option packages include:

(1) The Standard Death Benefit which equals return of premium, less credits applied since or within 12 months prior to death, reduced pro rata for withdrawals;

(2) The contract value on the claim date, less credits applied since or within 12 months prior to death;

(3) The Annual Ratchet death benefit which equals the maximum contract value on each contract anniversary occurring on or prior to attainment of age 90, adjusted for new premiums and credits and reduced pro rata for withdrawals, less credits applied since or within 12 months prior to death; and

(4) Return of premium.

Under Option Package I, the death benefit payable is the greater of (1), (2) and (3). Under Option Package II, the death benefit payable is the greatest of (1), (2), (3) and (4). Under Option Package III, the death benefit payable is the greatest of (1), (2), (3) and (4).

11. RLNY intends to offer a bonus credit provision under the Contracts. At the time of application, an owner may elect the bonus credit provision. Under the bonus credit provision, RLNY credits contract value in the subaccounts and the fixed-interest allocations with an amount that is a percentage of the premium payment. The bonus credit applies upon issuance of the Contract and is based upon premium payments received within the first contract year (''first year premium payments''). RLNY allocates the bonus credit among the subaccounts and fixed-interest allocations the owner selects in proportion to the premium payment in each investment option. The bonus credit equals 4% of the first year premium payments. RLNY reserves the right to increase or decrease the amount of the bonus credit or discontinue the bonus credit provision in the future. The annual charge assessed for the premium credit rider (as a percentage of contract value) is 0.50%. The charge is payable for the first seven contract years. The charge is deducted from the contract value in the subaccounts and is also deducted from amounts in fixed interest allocations by crediting a lower interest rate.

12. Under the bonus credit provision, RLNY recaptures or retains the credited amount in the event that the owner exercises his or her cancellation right during the ''free look'' period. RLNY recaptures bonus credits applied after or within twelve months of the date as of which a death benefit is computed. RLNY also will recapture part or all of the credited amount upon surrender or withdrawal. The portion of the credit deducted is based on the percentage of first year premium withdrawn and the contract year of surrender or withdrawal. The amount recaptured is calculated separately and applied to each premium payment at any time that the payment (or part of the payment) is surrendered or withdrawn. The recapture percentage applicable to each premium payment is level for the first two contract years and diminishes to zero after the seventh contract year. The schedule is as follows:

Contract year of surrender or withdrawal	Percentage of premium credit forfeited (based on percentage of first year premium withdrawn)
Years 1–2	100
Years 3–4	75
Years 5–6	50
Year 7	25
Years 8+	0

13. No recapture percentage applies to contract value representing the annual free withdrawal amount or to contract value representing earnings. Because of the recapture provisions discussed above, the value of a credit only ''vests'' or belongs irrevocably to the owner as the recapture period for the credit expires. As to bonus credits resulting from premiums paid before the ''free look'' period ends, no part of the credit vests for the owner until the expiration of the ''free look'' period. After the expiration of the ''free look'' period, all bonus credits vest in full over the 7 year period after RLNY grants them. Under the bonus credit provision, RLNY credits amounts to an owner's contract value either by ''purchasing'' accumulation units of an appropriate subaccount or adding to the owner's fixed interest allocation option values.

14. With regard to variable contract value, several consequences flow from the foregoing. First, increases in the value of accumulation units representing bonus credits accrue to the owner immediately, but the initial value of such units only belongs to the owner when, or to the extent that, each vests. Second, decreases in the value of accumulation units representing bonus credits do not diminish the dollar amount of contract value subject to recapture. Therefore, additional accumulation units must become subject to recapture as their value decreases. Stated differently, the proportionate share of any owner's variable contract value (or the owner's interest in the Account) that RLNY can ''recapture'' increases as variable contract value (or the owner's interest in the Account) decreases. This dilutes somewhat the owner's interest in the Account vis-a-vis RLNY and other owners, and in his or her variable

contract value vis-a-vis RLNY. Lastly, because it is not administratively feasible to track the unvested value of bonus credits in the Account, RLNY deducts the daily mortality and expense risk charge and the daily administrative charge from the entire net asset value of the Account. As a result, the daily mortality and expense risk charge and the daily administrative charge paid by any owner is greater than that which he or she would pay without the bonus credit.

15. Applicants respectfully request that the Commission issue an order pursuant to Section 6(c) of the Act, exempting them from the provisions of Sections 2(a)(32) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder, to the extent necessary to permit the recapture of certain credits applied to premium payments made in consideration of the Contracts.

Legal Analysis

1. Section 6(c) of the Act authorizes the Commission to exempt any person, security, or transaction or any class of persons, securities, or transactions from any provision or provisions of the Act and/or any rule under it if, and to the extent that, such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Subsection (i) of Section 27 provides that Section 27 does not apply to any registered separate account supporting variable annuity contracts, or to the sponsoring insurance company and principal underwriter of such account, except as provided in paragraph (2) of subsection (i). Paragraph (2) provides that it shall be unlawful for a registered separate account or sponsoring insurance company to sell a variable annuity contract supported by the separate account unless the ''* * * contract is a redeemable security; and * * * [t]he insurance company complies with Section 26(e) * * *'' RLNY, of course, complies with Section 26(e). Section 2(a)(32) defines a ''redeemable security'' as any security, other than short-term, paper, under the terms of which the holder, upon presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof.

3. Applicants submit that the recapture of bonus credits would not, at any time, deprive an owner of his or her proportionate share of the current net assets of an Account. Until the appropriate recapture period expires, RLNY retains the right to and interest in each owner's contract value representing the dollar amount of any unvested bonus credits. Therefore, if RLNY recaptures any bonus credit or part of a bonus credit in the circumstances described above, it would merely be retrieving its own assets. RLNY would grant bonus credits out of its general account assets and the amount of the credits (although not the earnings on such amounts) would remain RLNY's until such amounts vest with the owner. Thus, to the extent that RLNY may grant and recapture bonus credits in connection with variable contract value, it would not, at either time, deprive any owner of his or her then proportionate share of the Account's assets. It is the nature of the bonus recapture provisions as they apply to variable contract value that an owner would obtain a benefit from a bonus credit in a rising market because any earnings on the bonus credit amount would vest with him or her immediately. Over time this would, of course, cause the owner's share of both the Contract's variable contract value and the Account's net assets to be greater on a relative basis than it would have been without the bonus credit. Conversely, in a falling market an owner would suffer a detriment from a bonus credit because losses on the bonus credit amount also would ''vest'' with him or her immediately. As explained above, over time this would cause the owner's share of both the Contract's variable contract value and the Account's net assets to decrease on a relative basis.

4. Applicants do not believe that the dynamics of RLNY's proposed bonus credit provisions would violate Sections 2(a)(32) or 27(i)(2)(A) of the Act. To begin with, Section 2(a)(32) defines a redeemable security as one ''under the terms of which the holder, *upon presentation to the issuer*, is entitled to receive *approximately* his proportionate share of the issuer's *current* net asset value. Taken together, these two sections of the Act do not require that the holder receive the exact proportionate share that his or her security represented at a prior time. Therefore, the fact that the proposed bonus credit provisions have a dynamic element that may cause the relative ownership positions of RLNY and a Contract owner to shift due to Account performance and the vesting schedule of such credits, would not cause the provisions to conflict with Sections 2(a)(32) or 27(i)(2)(A). Nonetheless, in order to avoid any uncertainty as to full compliance with the Act, Applicants seek exemptions from these two sections.

5. Section 22(c) of the Act authorizes the Commission to make rules and regulations applicable to registered investment companies and to principal underwriters of, and dealers in, the redeemable securities of any registered investment company. Rule 22c–1 thereunder imposes requirements with respect to both the amount payable on redemption of a redeemable security and the time as of which such amount is calculated. Specifically, Rule 22c–1, in pertinent part, prohibits a registered investment company issuing any redeemable security, a person designated in such issuer's prospectus as authorized to consummate transactions in any such security, and a principal underwriter of, or dealer in, such security from selling, redeeming or repurchasing any such security, except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption, or of an order to purchase or sell such security.

6. RLNY's granting of a bonus credit would have the result of increasing an owner's contract value in a way that could be viewed as the purchase of an interest in the Account at a price below net asset value. Similarly, RLNY's recapture of any bonus credit could be viewed as the redemption of such an interest at a price above net asset value. If such is the case, then the bonus credit provisions could be viewed as conflicting with Rule 22c–1 under the Act. Applicants contend, however, that the bonus credits do not violate Rule 22c–1 under the Act. The bonus credit provisions do not give rise to either of the evils that Rule 22c–1 was designed to address. The Rule was intended to eliminate or reduce, as far as was reasonably practicable, the dilution of the value of outstanding redeemable securities of registered investment companies through their sale at a price below net asset value or their redemption at a price above net asset value, or other unfair results, including speculative trading practices.

7. The evils prompting the adoption of Rule 22c–1 were primarily the result of backward pricing, the practice of basing the price of a mutual fund share on the net asset value per share determined as of the close of the market on the previous day. Backward pricing permitted certain investors to take advantage of increases or decreases in net asset value that were not yet reflected in the price, thereby diluting the values of outstanding shares. The proposed bonus credit provisions pose no such threat of dilution. An owner's

interest in his or her contract value or in the Account would always be offered under the Contracts at a price determined on the basis of net asset value. The granting of a bonus credit does not reflect a reduction of that price. Instead, RLNY will purchase with its own money on behalf of the owner, an interest in the Account equal to the bonus credit. Because any bonus credit will be paid from RLNY's general account and not from the assets of the Account, no dilution will occur as a result of the credit. Likewise, because RLNY will use general account assets to increase an owner's total contract value, no dilution will occur from such an increase.

8. Recaptures of bonus credits result in a redemption of RLNY's interest in an owner's contract value or in the Account at a price determined on the basis of the Account's current net asset value and not at an inflated price. Moreover, the amount recaptured will always equal the amount that RLNY paid from its general account for the credits. Similarly, although owners are entitled to retain any investment gains attributable to the bonus credits, the amount of such gains would always be computed at a price determined on the basis of net asset value. Because neither of the harms that Rule 22c–1 was intended to address arise in connection with the proposed bonus credit provisions, the provisions do not conflict with the Rule. Nonetheless, in order to avoid any uncertainty as to hill compliance with the Act, Applicants seek exemptions from Rule 22c–1.

9. The bonus credit recapture provisions are necessary for RLNY to offer the bonus credits. It would be unfair to RLNYto permit owners to keep their bonus credits upon their exercise of the Contracts' ''free look'' provision. Because no CDSC applies to the exercise of the ''free look'' provision, the owner could obtain a quick profit in the amount of the bonus credit at RLNY's expense by exercising that right. Similarly, the owner could take advantage of the bonus credit by taking withdrawals within the recapture period, because the cost of providing the bonus credit is recouped through charges imposed over a period of years. Likewise, because no additional CDSC applies upon death of an owner (or annuitant), a death shortly after the award of bonus credits would afford an owner or a beneficiary a similar profit at RLNY's expense. In the event of such profits to owners or beneficiaries, RLNY could not recover the cost of granting the bonus credits. This is because RLNY intends to recoup the costs of providing the bonus credits through the charges under the Contract, particularly the daily mortality and expense risk charge and the daily administrative charge. If the profits described above are permitted, certain owners could take advantage of them, reducing the base from which the daily charges are deducted and greatly increasing the amount of bonus credits that RLNY must provide. Therefore, the recapture provisions are a price of offering the bonus credits. RLNY simply cannot offer the proposed bonus credits without the ability to recapture those credits in the limited circumstances described herein.

10. Applicants state that the Commission's authority under Section 6(c) of the Act to grant exemptions from various provisions of the Act and rules thereunder is broad enough to permit orders of exemption that cover classes of unidentified persons. Applicants request an order of the Commission that would exempt them, RLNY's successors in interest, Future Accounts and Future Underwriters from the provisions of Sections 2(a)(32) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder. The exemption of these classes of persons is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act because all of the potential members of the class could obtain the foregoing exemptions for themselves on the same basis as the Applicants, but only at a cost to each of them that is not justified by any public policy purpose. As discussed below, the requested exemptions would only extend to persons that in all material respects are the same as the Applicants.

11. Applicants represent that Future Contracts will be substantially similar in all material respects to the Contracts and that each factual statement and representation about the bonus credit provisions of the Contracts will be equally true of Future Contracts. Applicants also represent that each material representation made by them about the Account and DSI will be equally true of Future Accounts and Future Underwriters, to the extent that such representations relate to the issues discussed in this application. In particular, each Future Underwriter will be registered as a broker-dealer under the Securities Exchange Act of 1934 and be a NASD member.

Conclusion

Applicants request that the Commission issue an order pursuant to Section 6(c) of the Act exempting them as well as Future Accounts and Future Underwriters from the provisions of Sections 2(a)(32) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder, to the extent necessary to permit the recapture of certain credits applied to purchase payments made in consideration of the Contracts. Applicants submit that, for all the reasons stated above, the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–32914 Filed 12–27–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXHANGE COMMISSION

[Release No. 34–47078; File No. SR–Amex–2001–07]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change and Amendment Nos. 1, 2 and 3 Thereto by the American Stock Exchange LLC Relating to the Review of a Floor Official's Market Decision

December 20, 2002.

On February 14, 2001, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Amex Rule 22 to change the procedure for reviewing a Floor Official's market decision and to eliminate the right of appealing a Floor Official's market decision or ruling to the Board of Governors (''Board''). The Amex amended the proposed rule change on August 27, 2001 [3] and October 8, 2002.[4]

The proposed rule change and Amendment Nos. 1 and 2 thereto were published for comment in the **Federal Register** on November 15, 2002.[5] The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from William Floyd-Jones, Jr., Assistant General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated August 24, 2001, replacing Form 19b–4 in its entirety (''Amendment No. 1'').

[4] *See* letter from William Floyd-Jones, Jr., Assistant General Counsel, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated October 7, 2002, replacing Form 19b–4 in its entirety (''Amendment No. 2'').

[5] *See* Securities Exchange Act Release No. 34–46779 (November 6, 2002), 67 FR 69271.

Commission received no comments on the proposal, as amended. On December 19, 2002, the Amex filed Amendment No. 3 to the proposed rule change.[6] In Amendment No. 3, the Amex corrected a typographical error in the proposed rule text by clarifying that there would be no change to Amex Rule 22(a) through (c).

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[7] and, in particular, the requirements of Section 6 of the Act[8] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act[9] because 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, and, in general, to protect investors and the public interest.

Specifically, the Commission finds that the Amex's proposal, as amended, is a reasonable effort to ensure prompt review of Floor Officials' decisions. The Commission notes that the Amex provides for several levels of appeal of a Floor Official's decision. Further, decisions of a Floor Official made with the concurrence of a Senior Floor Official may also be appealed to a panel of three governors. The Commission believes that the process for review of Floor Officials' decisions will help to ensure that Floor Officials' decisions are fair and impartial, as well as prompt. In addition, the Commission notes that the proposed rule change, as amended, would leave unchanged any right that a member or its customer may have to submit a market dispute to arbitration.

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and rules and regulations thereunder.

[6] *See* letter from William Floyd-Jones, Jr., Assistant General Counsel, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated December 18, 2002 (''Amendment No. 3''). This was a technical amendment and is not subject to notice and comment.

[7] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(5).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[10], that the proposed rule change (File No. SR–Amex–2001–07) and Amendment Nos. 1, 2 and 3 are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–32920 Filed 12–27–02; 8:45 am]

BILLING CODE 8010–01–P

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47055; File No. SR–Amex–2002–110]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC To Increase the Maximum Number of Equity Securities Permitted To Be Linked to an ELN

December 19, 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 December 19, 2002, the American Stock Exchange LLC (''Amex'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to revise Amex Company Guide Section 107B to permit the listing and trading of notes linked to up to thirty (30) equity securities (''ELNs'').

The text of the proposed rule change is available at the Office of the Secretary, the Amex, and 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 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 IV below. The 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

On May 20, 1993, the Commission approved Section 107B of the Amex Company Guide to provide for the listing and trading of equity linked term notes (ELNs), hybrid instruments whose values are linked to the performance of highly capitalized, actively traded common stock.[3] ELNs are non-convertible debt of an issuer, whose value is based, at least in part, on the value of another issuer's common stock or non-convertible preferred stock.

Section 107B of the Amex Company Guide details the Amex's listing standards for ELNs. Specifically, Section 107B requires, among other things, that securities linked to ELNs (i) have a minimum market capitalization of $3 billion and during the 12 months preceding listing shown to have traded at least 2.5 million shares; (ii) have a minimum market capitalization of $1.5 billion and during the 12 months preceding listing shown to have traded at least 10 million shares; or (iii) have a minimum market capitalization of $500 million and during the 12 months preceding listing shown to have traded at least 15 million shares.

On March 27, 2000, the Commission granted authority to the Amex to list and trade notes linked to more than one equity security.[4] Each of the underlying securities of an ELN is required to meet the standards for linked securities set forth in Section 107B. However, the 2000 Order limited the basket of underlying securities that may be linked to an ELN to no more than twenty (20).[5] Based on the its experience over the last two (2) years, the Amex believe that the limit of twenty (20) equity securities linked to an ELN is overly restrictive. Accordingly, the Amex proposes to amend the text of Section 107B to enable ELNs to be linked to up to thirty (30) equity securities provided that each linked equity security individually

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 32343 (May 20, 1993), 58 FR 30833 (May 27, 1993) (SR–Amex–92–42).

[4] *See* Securities Exchange Act Release No. 42582 (March 27, 2000), 65 FR 17685 (April 4, 2000) (SR–Amex–99–42) (the ''2000 Order'').

[5] *See Id.*

satisfies the applicable standards set forth in Section 107B.[6]

The Amex submits that its proposal to increase the number of equity securities that may be linked to an ELN to thirty (30) will better reflect the competitive nature of attracting listings to the Amex. The Amex believes that expanding the basket of equity securities that may be linked to an ELN will enhance competition and benefit investors and the marketplace through additional product choices and alternatives. Amex also believes that there would be no investor protection concerns with expanding the number of equity securities that may be linked to an ELN from twenty (20) to thirty (30).

(2) Statutory Basis

The Amex believes that the proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5),[8] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of change, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

[6] The Amex notes that a recent proposal by UBS AG to list and trade Enhanced Appreciation Securities (the ''Notes'') on the Amex would be prohibited under current Section 107B because of the limitation of twenty (20) equity securities. These Notes, issued in amounts of $1,000 under the symbol ''EAN.B,'' will consist of a basket of thirty (30) common stocks each of which are component stocks of the Dow Jones Industrial Average (''DJIA''). Each component of the basket is equally weighted and will represent approximately 3.33% of the basket. The payment that an investor will receive at maturity is based on the return of each basket stock. For each positive return, the basket stock will be doubled subject to a maximum gain amount. Therefore, the maximum total return at maturity for each $1,000 principal amount of the Notes will be such maximum or ceiling amount. The Notes are also subject to full downside risk with a negative return reducing the cash payment at maturity. The Amex believes that the limitation of twenty (20) equity securities to be linked to an ELN such as these Notes is unduly restrictive because each linked security is highly capitalized and actively-traded. In addition, the Amex submits that it lists and trades options, exchange-traded funds and index-linked notes based on the DJIA. These Notes are essentially linked to the DJIA with a different payout scenario at maturity.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. 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 [9] and subparagraph (f)(6) of Rule 19b–4 [10] thereunder because the Amex has designated the proposed rule change as one that does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Under Rule 19b–4(f)(6)(iii) of the Act,[11] the proposed rule change does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest and the Amex is required to give the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. The Amex has requested that the Commission waive the 30-day operative date and the five-day pre-filing notice requirement in order for it to implement the proposed rule change on December 19, 2002 to allow the Amex to list and trade UBS AG Enhanced Appreciation Securities (''EAN.B'') immediately. The Commission, consistent with the protection of investors and the public interest, has determined to waive the 30-day operative period as well as the five-day pre-filing notice requirement,[12] and, therefore, the proposal is effective and operative upon filing with the Commission.

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] For purposes only of waiving the five-day pre-filing notice requirement and the 30-day operative period for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–2002–110 and should be submitted by January 21, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–32924 Filed 12–27–02; 8:45 am]

BILLING CODE 8010–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47085; File No. SR–CBOE–2002–46]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating Its AutoQuote Triggered Ebook Execution System

December 23, 2002.

On August 21, 2002, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to its AutoQuote Triggered Ebook Execution (''Trigger'') system. Notice of the proposed rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

change was published for comment in the **Federal Register** on September 30, 2002.[3] No comments were received on the proposed rule change.

The Commission originally approved the rule governing the Trigger system in 2001.[4] Trigger allows orders resting in the limit order book to be automatically executed, at their limit prices, in the limited situation where the bid or offer for a series of options generated by the Exchange's AutoQuote system (or any Exchange approved proprietary quote generation system used in lieu of the Exchange's AutoQuote system) crosses or locks the Exchange's best bid or offer for that series as established by a booked order. Such orders are executed against market makers participating in the Exchange's Retail Automated Execution System (''RAES'').[5]

In general, where Trigger has been activated, when the quote generated by Autoquote either touches or crosses an order in the book, the booked order is automatically executed up to the maximum number of contracts permitted to be entered into RAES. The applicable RAES contract limit is set by the appropriate Floor Procedure Committee (''FPC''), but may not be more than 100 contracts.[6] When the number of contracts in the book is greater than the applicable RAES contract limit, the trading crowd will manually execute the remainder. In the limited circumstance where contracts remain in the book after a Trigger execution and a disseminated quote remains locked or crossed, orders in RAES for options of that series are ''kicked-out'' of RAES, and immediately and automatically routed to the Public Automated Routing (''PAR'') terminal (absent contrary instructions of the firm) for manual execution. Because these orders remain RAES eligible, they will be entitled to receive firm quote treatment when represented in the crowd.[7]

After the Trigger rules were approved, CBOE proposed, and the Commission approved, rule changes to permit the implementation of an options quotation with size system with an automatic decrementation feature (''Dynamic Quotes with Size'').[8] Where this new system has been implemented, it has permitted the Exchange to raise the maximum eligible size for RAES orders from 100 contracts to the size disseminated by the Dynamic Quotes with Size system. The Exchange represents that in some cases, the RAES-eligible order size has been raised up to 250 contracts. The Exchange further asserts that, because the Trigger rules are tied to the RAES eligible order size, the size of booked orders that Trigger removes is now much larger than was contemplated when Trigger was first implemented in 2001.

Therefore, the Exchange proposes to amend the Trigger rule to provide that the Trigger system will automatically remove orders in the Exchange's limit order book up to the ''Trigger Volume'' amount. This amount could be lower than, but could not exceed, the RAES-eligible size for the particular series of options. The appropriate Floor Procedure Committee (''FPC'') would be responsible for setting the Trigger Volume for a particular series of options.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[9] In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,[10] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest.

The Commission believes that allowing the Trigger Volume to be set at a size up to, but not more than, the RAES-eligible order size for the particular series of options will not adversely affect the execution price of the booked orders because whether removed by Trigger or executed manually in the trading crowd, these orders may only be executed at their limit prices. The Commission points out that the proposed rule change does not alter CBOE members' duty to comply with the Commission's rule relating to the firmness of quotations.[11]

Additionally, the Commission approves the amended Trigger rule to provide that the appropriate FPC shall be responsible for setting the Trigger Volume for a particular series of options. Currently, the Trigger rule provides only that the appropriate FPC has the authority to determine those classes of options that are eligible for Trigger. The Commission believes that it is appropriate to set forth in the rule that the appropriate FPC also has the authority to set the maximum number of contracts eligible for Trigger, not to exceed the maximum size of RAES-eligible orders.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (File No. SR–CBOE–2002–46) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–32923 Filed 12–27–02; 8:45 am]

BILLING CODE 8010–01–P

[3] *See* Securities Exchange Act Release No. 46519 (September 20, 2002), 67 FR 61358 (September 30, 2002).

[4] *See* Securities Exchange Act Release No. 44462 (June 21, 2001), 66 FR 34495 (June 28, 2001). *See also* Securities Exchange Act Release No. 45992 (May 29, 2002), 67 FR 38530 (June 4, 2002) (approving SR–CBOE–2002–12).

[5] CBOE Rule 6.8(d).

[6] CBOE Rule 6.8(c)(v).

[7] CBOE Rule 6.8(d)(v); *see* Securities Exchange Act Release No. 44462 (June 21, 2002), 66 FR 34495 (June 28, 2002) (approving implementation of Trigger system).

[8] *See* Securities Exchange Act Release No. 45676 (March 29, 2002), 67 FR 16478 (April 5, 2002) (approval); Securities Exchange Act Release No. 45490 (March 1, 2002), 67 FR 10778 (March 8, 2002) (proposal).

[9] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78(c)(f).

[10] 15 U.S.C. 78f(b)(5).

[11] 17 CFR 240.11Ac1–1.

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47068; File No. SR–CHX–2002–37]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Execution of Limit Orders Following Primary Market Block-Size Trade-Through

December 20, 2002

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 11, 2002, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6)[4] thereunder,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend certain provisions of CHX Article XX, Rule 37(a)(3), which governs, among other things, execution of limit orders in a CHX specialist's book following a trade-through in the primary market. Specifically, the CHX seeks to add a provision that would permit, but not require, a CHX specialist to enable a functionality that would automatically execute designated limit orders represented in the specialist's quotation, following a ''block size'' [5] trade-through in the primary market, at the block price instead of the limit price. The text of the proposed rule change is available at the Commission and at the CHX.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change would permit a CHX specialist to enable a functionality that would automatically execute designated limit orders represented in the specialist's quotation, following a ''block size'' trade-through in the primary market, at the block price instead of the limit price.

Under existing Exchange rules relating to listed securities, whenever a block trade in the primary market trades through a specialist's quote, the specialist must execute all limit orders in the book (that are priced at the block price or better) at the better block price, rather than at their less-favorable limit prices.[6] This requirement protects resting customer limit orders against large trade-throughs in the primary market.

At the time a trade-through occurs, however, it is impossible to determine whether it qualifies as a ''block trade.''[7] For that reason, the Exchange's systems have been designed to automatically execute resting customer limit orders at their limit prices; CHX specialists must later correct those prices to the better block price, if they have determined that a block trade occurred.

This practice of correcting execution prices, even when it results in a better execution for the customer, is a large inconvenience to some key CHX order-sending firms. These electronically sophisticated firms must send out two trade confirmations to each customer—one that is generated as soon as the trade occurs and a second to reflect the corrected execution price.

To accommodate CHX order-sending firms, the proposed rule change would permit, but not require, a CHX specialist to enable a functionality that would automatically execute designated limit orders when a block-size trade-through occurs in the primary market *at the block price.* We anticipate that the use of this functionality will result in a dramatic reduction of price corrections and, thus, will provide better customer service to some of the Exchange's key order-sending firms.

In addition to adding the optional functionality detailed above, the proposed rule change would relocate the existing provision currently located in Article XX, Rule 7.06 to Article XX, Rule 37(a)(3) of the CHX Rules, which governs execution of limit orders in a CHX specialist's book when certain conditions occur in the primary market. It is important to note that the proposed rule change does not seek to modify a CHX specialist's execution obligations whatsoever. Rather, it represents the Exchange's attempt to address the concerns of its order-sending firms by providing CHX specialists with a functionality that they can utilize to meet their obligations automatically, instead of by means of the manual price correction procedure currently used. Moreover, the proposed functionality would only permit a CHX specialist to designate an order for automatic execution based on objective criteria such as the size of the order. For this reason, as set forth below, the Exchange believes that immediate effectiveness of the rule change is amply warranted.

The Exchange intends to allow its specialists to begin using this new functionality floor-wide on January 2, 2003; a pilot version of the functionality likely will be tested in a limited number of issues beginning the week of December 16, 2002.

2. Statutory Basis

The CHX believes the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[8] The CHX believes the proposal is consistent with Section 6(b)(5) of the Act [9] in that it is designed to promote just and equitable principles of trade, to remove impediments, and to perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement of Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6)[11] thereunder because the proposal: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may

[5] A ''block size trade'' means a trade that involves 10,000 or more shares of a Dual Trading System (*i.e.*, listed) issue, or having a market value of $200,000 or more.

[6] *See* CHX Article XX, Rule 7.06.

[7] A block trade is a trade that involves (a) a trade of ''block size'' (10,000 shares or more, or with a market value of $200,000 or more); and (b) either (i) a cross of block size (where a single firm represents all of one side of the transaction and all or a portion of the other side) or (ii) any other transaction where a single firm represents an order of block size on only one side of the transaction, so long as the transaction does not occur at the Exchange's current bid or offer. At the time a transaction occurs on another market, the CHX can determine whether it is a *block size trade*; the CHX does not yet know, however, which firms were on which sides of the transaction and therefore cannot determine whether it meets the other requirements of a *block trade.*

[8] 15 U.S.C. 78(f)(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

designate if consistent with the protection of investors and the public interest; provided that the Exchange has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate, in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Exchange has requested that the Commission accelerate the operative date. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[12] The Commission believes that acceleration of the operative date will allow the Exchange to implement this new automatic functionality floor-wide on January 2, 2002 and to permit a pilot version of the functionality to be tested beginning the week of December 16, 2002. For these reasons, the Commission designates this proposal as both effective and operative upon filing with the Commission.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–2002–37 and should be submitted by January 21, 2003.

[12] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–32916 Filed 12–27–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47075; File No. SR–ISE–2002–29]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by International Securities Exchange, Inc., Relating to Fee Changes

December 20, 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 December 16, 2002, the International Securities Exchange, Inc. (''Exchange'' or ''ISE'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. On December 20, 2002, the Exchange submitted Amendment No. 1 to the proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to establish a $.10 surcharge for non-Public Customer transactions in options on certain exchange traded funds (''ETFs'') based on indexes developed by the Frank Russell Company (''Russell'').

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Michael J. Simon, Senior Vice President and General Counsel, ISE, to Nancy J. Sanow, Assistant Direction, Division of Market Regulation, Commission, dated December 20, 2002 (''Amendment No. 1''). In Amendment No. 1, the Exchange amended the schedule of fees to list the specific ETFs based on indexes developed by the Frank Russell Company that ISE either has listed or have been allocated to a Primary Market Maker and will soon be listed for trading. The Exchange also clarified the fee schedule by stating that public customer orders are exempted from the proposed fee. The Commission notes that this is consistent with the manner in which the fee has been imposed with respect to options on the Nasdaq 100 Index Tracking Stock and the Nasdaq Biotechnology Index, and represents only a change in terminology.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has entered into a license agreement to use various indexes and trademarks of Russell in connection with the listing and trading of options on certain ETFs based on Russell indexes. The purpose of this proposed rule change is to adopt a fee for trading in five of these options that the ISE either has listed or have been allocated to a Primary Market Maker and will soon be listed for trading.[4] The ISE believes that charging the participants that trade in options on these instruments is the most equitable means of recovering the costs of the license. However, because competitive pressures in the industry have resulted in the waiver of all transaction fees for customer transactions, we do not propose to charge this additional fee with respect to customer transactions. Specifically, Public Customer Orders will be exempted from the proposed surcharge.[5]

This fee would be charged to the executing member of the ISE if the order is for the account of a broker-dealer. For example, if broker A has a Public Customer Order that broker A gives to broker B (an ISE electronic access member) to execute on the ISE, broker B will not be charged the proposed $.10 fee. On the other hand, if broker A gives broker B (an ISE electronic access

[4] The proposed fee will apply to options on the following ETFs: Russell 2000 iShares, Russell 2000 Value iShares, Russell 2000 Growth iShares, Russell 1000 Growth iShares, and Russell 1000 Value iShares.

[5] Under ISE Rule 100, a Public Customer is a person that is not a broker or dealer in securities, and a Public Customer Order is an order for the account of a Public Customer. Accordingly the execution of orders for the account of a non-broker-dealer will not be subject to the proposed $.10 fee. All other orders, *i.e.*, orders for the account of a broker-dealer, will be subject to the proposed fee.

member) an order for the account of broker A (or another broker-dealer), broker B will be charged the $.10 fee.

2. Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(4) of the Act that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.[6]

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing amended rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(2)[8] thereunder. At any time within 60 days of the filing of such amended proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the 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 Section. Copies of such filing will also be available for inspection and copying at the principal office of the ISE. All submissions should refer to File No. SR–ISE–2002–29 and should be submitted by January 21, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–32917 Filed 12–27–02; 8:45 am]

BILLING CODE 8010–01–P

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 19b–4(f)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47054; File No. SR–NASD–2002–171]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to NASD's Minor Rule Violation Plan

December 19, 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 29, 2002 the National Association of Securities Dealers, Inc. (''NASD'') filed a proposed rule change with the Securities and Exchange Commission (''SEC'' or ''Commission''). The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the NASD. The NASD filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend Interpretative Material 9216 (''IM–9216'') to clarify that a failure to timely file annual audit reports is eligible for disposition under the NASD's Minor Rule Violation Plan (''MRVP'' or the ''Plan''). The text of the proposed rule change is available at the office of the secretary of the NASD, 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 NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to clarify that a failure to timely file annual audit reports is appropriate for disposition under the NASD's MRVP. As described in more detail herein, the NASD believes that the current rule language in IM–9216 referring to Rule 17a–5 under the Act does not clearly reflect that a failure to timely file annual audit reports is included in the NASD's MRVP.

In 1984, the SEC adopted amendments to Rule 19d–1(c) under the Act[5] to allow self-regulatory organizations to adopt, with SEC approval, plans for the disposition of minor violations of rules.[6] In 1993, pursuant to Rule 19d–1(c), the NASD established an MRVP,[7] which is currently set forth in NASD Rule 9216. In 2001, the SEC approved amendments to the NASD's MRVP.[8]

NASD Rule 9216(b) authorizes the NASD to impose a fine of $2,500 or less on any member or associated person of a member for a violation of any of the rules specified in NASD IM–9216. The number and seriousness of the violations, as well as the previous disciplinary history of the respondent, is reviewed to determine if a matter is

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] 17 CFR 240.19d–1(c).

[6] *See* Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23833 (June 8, 1984).

[7] *See* Securities Exchange Act Release No. 32076 (March 31, 1993), 58 FR 18291 (April 8, 1993). *See also Notice to Members* 93–42 (July 1993).

[8] *See* Securities Exchange Act Release No. 44512 (July 3, 2001), 68 FR 36812 (July 13, 2001).

appropriate for disposition under the MRVP and to determine the amount of the fine. Once the NASD has brought a minor violation of a rule against an individual or member firm, the NASD may, at its discretion, issue progressively higher fines for all subsequent minor violations of rules within the next 24-month period or initiate more formal disciplinary proceedings.

The purpose of the MRVP is to provide for a meaningful sanction for the minor or technical violation of a rule when the initiation of a disciplinary proceeding through the formal complaint process would be more costly and time-consuming than would be warranted. Inclusion of a rule in the NASD's MRVP does not mean it is an unimportant rule; rather, a minor or technical violation of the rule may be appropriate for disposition under the MRVP. The NASD retains the discretion to bring full disciplinary proceedings.

As stated above, in 2001, the NASD amended the MRVP to include additional violations. One of these violations is listed in IM–9216 as ''SEC Exchange Act Rule 17a–5—failure to timely file FOCUS reports.'' In the Notice of Filing of Proposed Rule Change adding SEC Rule 1a-5 to the NASD's MRVP, the SEC, referring to language in the NASD's filing, stated that the NASD ''proposes to institute minor rule violations for failure of a member to timely file monthly, quarterly, and annual reports required by SEC Rule 17a–5, also known as FOCUS reports.'' [9] Rule 17a–5 requires that firms file both FOCUS reports and annual audit reports; however, for purposes of the NASD's MRVP, an annual audit report currently is defined as being included in the term ''FOCUS reports.'' As a result, the NASD believes that the MRVP may not clearly reflect that a failure to timely file annual audit reports, as well as FOCUS reports, under Rule 17a–5 is proper for disposition as a minor rule violation. The NASD therefore is proposing this rule change to clarify that a failure to timely file annual audit reports is encompassed within the MRVP.

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,[10] which requires, among other things, that the NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The NASD believes that this proposed rule change is necessary to clarify that a failure to timely file annual audit reports is included in the NASD's MRVP.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to section 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(6) [12] thereunder because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which the proposed rule change was filed, or such shorter time as the Commission may designate. At any time within 60 days of the filing of a rule change pursuant to section 19(b)(3)(A) of the Act,[13] 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.

As required, the NASD filed its notice of intent to file the proposed rule change on November 12, 2002. The NASD also requested that the Commission waive the 30-day operative date. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the NASD to continue to proceed under its MRVP for failure to file annual audit reports without interruption. Thus, the foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act [14] and subparagraph (f)(6) of Rule 19b–4.[15] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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 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 NASD. All submissions should refer to the File No. SR–NASD–2002–171 and should be submitted by January 21, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–32915 Filed 12–27–02; 8:45 am]

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[9] *See* Securities Exchange Act Release No. 43330 (September 22, 2000), 65 FR 58585 (September 29, 2000). This statement is also repeated in *Notice to Members* 01–54 (August 2001), which announced the SEC approval order.

[10] 15 U.S.C. 78o-3(b)(6).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4.

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47077; File No. SR–NASD–2002–115]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Regarding an Amendment to Nasdaq's Transaction Credit Program for Exchange-Listed Securities to Allocate Credits to Liquidity Providers

December 20, 2002.

On August 19, 2002, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to modify Nasdaq's transaction credit program for exchange-listed securities[3] to allocate credits to liquidity providers. The proposed rule change was published for notice and comment in the **Federal Register** on November 19, 2002.[4]

The Commission received one comment on the proposed rule change.[5] This order approves the proposed rule change.

As set forth in its July 2, 2002 Order of Summary Abrogation (''Abrogation Order''),[6] the Commission will continue to examine the issues surrounding market data fees, the distribution of market data rebates, and the impact of market data revenue sharing programs on both the accuracy of market data and on the regulatory functions of self-regulatory organizations. In the interim, the Commission believes it is reasonable to allow Nasdaq to amend its transaction credit program for exchange-listed securities to allocate credits to liquidity providers. To the extent that the Abrogation Order was prompted by evidence that entities were engaging in conduct with no economic benefit other than to capture market data fees, Nasdaq's proposal to allocate credits to liquidity providers may remove some of the incentives for engaging in such behavior.

The Commission has reviewed carefully the proposed rule change and the comment letter, and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association[7] and, in particular, the requirements of Section 15A of the Act.[8] Specifically, the Commission finds that the proposed rule change is consistent with Section 15A(b)(5) of the Act[9] which requires the rules of a national securities association to provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls.

The decision to allow Nasdaq to make these adjustments to its transaction credit program for exchange-listed securities, however, is narrowly drawn, and should not be construed as resolving the issues raised in the Abrogation Order, and does not suggest what, if any, future actions the Commission may take with regard to market data revenue sharing programs.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–NASD–2002–115) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–32919 Filed 12–27–02; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Nasdaq's transaction credit program for exchange-listed securities was a pilot at the time Nasdaq filed the instant proposed rule change. The program is now permanent. *See* Securities Exchange Act Release No. 46938 (December 3, 2002), 67 FR 72993 (December 10, 2002) (SR–NASD–2002–149) (approving proposal to make permanent Nasdaq's transaction credit pilot program for exchange-listed securities, and to increase the percentage of revenue available for distribution from 40% to 50%).

[4] *See* Securities Exchange Act Release No. 46806 (November 8, 2002), 67 FR 69780.

[5] *See* December 10, 2002 letter from Darla C. Stuckey, Corporate Secretary, New York Stock Exchange, Inc. (''NYSE'') to Jonathan G. Katz, Secretary, Commission (''NYSE Letter''). The NYSE Letter does not specifically address the instant proposed rule change, but instead expresses the NYSE's general opposition to market data revenue sharing programs. Therefore, the Commission has not included a detailed summary of comments in this order. The NYSE Letter is available at the Commission. The Commission did not ask Nasdaq to respond to the NYSE Letter.

[6] Securities Exchange Act Release No. 46159 (July 2, 2002), 67 FR 45775 (July 10, 2002) (File Nos. SR–NASD–2002–61, SR–NASD–2002–68, SR–CSE–2002–06, and SR–PCX–2002–37) (Order of Summary Abrogation).

[7] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78o–3.

[9] 15 U.S.C. 78o–3(b)(5).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47080; File No. SR–NASD–2002–134]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Exemptions From Options Position and Exercise Limits

December 23, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 1, 2002, the National Association of Securities Dealers, Inc. (''NASD'') 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 NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to amend Rule 2860(b)(3)(A) of the Conduct Rules of NASD, relating to options position and exercise limits for positions entered into under certain enumerated hedge strategies.

Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

2860. Options

(a) No Change

(b) Requirements

(1) and (2) (No Change)

(3) Position Limits[3]

(A) Stock Options—Except in highly unusual circumstances, and with the prior written approval of [the Association] *NASD* pursuant to the Rule 9600 Series for good cause shown in each instance, no member shall effect for any account in which such member has an interest, or for the account of any partner, officer, director or employee thereof, or for the account of any customer, non-member broker, or non-

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission notes that it made typographical changes to the rule text submitted in the proposed rule change. NASD has committed to submitting an amendment reflecting those changes. Telephone conversation between Gary Goldsholle, Office of General Counsel, NASD and Tim Fox, Law Clerk, Division of Market Regulation (''Division''), Commission on December 20, 2002.

member dealer, an opening transaction through Nasdaq, the over-the-counter market or on any exchange in a stock option contract of any class of stock options if the member has reason to believe that as a result of such transaction the member or partner, officer, director or employee thereof, or customer, non-member broker, or non-member dealer, would, acting alone or in concert with others, directly or indirectly, hold or control or be obligated in respect of an aggregate equity options position in excess of:

(i) 13,500 option contracts of the put class and the call class on the same side of the market covering the same underlying security, combining for purposes of this position limit long positions in put options with short positions in call options, and short positions in put options with long positions in call options; or

(ii) 22,500 option[s] contracts of the put class and the call class on the same side of the market covering the same underlying security, providing that the 22,500 contract position limit shall only be available for option contracts on securities [which] *that* underlie Nasdaq or exchange-traded options qualifying under applicable rules for a position limit of 22,500 option contracts; or

(iii) 31,500 option contracts of the put class and the call class on the same side of the market covering the same underlying security providing that the 31,500 contract position limit shall only be available for option contracts on securities [which] *that* underlie Nasdaq or exchange-traded options qualifying under applicable rules for a position limit of 31,500 option contracts; or

(iv) 60,000 option[s] contracts of the put and the call class on the same side of the market covering the same underlying security, providing that the 60,000 contract position limit shall only be available for option contracts on securities [which] *that* underlie Nasdaq or exchange-traded options qualifying under applicable rules for a position limit of 60,000 option contracts; or

(v) 75,000 option[s] contracts of the put and the call class on the same side of the market covering the same underlying security, providing that the 75,000 contract position limit shall only be available for option contracts on securities [which] *that* underlie Nasdaq or exchange-traded options qualifying under applicable rules for a position limit of 75,000 option contracts; or

(vi) such other number of stock option[s] contracts as may be fixed from time to time by [the Association] *NASD* as the position limit for one or more classes or series of options provided that reasonable notice shall be given of each new position limit fixed by [the Association] *NASD*.

(vii) Equity Option Hedge Exemptions

a. *The following qualified hedge strategies and positions described in subparagraphs 1. through 5. below shall be exempt from the established position limits under this rule for standardized options. Hedge strategies and positions described in subparagraphs 6. and 7. below in which one of the option components consists of a conventional option, shall be subject to a position limit of five times the established position limits contained in subparagraphs (i) through (vi) above. Hedge strategies and positions in conventional options as described in subparagraphs 1. through 5. below shall be subject to a position limit of five times the established limits contained in subparagraphs (i) through (vi) above. Options positions limits established under this subparagraph shall be separate from limits established in other provisions of this rule.*

1. Where each option contract is ''hedged'' or ''covered'' by 100 shares of the underlying security or securities convertible into the underlying security, or, in the case of an adjusted option, the same number of shares represented by the adjusted contract: (a) Long call and short stock; (b) short call and long stock; (c) long put and long stock; or (d) short put and short stock.

2. Reverse Conversions—A long call position accompanied by a short put position, where the long call expires with the short put, and the strike price of the long call and short put is equal, and where each long call and short put position is hedged with 100 shares (or other adjusted number of shares) of the underlying security or securities convertible into such underlying security.

3. Conversions—A short call position accompanied by a long put position where the short call expires with the long put, and the strike price of the short call and long put is equal, and where each short call and long put position is hedged with 100 shares (or other adjusted number of shares) of the underlying security or securities convertible into such underlying security.

4. Collars—A short call position accompanied by a long put position, where the short call expires with the long put, and the strike price of the short call equals or exceeds the strike price of the long put position and where each short call and long put position is hedged with 100 shares (or other adjusted number of shares) of the underlying security or securities convertible into such underlying security. Neither side of the short call/long put position can be in-the-money at the time the position is established.

5. Box Spreads—A long call position accompanied by a short put position with the same strike price and a short call position accompanied by a long put position with a different strike price.

6. Back-to-Back Options—A listed option position hedged on a one-for-one basis with an over-the-counter (OTC) option position on the same underlying security. The strike price of the listed option position and corresponding OTC option position must be within one strike price interval of each other and no more than one expiration month apart.

7. For reverse conversion, conversion and collar strategies set forth above in subparagraphs 2., 3. and 4., one of the option components can be an OTC option guaranteed or endorsed by the firm maintaining the proprietary position or carrying the customer account.

[a. The following positions, where each option contract is ''hedged'' by 100 shares of stock or securities readily convertible into or economically equivalent to such stock, or, in the case of an adjusted option contract, the same number of shares represented by the adjusted contract, shall be exempted from established limits contained in paragraphs (i) through (vi) above:]

[1. long call and short stock;]

[2. short call and long stock;]

[3. long put and long stock;]

[4. short put and short stock.]

[b. Except as provided under OTC Collar Exemption contained in subparagraph (b)(3)(A)(viii), in no event may the maximum allowable position, inclusive of options contracts hedged pursuant to the equity option position limit hedge exemption in subparagraph a. above, exceed three times the applicable position limit established in subparagraph (b)(3)(A)(i) through (v) with respect to standardized equity options, or paragraph (b)(3)(A)(ix) with respect to conventional equity options.]

[(viii) OTC Collar Aggregation Exemption]

[a. For purposes of this paragraph (b), the term OTC collar shall mean a conventional equity option position comprised of short (long) calls and long (short) puts overlying the same security that hedge a corresponding long (short) position in that security.]

[b. Notwithstanding the aggregation provisions for short (long) call positions and long (short) put positions contained in subparagraphs (b)(3)(A)(i) through (v) above, the conventional options positions involved in a particular OTC collar transaction need not be

aggregated for position limit purposes, provided the following conditions are satisfied:]

[1. the conventional options can only be exercised if they are in-the-money;]

[2. neither conventional option can be sold, assigned, or transferred by the holder without the prior written consent of the writer;]

[3. the conventional options must be European-style (*i.e.*, only exercisable upon expiration) and expire on the same date;]

[4. the strike price of the short call can never be less than the strike price of the long put; and]

[5. neither side of any particular OTC collar transaction can be in-the-money when that particular OTC collar is established.]

[6. the size of the conventional options in excess of the applicable basic position limit for the options established pursuant to subparagraph (b)(3)(A)(ix) must be hedged on a one-to-one basis with the requisite long or short stock position for the duration of the collar, although the same long or short stock position can be used to hedge both legs of the collar.]

[c. For multiple OTC collars on the same security meeting the conditions set forth in subparagraph b. above, all of the short (long) call options that are part of such collars must be aggregated and all of the long (short) put options that are part of such collars must be aggregated, but the short (long) calls need not be aggregated with the long (short) puts.]

[d. Except as provided above in subparagraphs b. and c., in no event may a member fail to aggregate any conventional options contract of the put class and the call class overlying the same equity security on the same side of the market with conventional option positions established in connection with an OTC collar.]

[e. Nothing in this subparagraph (b)(3)(A)(viii) changes the applicable position limit for a particular equity security.]

[(ix)]*(viii)* Conventional Equity Options

a. For purposes of [sub]paragraph (b), standardized equity option[s] contracts of the put class and call class on the same side of the market overlying the same security shall not be aggregated with conventional equity option[s] contracts or FLEX Equity Option[s] contracts overlying the same security on the same side of the market. Conventional equity option[s] contracts of the put class and call class on the same side of the market overlying the same security shall be subject to a position limit equal to the greater of:

1. the basic limit of 13,500 contracts, or

2. any standardized equity options position limit as set forth in [sub]paragraphs (b)(3)(A)(ii) through (v) for which the underlying security qualifies or would be able to qualify.

a. In order for a security not subject to standardized equity options trading to qualify for an options position limit of more than 13,500 contracts, a member must first demonstrate to *NASD's* [the Association's] Market Regulation Department that the underlying security meets the standards for such higher options position limit and the initial listing standards for standardized options trading.

(B) No Change

(4) through (24) No Change

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change amends NASD's options position and exercise limits. Earlier this year, the Commission approved changes to the rules of the options exchanges that eliminated standardized equity option [4] position and exercise limits for certain qualified hedge strategies and established position and exercise limits of *five* times the standard limit for certain of those strategies when they include an over-the-counter (OTC) option contract.[5] NASD is proposing changes to substantially conform its rules to those of the options exchanges.

The proposed rule change establishes six qualified hedge strategies:

1. Where each option contract is ''hedged'' or ''covered'' by 100 shares of the underlying [6] security or securities convertible into the underlying security, or, in the case of an adjusted option, the same number of shares represented by the adjusted contract: (a) long call and short stock; (b) short call and long stock; (c) long put and long stock; or (d) short put and short stock.

2. Reverse Conversions—A long call position accompanied by a short put position, where the long call expires with the short put, and the strike price of the long call and short put is equal, and where each long call and short put position is hedged with 100 shares (or other adjusted number of shares) of the underlying security or securities convertible into such underlying security.

3. Conversions—A short call position accompanied by a long put position where the short call expires with the long put, and the strike price of the short call and long put is equal, and where each short call and long put position is hedged with 100 shares (or other adjusted number of shares) of the underlying security or securities convertible into such underlying security.

4. Collars—A short call position accompanied by a long put position, where the short call expires with the long put and the strike price of the short call equals or exceeds the strike price of the long put position and where each short call and long put position is hedged with 100 shares (or other adjusted number of shares) of such the underlying security or securities convertible into such underlying security. Neither side of the short call/long put position can be in-the-money at the time the position is established.

5. Box Spreads—A long call position accompanied by a short put position with the same strike price and a short call position accompanied by a long put position with a different strike price.

6. Back-to-Back Options—A listed option position hedged on a one-for-one basis with an OTC option position on the same underlying security. The strike price of the listed option position and corresponding OTC option position must be within one strike price interval

[4] A standardized equity option contract is any equity options contract issued, or subject to issuance by, the Options Clearing Corporation that is not a FLEX Equity Option. NASD Rule 2860(b)(2)(vv).

[5] *See* Securities Exchange Act Release No. 45603 (March 20, 2002), 67 FR 14751 (March 27, 2002) (CBOE–2000–12); Securities Exchange Act Release No. 45650 (March 26, 2002), 67 FR 15638 (Apr. 2, 2002) (AMEX–2001–71); Securities Exchange Act Release No. 45737 (April 11, 2002), 67 FR 18975 (Apr. 17, 2002) (PCX–2000–45); Securities Exchange Act Release No. 45899 (May 9, 2002), 67 FR 34980 (May 16, 2002) (PHLX–2002–33); and Securities Exchange Act Release No. 46228 (July 18, 2002), 67 FR 48689 (July 25, 2002) (ISE–2002–15).

[6] NASD represents that the phrase ''securities convertible into the underlying security'' does not include single stock futures products. Telephone Conversation between Gary Goldsholle, Office of General Counsel, NASD and Tim Fox, Law Clerk, Division, Commission on December 6, 2002.

of each other and no more than one expiration month apart.

Under the proposed rule change, there would be no position and exercise limits when such qualified hedge strategies are effected solely with standardized equity options. In addition, the proposed rule change establishes standardized equity option position and exercise limits of five times the standard limit when one component of such strategies is an OTC option contract.

Further, within the list of proposed hedge strategies, NASD proposes that the option component of a reversal, a conversion or a collar position can be treated as one contract rather than as two contracts. NASD believes that all three strategies serve to hedge a related stock portfolio. Because these strategies require the contemporaneous purchase/sale of both a call and put component, against the appropriate number of shares underlying the option (generally 100 shares), NASD believes, like the options exchanges, that the position should be treated as one contract for hedging purposes.

NASD currently establishes position and exercise limits on conventional [7] equity options.[8] The NASD's position limits for conventional equity options are identical to those for standardized options.[9] Moreover, like position and exercise limits for standardized equity options, NASD recognizes certain hedge strategies under which persons can establish greater options positions. NASD currently has an equity option hedge exemption [10] and an OTC collar aggregation exemption.[11] Under the current equity option hedge exemption, a person can establish a conventional equity options position of three times the standard position limit. Under the OTC collar aggregation exemption, a person can establish a conventional equity options position of *three* times the standard position limit for each side of the OTC collar.

The proposed rule change modifies the conventional equity options position and exercise limits in several respects. First, the proposed rule change expands the hedge exemption for conventional options to include all of the qualified hedge strategies. NASD believes that covered stock positions, conversions, reverse conversions, collars,[12] and box spreads may all be effected with conventional options. Moreover, NASD believes that having one set of hedge strategies applicable to standardized and conventional options will simplify members' compliance burdens.

Second, the proposed rule change increases the conventional equity options position and exercise limits for such qualified hedge strategies to five times the standard limits. NASD believes that this change makes NASD's conventional equity options position limits consistent with the limits for OTC options under the options exchange's hedge exemptions. NASD's increased conventional options position limits also will apply when not part of a standardized option hedge. According to NASD, this change avoids having different conventional equity options position and exercise limits apply depending on whether a position is hedged by a standardized or conventional option.

Third, the proposed rule change provides that conventional equity options positions under the hedge strategies not be aggregated with other options positions similar to the way that positions under the current equity option hedge exemption and OTC collar aggregation exemption are not aggregated with other options positions.

NASD believes that rationales articulated by the Commission in its prior approval of similar rule changes by the options exchanges apply equally to the proposed rule change.[13] It is NASD's view that position and exercise limits serve as a regulatory tool designed to address potential manipulative schemes and adverse market impact surrounding the use of options. According to NASD, the Commission has taken a gradual, evolutionary approach toward expansion of position and exercise limits. NASD believes that the Commission has been careful to balance two competing concerns when considering the appropriate level at which to set position and exercise limits. According to NASD, the Commission has recognized that the limits must be sufficient to prevent investors from disrupting the market in the underlying securities. At the same time, it is NASD's view that the Commission has determined that limits must not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs. NASD believes that the proposed rule change is consistent with these Commission policies.

Under the proposed rule change, the standard position and exercise limits will remain in place for unhedged equity options positions. Once an account reaches the standard limit, positions identified as a qualified hedge strategy would be subject to the increased position limits, or exempted from position limit calculations, as appropriate. The exemption would be automatic (*i.e.*, it will not require pre-approval from NASD) to the extent that a member identifies that a pre-existing qualified strategy is in place or is employed from the point that an account's position reaches the standard limit and provides the required supporting documentation to NASD.[14] The exemption would remain in effect to the extent that the exempted position remains intact and NASD is provided with any required supporting documentation.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[15] in general and with Section 15A(b)(6) of the Act,[16] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD also believes that the proposed rule change is necessary to keep NASD's rules consistent with similar rules of Options Exchanges approved by the Commission.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[7] A ''conventional option'' is any option contract not issued, or subject to issuance, by the Options Clearing Corporation. NASD Rule 2860(b)(2)(N).

[8] NASD notes that the terms ''conventional'' and ''OTC'' options have identical meanings for the purposes of this proposed rule change. Telephone conference among Gary Goldsholle, Office of General Counsel, NASD, Susie Cho, Special Counsel, Division, Commission, and Tim Fox, Law Clerk, Division, Commission on November 14, 2002.

[9] NASD Rule 2860(b)(3)(A)(ix).

[10] NASD Rule 2860(b)(3)(A)(vii).

[11] NASD Rule 2860(b)(3)(A)(viii).

[12] NASD Rule 2860(b)(3)(viii) currently provides for a collar exemption. For purposes of clarity and consistency, NASD proposes adopting the collar exemption developed by the Options Exchanges in place of its existing collar exemption.

[13] *See supra* note 4.

[14] Under the proposed rule change, the existing reporting procedures that serve to identify and document hedged positions above a certain threshold continue to apply. Paragraph (b)(5) of NASD Rule 2860 requires reporting to NASD of aggregate positions of 200 more contracts of the put class and the call class on the same side of the market covering the same underlying security.

[15] 15 U.S.C. 78*o*–3.

[16] 15 U.S.C. 78*o*–3(b)(6).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the NASD consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the NASD.

All submissions should refer to File No. SR–NASD–2002–134 and should be submitted by January 21, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–32921 Filed 12–27–02; 8:45 am]

BILLING CODE 8010–01–P

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47076; File No. SR–NYSE–2002–65]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Regarding the Extension of the Pilot Programs for Mediation and Administrative Conferences

December 20, 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 December 19, 2002, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend its pilot programs for mediation and administrative conferences (NYSE Rules 638 and 639) that expire on December 31, 2002. The Exchange has separately requested that the rules for Mediation and Administrative Conferences, as amended, (''the amended pilots'') be adopted by way of its filing SR–NYSE–2002–59. An extension of the present pilots is needed pending the Commission's action on the amended rules.

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 NYSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On November 19, 1998, the Commission approved a two-year pilot program for mediation and administrative conferences in the Exchange's arbitration facility.[3] On December 20, 2000, the Commission approved amendments to the two pilot rules and granted a 2-year extension.[4] The pilot mediation program is intended to allow parties to settle cases earlier with lower costs. The administrative conference allows arbitrators to intervene early in the case to set deadlines and resolve preliminary procedural issues. On November 4, 2002, the Exchange filed a proposal with the Commission to adopt as amended the rules for mediation and administrative conferences.[5] The Exchange proposes to extend through January 31, 2003, its pilot program for mediation and administrative conferences (Rules 638 and 639) currently scheduled to expire on December 31, 2002. The Exchange has separately proposed in SR–NYSE–2002–59 to amend and revise Rules 638 (Mediation) and 639 (Administrative Conferences). An extension of the present pilot is needed pending the Commission's actions on its request.

While the Exchange believes it is appropriate to replace the pilot programs with the Rules proposed in SR–NYSE–2002–59, to maintain continuity pending the Commission's action an extension of the pilots to January 31, 2003 is warranted. By this filing, the Exchange is not seeking to modify the present pilot programs.

2. Statutory Basis

The Exchange believes that proposed changes are consistent with Section 6(b)(5) of the Act in that they promote just and equitable principles of trade by insuring that members and member organizations and the public have a fair and impartial forum for the resolution of their disputes.

[3] *See* Securities Exchange Act Release No. 34–40695 (November 19, 1998); 63 FR 65834 (November 30, 2000), (SR–NYSE–98–27).

[4] *See* Securities Exchange Act Release No. 34–43785 (December 29, 2000); 66 FR 1710 (January 9, 2001), (SR–NYSE–00–39).

[5] *See* Securities Exchange Act Release No. 34–47025 (December 18, 2002) (File No. SR–NYSE–2002–59).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [6] and subparagraph (f)(6) of Rule 19b–4 thereunder.[7]

The Commission notes that under Rule 19b–4(f)(6)(iii), the proposal does not become operative for 30 days after date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange requested a waiver of this 30-day period to extend the pilot programs before they are due to expire on December 31, 2002. The Commission believes that the waiver of the 30-day period is consistent with the protection of investors and the public interest.[8]

At any time within 60 days of the filing of the proposed rule change, as amended, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–2002–65 and should be submitted by January 21, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–32918 Filed 12–27–02; 8:45 am]

BILLING CODE 8010–01–P

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6).

[8] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47084; File No. SR–NYSE–2002–67]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Extending the Pilot Regarding Shareholder Approval of Stock Option Plans through February 28, 2003, or Such Earlier Date as the NYSE's Pending Rule Proposal Requiring Shareholder Approval of Equity-Compensation Plans Is Approved by the Commission

December 23, 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 December 20, 2002, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend until February 28, 2003, or such earlier date as the NYSE's pending rule proposal requiring shareholder approval of equity-compensation plans [3] is approved by the Commission, the effectiveness of the amendments to Sections 312.01, 312.03 and 312.04 of the Exchange's Listed Company Manual with respect to the definition of a ''broadly-based'' stock option plan, which were approved by the Commission on a pilot basis (the ''Pilot'') on June 4, 1999.[4] The Pilot was subsequently amended and extended on March 30, 2001 until September 30, 2001.[5] The Pilot has since been extended until January 11, 2002,[6] March 11, 2002,[7] May 13, 2002,[8] June 30, 2002,[9] August 31, 2002,[10] October 30, 2002,[11] and December 30, 2002.[12]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set

[3] *See* Securities Exchange Act Release No. 46620 (October 8, 2002), 67 FR 63486 (October 11, 2002) (File No. SR–NYSE–2002–46).

[4] *See* Securities Exchange Act Release No. 41479, 64 FR 31667 (June 11, 1999) (notice of filing and order granting accelerated approval, on a pilot basis, to File No. SR–NYSE–98–32) (''Original Pilot Approval Order'').

[5] *See* Securities Exchange Act Release No. 44141, 66 FR 18334 (April 6, 2001) (order granting approval, on a pilot basis, to the File No. SR–NYSE–00–32).

[6] *See* Securities Exchange Act Release No. 44886 (September 28, 2001), 66 FR 51083 (October 5, 2001) (notice of filing and immediate effectiveness of File No. SR–NYSE–2001–37) (''2001 Extension Request'').

[7] *See* Securities Exchange Act Release No. 45275 (January 14, 2002), 67 FR 2718 (January 18, 2002) (File No. SR–NYSE–2002–03).

[8] *See* Securities Exchange Act Release No. 45546 (March 12, 2002), 67 FR 10272 (March 18, 2002) (File No. SR–NYSE–2002–14).

[9] *See* Securities Exchange Act Release No. 45918 (May 13, 2002), 67 FR 35174 (May 17, 2002) (File No. SR–NYSE–2002–18).

[10] *See* Securities Exchange Act Release No. 46143 (June 28, 2002), 67 FR 35174 (July 5, 2002) (File No. SR–NYSE–2002–22).

[11] *See* Securities Exchange Act Release No. 46437 (August 29, 2002), 67 FR 57262 (September 9, 2002) (File No. SR–NYSE–2002–42).

[12] *See* Securities Exchange Act Release No. 46747 (October 30, 2002), 67 FR 67680 (November 6, 2002) (File No. SR–NYSE–2002–57).

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 has had the Pilot with respect to the definition of a ''broadly-based'' stock option plan since June 4, 1999.[13] On July 13, 2000, the Exchange filed a proposed rule change seeking to extend the effectiveness of the Pilot until September 30, 2003.[14] Following receipt of comments from interested parties and the SEC staff, on January 19, 2001, the Exchange amended the 2000 Extension Request to shorten the three-year extension request to one year and to amend the definition of ''broadly based'' under the Exchange's rule. While the 2000 Extension Request was under consideration, the Commission extended the Pilot to provide the Commission and the Exchange with additional time to review and evaluate comment letters.[15] On March 30, 2001, the Commission approved the 2000 Extension Request, which amended and extended the Pilot, on a pilot basis until September 30, 2001.[16] The Exchange's 2001 Extension Request extended the Pilot until January 11, 2002 to provide additional time to evaluate the issues presented by the Pilot.[17] The Pilot was again extended several times, most recently until December 30, 2002, for the same reasons.[18]

On October 7, 2002, in connection with the Exchange's corporate governance proposals, the Exchange filed a proposal with the Commission that would require shareholder approval for equity-compensation plans, making it unnecessary to continue the Pilot. That proposal was published in the **Federal Register** on October 11, 2002.[19] As directed by the Commission staff, the Exchange is requesting an extension of the effectiveness of the Pilot until February 28, 2003, or until such earlier date as the Exchange's proposal relating to shareholder approval of equity-compensation plans is approved by the Commission.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[20] which requires, among other things, that an Exchange have rules 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 and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[21] and Rule 19b–4(f)(6)[22] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[23] normally does not become operative prior to 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),[24] the Commission may designate a shorter time if such action is consistent with the protection of investors and public interest. The Exchange seeks to have the proposed rule change become operative on or before December 30, 2002, in order to allow the Pilot to continue in effect on an uninterrupted basis. In addition, under Rule 19b–4(f)(6)(iii), the Exchange is required to provide the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date or such shorter time as designated by the Commission. The Commission has waived the five-day pre-notice requirement for this proposed rule change. In addition, for the reasons discussed below, the Commission has also waived the thirty-day operative date requirement for this proposed rule change.

The Commission, consistent with the protection of investors and the public interest, has determined to make the proposed rule change, which will extend the Pilot through February 28, 2003, or such earlier date as the NYSE's pending rule proposal requiring shareholder approval of equity-compensation plans[25] is approved by the Commission, become operative on December 30, 2002. The Commission notes that unless the Pilot is extended, the Pilot will expire and the provisions of Sections 312.01, 312.03, and 312.04 of the Exchange's Listed Company Manual that were amended in the Pilot will revert to those in effect prior to June 4, 1999. The Commission believes that such a result could lead to confusion.

The Commission recognizes that the Pilot has generated many comment letters from commenters that do not support the NYSE's definition of ''broadly-based'' stock option plans under the Pilot.[26] The Commission also notes that many commenters were critical of the NYSE's existing rules on broadly-based plans prior to the adoption of the original Pilot. As noted above, if the Pilot is not extended, the rules prior to the Pilot will go into effect. The proposed rule change merely extends the duration of the Pilot for only a short period of time and does not deal with the substantive issues presented by the Pilot itself.

The Commission notes that once the Exchange's proposed rule change relating to shareholder approval of equity compensation plans has been approved by the Commission, those approved rules will supercede this Pilot because the concept of ''broadly-based''

[13] *See* Original Pilot Approval Order note 4 *supra.*

[14] *See* Securities Exchange Act Release No. 43111 (August 2, 2000), 65 FR 49046 (August 10, 2000) (notice of filing of File No. SR–NYSE–00–32) (''2000 Extension Request'').

[15] *See* Securities Exchange Act Release Nos. 43329 (September 22, 2000), 65 FR 58833 (October 2, 2000) (notice of filing and immediate effectiveness of File No. SR–NYSE–00–38); 43647 (November 30, 2000), 65 FR 77407 (December 11, 2000) (notice of filing and immediate effectiveness of File No. SR–NYSE–00–52); and 44018 (February 28, 2001), 66 FR 13821 (March 7, 2001) (notice of filing and immediate effectiveness of File No. SR–NYSE–2001–04).

[16] *See* note 5 *supra.*

[17] *See* note 6 *supra.*

[18] *See* notes 7 through 12 *supra.*

[19] *See* note 3 *supra.*

[20] 15 U.S.C. 78f(b)(5).

[21] 15 U.S.C. 78s(b)(3)(A).

[22] 17 CFR 240.19b–4(f)(6).

[23] *Id.*

[24] 17 CFR 240.19b–4(f)(6)(iii).

[25] *See* note 3 *supra.*

[26] *See* Original Pilot Approval Order, note 4 *supra.*

stock option plans will no longer be retained in the Exchange's shareholder approval rules.

Based on these reasons, the Commission has determined that it is consistent with the protection of investors and the public interest that the proposed rule change, which will extend the Pilot through February 28, 2003, or such earlier date as the NYSE's pending rule proposal requiring shareholder approval of equity-compensation plans is approved by the Commission, become operative on December 30, 2002.[27] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the File No. SR–NYSE–2002–67 and should be submitted by January 21, 2003.

[27] For purposes only of accelerating the operative date of this proposal, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[28]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–32922 Filed 12–27–02; 8:45 am]

BILLING CODE 8010–01–P

[28] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3473]

State of Alaska; Amendment #1

In accordance with information received from the Federal Emergency Management Agency, the above-numbered declaration is hereby amended to reopen the incident period for this disaster due to additional flooding.

All other information remains the same, *i.e.*, the deadline for filing applications for economic injury is September 4, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: December 23, 2002.

Allan I. Hoberman,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 02–32931 Filed 12–27–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3467]

State of Ohio; Amendment #2

In accordance with a notice received from the Federal Emergency Management Agency, dated December 20, 2002, the above numbered declaration is hereby amended to include Ashland, Auglaize, Coshocton, Franklin, Henry, Huron, Lorain, Medina, Sandusky, Union, Wayne, and Wood Counties in the State of Ohio as a disaster area due to damages caused by severe storms and tornadoes occurring on November 10, 2002.

In addition, applications for economic injury loans from small businesses located in Champaign, Darke, Delaware, Erie, Fairfield, Fulton, Guernsey, Holmes, Knox, Licking, Logan, Madison, Marion, Muskingum, Pickaway, Richland, Shelby, Tuscarawas, and Williams Counties in the State of Ohio may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary counties have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is January 17, 2003, and for economic injury the deadline is August 18, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: December 23, 2002.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 02–32932 Filed 12–27–02; 8:45 am]

BILLING CODE 8025–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Identification of Countries Under Section 182 of the Trade Act of 1974: Request for Public Comment

AGENCY: Office of the United States Trade Representative.

ACTION: Request for written submissions from the public.

SUMMARY: Section 182 of the Trade Act of 1974 (Trade Act) (19 U.S.C. 2242), requires the United States Trade Representatives (USTR) to identify countries that deny adequate and effective protection of intellectual property rights or deny fair and equitable market access to U.S. persons who rely on intellectual property protection. (Section 182 is commonly referred to as the ''Special 301'' provisions in the trade act.) In addition, the USTR is required to determine which of these countries should be identified as Priority Foreign Countries. Acts, policies or practices which are basis of a country's identification as a priority foreign country are normally the subject of an investigation under the Section 301 provisions of the trade act. Section 182 of the Trade Act contains a special rule for the identification of actions by Canada affecting United States cultural industries.

USTR requests written submissions from the public concerning foreign countries' acts, policies, and practices that are relevant to the decision whether particular trading partners should be identified under Section 182 of the Trade Act.

DATES: Submissions must be received on or before 12 noon on Friday, February 14, 2003.

ADDRESSES: *fr0061@ustr.gov.*

FOR FURTHER INFORMATION CONTACT: Kira Alvarez, Director for Intellectual Property (202) 395–6864, Office of the United States Trade Representative; Victoria Espinel or Danial Mullaney, Assistant General Counsels (202) 395–

7305, Office of the United States Trade Representative.

SUPPLEMENTARY INFORMATION: Pursuant to Section 182 of the Trade Act, the USTR must identify those countries that deny adequate and effective protection of intellectual property rights or deny fair and equitable market access to U.S. persons who rely on intellectual property protection. Those countries that have the most onerous or egregious acts, policies, or practices and whose acts, policies or practices have the greatest adverse impact (actual or potential) on relevant U.S. products are to be identified as Priority Foreign Countries. Acts, policies or practices that are the basis of a country's designation as a Priority Foreign Country are normally the subject of an investigation under the Section 301 provisions of the Trade Act.

USTR may not identify a country as a Priority Foreign Country if it is entering into good faith negotiations, or making significant progress in bilateral or multilateral negotiations, to provide adequate and effective protection of intellectual property rights.

In identifying countries that deny adequate and effective protection of intellectual property rights in 2002, USTR will continue to pay special attention to other countries' efforts to reduce piracy of optional media (music CDs, video CDs, CD–ROMs, and DVDs) and prevent unauthorized government use of computer software. USTR will also focus on countries' compliance with their TRIPS obligations, which came due on January 1, 2000.

Section 182 contains a special rule regarding actions of Canada affecting United States cultural industries. The USTR is obligated to identify any act, policy or practice of Canada which affects cultural industries, is adopted or expanded after December 17, 1992, and is actionable under Article 2106 of the North American Free Trade Agreement (NAFTA). Any such act, policy or practice so identified shall be treated the same as an act, policy or practice which was the basis for a country's identification as a Priority Foreign Country under section 182(a)(2) of the Trade Act, unless the United States has already taken action pursuant to Article 2106 of the NAFTA.

USTR must make the above-referenced identifications within 30 days after publication of the National Trade Estimate (NTE) report, *i.e.*, no later than April 30, 2003.

Requirement for Comments

Comments should include a description of the problems experienced and the effect of the acts, policies and practices on U.S. industry. Comments should be as detailed as possible and should provide all necessary information for assessing the effect of the acts, policies and practices. Any comments that include quantitative loss claims should be accompanied by the methodology used in calculating such estimated losses. Comments must be in English and provided in twenty copies. A submitter requesting that information contained in a comments be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly market ''business confidential'' in a contrasting color ink at the top of each page of each copy. A non-confidential version of the comment must also be provided.

All comments should be sent to Sybia Harrison, Staff Assistant to the section 301 committee, at *fr0061@ustr.gov,* and must be received no later than 12 noon on Friday, February 14, 2003.

Public Inspection of Submissions

Within one business day of receipt, non-confidential submissions will be placed in a public file, open for inspection at the USTR reading room, Office of the United States Trade Representative, Annex Building, 1724 F Street, NW., Room 1, Washington, DC. An appointment to review the file may be made by calling Tecola Plowden, (202) 395–6186. The USTR reading room is open to the public from 10 a.m. to 12 noon and from 1 p.m. to 4 p.m., Monday through Friday.

Claude Burcky,

Acting Assistant USTR for Services, Investment and Intellectual Property.

[FR Doc. 02–32955 Filed 12–27–02; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for a Waiver of Compliance

In accordance with Title 49, Code of Federal Regulations (CFR), Sections 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance with certain requirements of Federal railroad safety regulations. The individual petitions are described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested and the petitioner's arguments in favor of relief.

Atlantic & Western Railway, L.P.

(Docket Number FRA–2002–13808)

Atlantic & Western Railway, L.P., (hereafter ''ATW'') is a short line railroad managed by Rail Management Corporation operating over approximately 10 miles of track in the vicinity of Sanford, North Carolina. The railroad operates with five (5) full-time employees and handles approximately 1500 cars per year. A two-person switching crew works five days a week, Monday through Friday, 8 a.m. to 5 p.m. The railroad interchanges with CSX Transportation at Sanford, North Carolina and with the Norfolk Southern Corporation at Cumnock, North Carolina.

ATW seeks to petition the Federal Railroad Administration (FRA) for a waiver from the requirements of Federal regulations on behalf of Kinder Morgan, a shipper located on the ATW line. ATW proposes to allow Kinder Morgan the use of its trackage to conduct ''trans-loading'' switching operations near Cumnock, North Carolina. The operation would entail movements from the Kinder Morgan facility, at approximately mile post 126.5, onto ATW trackage for a distance of approximately .25 miles each way by Kinder Morgan employees. The proposed operational limits would be controlled by Kinder Morgan and protected by the placement of stop signs and derails at each end of the limits. The method of operation on this section of track is yard limits (restricted speed not to exceed 10 mph). ATW crews would be required to stop at the stop sign and request permission from Kinder Morgan to proceed through the limits. ATW indicates it would use this track approximately once per day for interchange purposes with Norfolk Southern Corporation. Kinder Morgan plans to work two shifts per day, seven days per week, at its facility using ATW trackage occasionally.

ATW believes that relief from applicable Federal regulations will make the operations economically feasible for Kinder Morgan and more manageable for ATW's limited staff. ATW further believes that, because of its low volume of traffic and its low operating speed (10 mph), granting the waiver request will not jeopardize the safety of its employees or those of Kinder Morgan.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a

hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA–2002–13808) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 Seventh Street, SW., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility.

Issued in Washington DC on December 23, 2002.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development

[FR Doc. 02–32945 Filed 12–27–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Locomotive and Tower Preservation, Ltd.

[Docket Number FRA–2002–13810]

The Locomotive and Tower Preservation, Ltd. seeks a waiver of compliance, number FRA–2002–13810, with the Inspection and Maintenance Standards for Steam Locomotives, 49 CFR Part 230, published November 17, 1999. Section 230.3(c)(1) of the standards requires steam locomotives having flue tubes replaced after September 25, 1995, must request a Special Consideration to come under the new requirements by January 18, 2001, or have a 1,472-service-day inspection [49 CFR 230.17] performed prior to being allowed to operate under the requirements. The Locomotive and Tower Preservation, Ltd, seeks an extension of time beyond January 18, 2001, to file for a Special Consideration for Soo Line steam locomotive number 2719, which had the flue tubes replaced and was returned to service July 28, 1998.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA–2002–13810) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, 700 4th Street, SW., Room PL–401 (Plaza Level), Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Issued in Washington, DC on December 23, 2002.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 02–32943 Filed 12–27–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Montana Rail Link, Inc.

[Docket Number FRA–2002–13967]

Montana Rail Link, Inc. (MRL) seeks a waiver of compliance from the provisions of the Track Safety Standards, 49 CFR Section 213.121(b), regarding cracked or broken joint bars in Classes 3 through 5 track.

The MRL is petitioning for a waiver which would provide relief from cracks which can develop between the outermost bolt holes of a specified six-hole skirted joint bar in use on 115-pound rail. The petitioner states that the cracks develop from spike notches on the skirted portion of the bar and in some cases penetrate the entire bar, producing a complete end failure.

The petitioner states that these six-hole bars which develop cracks between the outermost bolt holes are comparable in strength and stability to their conventional 115-pound, four-hole unskirted joint bars and present no additional safety hazards. The trackage subject to this waiver consists of approximately 20 miles of MRL main line between Billings and Laurel, Montana and between Helena and Tobin, Montana. Trackage and joint bars were formerly Burlington Northern (BNSF) trackage prior to MRL purchasing the property in 1987. MRL submits that the bars are very similar or exactly the same as the BNSF in their waiver under Docket Number FRA–2001–10653. BNSF has submitted laboratory test results to support their request for a waiver.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communication concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number 2002–13967) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW, Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are

available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's web site at *http://dms.dot.gov.*

Issued in Washington, DC on December 23, 2002.

Grady C. Cothen, Jr.,

Deputy Associate Administrator, for Safety Standards and Program Development.

[FR Doc. 02–32942 Filed 12–27–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

[Docket No. FRA–2002–11809]

Notice of Public Hearing; the North County Transit District

AGENCY: Federal Railroad Administration.

ACTION: Correction.

SUMMARY: In notice document FRA–2002–11809, **Federal Register** Vol. 67, No. 235 on page 72718 in the issue of Friday, December 6, 2002, make the following correction:

The date previously published in the **Federal Register** for the North County Transit District (NCTD), public hearing in Oceanside, California is January 23, 2002. On page 72718, second column in the fourth paragraph, the date of the public hearing should read January 23, 2003.

Issued in Washington, DC on December 23, 2002.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 02–32941 Filed 12–27–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Safety Advisory

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of safety advisory.

SUMMARY: FRA is issuing Safety Advisory 2002–03 addressing potential catastrophic failure of 100-ton truck bolsters manufactured by National Castings of Sahagun, Mexico, with Association of American Railroads' (AAR) Identification #B–2410 and National Pattern #52122 used in 286,000 pound gross rail load freight cars.

FOR FURTHER INFORMATION CONTACT: Ronald Newman, Motive Power and Equipment Division Staff Director, Office of Safety Assurance and Compliance RRS–14, FRA, 1120 Vermont Avenue NW., Mail Stop 25, Washington, DC 20590 (telephone 202–493–6241) or Thomas Herrmann, Office of Chief Counsel, FRA, 1120 Vermont Avenue, SW., Washington, DC 20590, (telephone (202) 493–6036).

SUPPLEMENTARY INFORMATION: Six recent derailments have been reported by the AAR which are attributed to the failure of truck bolsters manufactured by National Castings of Mexico with AAR ID #B–2410 and National Pattern #52122 used in 286,000 pound gross rail load freight cars. All of the failed bolsters were in Barber S–2–HD trucks on 286,000 pound gross rail load freight cars. Most of the bolsters had evidence of welded repair during their manufacture. Full details are not yet available on all of the failures; however, preliminary investigation indicates that one failure was caused by an inclusion and the others were surface initiated. The incident that is best documented indicates that the failure occurred inboard of the truck side frame between the side bearing cage mounting pad and the inside gibs, initiating from the underside of the bolster. This was a catastrophic failure resulting in a clean break between the pieces. The other known failures appear to be similar in nature.

Information gathered by AAR indicates that there were 29,673 suspect bolsters produced between January 1995 and May 1999. Most of these were shipped to car builders and have since been placed into revenue service. AAR has been actively engaged in producing a list showing where each of the bolsters were installed. Approximately 13,000–15,000 cars may ultimately be affected including double stack, hopper, and tank cars as well as other types of cars. AAR has issued a maintenance advisory (MA–81) and two early warning letters (EW–5191 and EW–5191–S1) which identify some of the series of cars which may be equipped with the involved bolsters. Currently, AAR has identified approximately 348 tank cars in its early warning letters which may be affected. AAR is continuing its efforts to identify any car potentially equipped with these bolsters.

AAR also issued a second supplement to the initial early warning letter (EW–5191–S2) that reports progress toward the identification of a cost-effective x-ray technique to allow safe bolsters to remain in service while insuring that any defective bolsters are removed from the freight car fleet. The supplement endorses segregation of those removed bolsters which have no obvious defects pending possible issuance of instructions for requalification. The supplement further requests notification to *eec@aar.com* if a cracked or broken National Pattern #52122 bolster is found.

Action Recommended by FRA

• FRA recommends that all railroads and car repair shops diligently adhere to the instructions provided in AAR's maintenance advisory MA–81 and early warning letters EW–5191, EW–5191–S1, and EW–5191–S2. AAR has specifically identified the following cars in the above noted advisory and letters as being potentially equipped with the involved bolster:

Car numbers from MA–81	Tank car numbers from EW–5191 and EW–5191–S1
AGPX 98000–98099	NATX 33500–33531
CSXT 487700–487999.	NATX 33533–33535
MHFX 5600–5799 ..	NATX 33538
TFM 60000–60299	NATX 33544
TR 527800–528099	NATX 33549–33552
UP 28000–28639	NATX 33554–33557
WEPX 2375–2624 ..	NATX 33559–33560
WEPX 2875–3024 ..	NATX 33562
	ECUX 259000–259129
	ECUX 281000–381082
	ECUX 281084–281086
	ECUX 281088–281093
	ECUX 281095–281097
	ECUX 281100–281108
	UTLX 662506–662565
	UTLX 662795–662800

• FRA also recommends that the bolsters on the above identified cars be inspected as thoroughly as possible by visual or other means and/or removed from service as prescribed in AAR's maintenance advisory and early warning letters. Proper precautions must be taken to protect the safety of the employees making the inspections, including proper blue signal protection in accordance with existing Federal regulations contained at 49 CFR part 218.

• FRA further recommends that all railroads and car shops remain alert for the issuance of future AAR early warning letters and/or FRA Safety Advisories which may contain a listing of additional cars potentially equipped with the involved bolster and instructions for the handling of such cars.

FRA may modify Safety Advisory 2002–03, issue additional safety advisories, or take other appropriate action necessary to ensure the highest level of safety on the Nation's railroads.

Issued in Washington, DC on December 24, 2002.

George A. Gavalla,

Associate Administrator for Safety.

[FR Doc. 02–32940 Filed 12–26–02; 9:15 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Voluntary Intermodal Sealift Agreement (VISA)/Joint Planning Advisory Group (JPAG)

AGENCY: Maritime Administration, DOT.

ACTION: Synopsis of December 9–11, 2002 meeting with VISA participants.

The VISA program requires that a notice of the time, place, and nature of each JPAG meeting be published in the **Federal Register**. The program also requires that a list of VISA participants be periodically published in the **Federal Register**. The full text of the VISA program, including these requirements, is published in 66 FR 10938–10947, dated February 20, 2001.

On December 9–11, 2002, the Maritime Administration (MARAD) and the U.S. Transportation Command (USTRANSCOM) co-hosted a meeting of the VISA JPAG at USTRANSCOM, Scott Air Force Base, Illinois.

In order to exercise procedures for an operational JPAG meeting, attendance was by invitation only, and attendees were requested to provide government-issued security clearances prior to attending the meeting.

Of the 52 U.S.-flag carrier corporate participants enrolled in the VISA program at the time of the meeting, 22 companies participated in the meeting. In addition, representatives from the Maritime Administration (MARAD), the Department of Defense, and maritime labor attended the meeting.

LtGen Gary Hughey, the USTRANSCOM Deputy Commander, opened the meeting with a welcome to all attendees. He was followed by James E. Caponiti, Associate Administrator for National Security, Maritime Administration, and Mr. Daniel F. McMillin, Deputy Director, Plans and Policy Directorate (TCJ5), USTRANSCOM, who provided participants with an overview of expected outcomes. The JPAG meeting included briefings on: (1) VISA activation and deactivation processes; (2) the DOD contingency contracting process; (3) force protection issues; (4) merchant mariner issues; and (5) ammunition shipments.

In addition to the briefings, there were two JPAG exercises. The first exercise focused on the sealift contracting process. The second was a mariner exercise to address how to maximize mariner availability in the event of a contingency.

As of September 30, 2002, the following commercial U.S.-flag vessel operators were enrolled in the VISA program with MARAD: America Cargo Transport, Inc.; American Automar, Inc.; American International Car Carrier, Inc.; American President Lines, Ltd.; American Roll-On Roll-Off Carrier, LLC; American Ship Management, L.L.C.; Bay Towing Corporation; Beyel Brothers Inc.; Central Gulf Lines, Inc.; Coastal Transportation, Inc.; Columbia Coastal Transport, LLC; Crowley Liner Services, Inc.; Crowley Marine Services, Inc.; CSX Lines, LLC; Delta Towing; E-Ships, Inc.; Farrell Lines Incorporated; First American Bulk Carrier Corp.; First Ocean Bulk Carrier-I, LLC; First Ocean Bulk Carrier-II, LLC; First Ocean Bulk Carrier-III, LLC; Foss Maritime Company; Liberty Shipping Group Limited Partnership; Lockwood Brothers, Inc.; Lykes Lines Limited, LLC; Lynden Incorporated; Maersk Line, Limited; Matson Navigation Company, Inc.; Maybank Navigation Company, LLC; McAllister Towing and Transportation Co., Inc.; Moby Marine Corporation; Odyssea Shipping Line LLC; OSG Car Carriers, Inc.; Patriot Shipping, L.L.C.; RR & VO L.L.C.; Resolve Towing & Salvage, Inc.; Samson Tug & Barge Company, Inc.; Sea Star Line, LLC; SeaTac Marine Services, LLC; Sealift Inc.; Signet Maritime Corporation; STEA Corporation; Superior Marine Services, Inc.; TECO Ocean Shipping; Totem Ocean Trailer Express, Inc.; Trailer Bridge, Inc.; TransAtlantic Lines LLC; Troika International, Ltd.; U.S. Ship Management, Inc.; Van Ommeren Shipping (USA) LLC; Waterman Steamship Corporation; and Weeks Marine, Inc.

FOR FURTHER INFORMATION CONTACT: Mr. Taylor E. Jones II, Director, Office of Sealift Support, (202) 366–2323.

By Order of the Maritime Administrator.
Dated: December 23, 2002.

Joel C. Richard,

Secretary.

[FR Doc. 02–32828 Filed 12–27–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Federal Motor Vehicle Theft Prevention Standard; DaimlerChrysler

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

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full the petition of DaimlerChrysler Corporation, (DaimlerChrysler) for an exemption of a high-theft line, the Jeep Grand Cherokee, from the parts-marking requirements of the Federal Motor Vehicle Theft Prevention Standard. This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective and reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard.

DATES: The exemption granted by this notice is effective beginning with model year (MY) 2004.

FOR FURTHER INFORMATION CONTACT: Ms. Rosalind Proctor, Office of Planning and Consumer Standards, NHTSA, 400 Seventh Street, SW., Washington DC 20590. Ms. Proctor's phone number is (202) 366–0846. Her fax number is (202) 493–2290.

SUPPLEMENTARY INFORMATION: In a petition dated September 27, 2002, DaimlerChrysler Corporation, (DaimlerChrysler), requested an exemption from the parts-marking requirements of the theft prevention standard (49 CFR Part 541) for the Jeep Grand Cherokee vehicle line, beginning with MY 2004. The petition requested an exemption from parts-marking requirements pursuant to 49 CFR 543, Exemption from Vehicle Theft Prevention Standard, based on the installation of an antitheft device as standard equipment for the entire vehicle line.

Section 33106(b)(2)(D) of Title 49, United States Code, authorized the Secretary of Transportation to grant an exemption from the parts-marking requirements for not more than on additional line of a manufacturer for MYs 1997–2000. However, it does not address the contingency of what to do after model year 2000 in the absence of a decision under Section 33103(d). 49 U.S.C. § 33103(d)(3) states that the number of lines for which the agency can grant an exemption is to be decided after the Attorney General completes a

review of the effectiveness of antitheft devices and finds that antitheft devices are an effective substitute for parts-marking. The Attorney General has not yet made a finding and has not decided the number of lines, if any, for which the agency will be authorized to grant an exemption. Upon consultation with the Department of Justice, we determined that the appropriate reading of Section 33103(d) is that the National Highway Traffic Safety Administration (NHTSA) may continue to grant parts-marking exemptions for more than one additional model line each year, as specified for model years 1997–2000 by 49 U.S.C. 33106(b)(2)(C). This is the level contemplated by the Act for the period before the Attorney General's decision. The final decision on whether to continue granting exemptions will be made by the Attorney General at the conclusion of the review pursuant to Section 330103(d)(3).

DaimlerChrysler submission is considered a complete petition as required by 49 CFR 543.7, in that it meets the general requirements contained in § 543.5 and the specific content requirements of § 543.6.

In its petition, DaimlerChrysler provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the new vehicle line. DiamlerChrysler will install its antitheft devise as standard equipment on the MY 2004 Jeep Grand Cherokee vehicle line. The antitheft device to be installed on the MY 2004 Jeep Grand Cherokee does not include an audible or visual alarm but does incorporate an ignition immobilizer system.

The Sentry Key Immobilizer System (SKIS) prevents the engine from running for more than 2 seconds unless a valid key is in the ignition switch. The immobilizer feature is activated when the key is removed from the ignition switch whether the vehicle doors are open or not. Once activated, only a valid key inserted into the ignition switch will disable immobilization and allow the vehicle to start and continue to run. The SKIS has a visual telltale located in the vehicle electromechanical instrument cluster (EMIC). Besides acting as a SKIS diagnostic indicator, the telltale also alerts the owner than an unauthorized vehicle start attempt had been made. Upon an unauthorized start attempt, the telltale continuously illuminates until the owner starts the vehicle with the proper Sentry Key. The telltale will be illuminated for three seconds when the ignition is turned to the ''ON'' position.

The Sentry Key Immobilizer Module (SKIM), Jeep/Truck Engine Controller Plus (JTEC+) and the sentry key perform the immobilizer function. The JTEC+ controller must be programmed with the VIN and a secret key and the VIN must be programmed by a diagnostic tool. The EMIC controls the telltale only. When the sentry key is placed in the ignition, the SKIM and the key communicate via RF signal. After the SKIM determines that the key is valid, the SKIM requests a seed number from the JTEC+ controlled on all vehicles. The JTEC+ controller then verifies the code from the SKIM and transmits a key status (valid/invalid signal). To avoid any perceived delay when starting the vehicle with a valid key and to prevent unburned fuel from entering the exhaust, the engine is permitted to run for no more than 2 seconds if an invalid key is used. If the code from the SKIM is invalid, the JTEC+ controller immobilizes the vehicle by shutting down the engine (after the initial 2 second run). Only 6 consecutive invalid vehicle start attempts are permitted, all further invalid attempts are locked out by not firing fuel injectors and not engaging the starter. Only the communication with a valid key is required to permit the engine to start and run.

Replacing the SKIM requires a secret key to decode the ignitions keys. A copy of this secret key is stored in the JTEC+ controller. In replacing the JTEC+ controller, it must again have the VIN programmed in order for the vehicle to start and the secret key transferred to it by the SKIM. A diagnostic tool is required to perform both of these functions.

DaimlerChrysler stated that the SKIM performs the interrogation with the transponder in the key using a Texas Instruments proprietary algorithm which results in a 40-bit number which allows for over one trillion combinations. Each ignition key used in the SKIS has an integral transponder chip. Ignition keys with this feature can be readily identified by a gray rubber cap molded onto the head of the key, while conventional ignition keys have a black molded rubber. The transponder chip is concealed beneath the molded rubber cap, where it is molded onto the head of the metal key.

In order to ensure the realiability and durability of the device, DaimlerChrysler conducted tests based on its own specified standards and stated its belief that the device meets the stringent performance standards prescribed. Specifically, the device must demonstrate a minimum of 95 percent reliability with 90 percent confidence. This is the same standard that vehicle air bag systems are designed and tested to. The SKIS if fully functional over a voltage range of 9 Vde to 16 Vde and a temperature range of −40 degrees celsius through 85 degrees celisius. In addition to the design and production validation test criteria, the SKIS undergoes a daily short term durability test whereby three randomly chosen systems are tested once per shift at the production facility. DaimlerChrysler also stated that 100% of the systems immobilizer undergoes a series of three functional tests prior to being shipped from the supplier to the vehicle assembly plant for installation in the vehicle.

DaimlerChrysler has installed the SKIS vehicle immobilizer systems as standard equipment on all Jeep Grand Cherokee vehicles since the 1999 model year. DaimlerChrysler stated that NHTSA's theft rates for the Jeep Grand Cherokee vehicles for model years 1995 to 1998 are 5.5545, 7.0188, 4.3163 and 4.3557 respectively, significantly higher than the 1990/1991 median theft rate of 3,5826. Likewise, DaimlerChrysler reports that the theft rates of Jeep Grand Cherokee vehicles that were equipped with immobilizer systems indicate rates significantly lower than the 1990/1991 median theft rate. Theft rates for the Jeep Grand Cherokee vehicles since the introduction of immobilizer systems as standard equipment for MYs 1999 through 2000 are 2.5630 and 2.4701 respectively.

On the basis of this comparison, DaimlerChrysler has concluded that the proposed antitheft device is no less effective than those devices installed on lines for which NHTSA has already granted full exemption from the parts-making requirements.

Based on the evidence submitted by DaimlerChrysler, the agency believes that the antitheft device for the Jeep Grand Cherokee vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR 541). The agency concludes that the device will provide four of the five types of performance listed in § 543.6(a)(3): Promoting activation; attracting attention to the efforts of unauthorized persons to enter or operate a vehicle by means other than a key; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

As required by 49 U.S.C. § 33106 and 49 CFR Part 543.6(a)(4) and (5), the agency finds that DaimlerChrysler has provided adequate reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on

the information DaimlerChrysler provided about its antitheft device

For the foregoing reasons, the agency hereby grants in full DaimlerChrysler's petition for an exemption for the MY 2004 Jeep Grand Cherokee vehicle line from the parts-making requirements of 49 CFR Part 541. If DaimlerChrysler decides not to use the exemption for this line, it should formally notify the agency. If such a decision is made, the line must be fully marked according to the requirements of 49 CFR Parts 541.5 and 541.6 (marking of major components parts and replacement parts).

NHTSA notes that if DaimlerChrysler wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Part 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, Part 543.9(c)(2) provides for the submission of petitions ''to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption.''

The agency wishes to minimize the administrative burden that Part 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minims.* Therefore, NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as *de minimis,* it should consult the agency before preparing and submitting a petition to modify

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: December 20, 2002.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 02–32938 Filed 12–27–02; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–43 (Sub–No. 173X)]

Illinois Central Railroad Company—Abandonment Exemption—in Forrest County, MS

On December 10, 2002, Illinois Central Railroad Company (IC) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a rail line known as Central District Trackage, extending from milepost MH 0.66 to milepost MH 3.06, a distance of 2.4 miles, in Forrest County, MS. The line traverses U.S. Postal Service Zip Code 39401 and includes no stations.

The line does not contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R.Co.—Abandonment-Goshen,* 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by March 28, 2003.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,100 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than January 21, 2003. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–43 (Sub-No. 173X) and must be sent to: (1) Surface Transportation Board, 1925 K Street NW, Washington, DC 20423–0001, and (2) Michael J. Barron, Jr., 455 North Cityfront Plaza Drive, Chicago, IL 60611–5317. Replies to the petition are due on or before January 21, 2003.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment and discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1552. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by the SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our Web site at *''http://WWW.STB.DOT.GOV.''*

Decided: December 23, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–32933 Filed 12–27–02; 8:45 am]

BILLING CODE 4915–00–P

Federal Register

Monday,

December 30, 2002

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 679

Fisheries of the Exclusive Economic Zone Off Alaska; Amendments 61/61/13/8 to Implement Major Provisions of the American Fisheries Act; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011128283–2291–02; I.D. 111401B]

RIN 0648–AN55

Fisheries of the Exclusive Economic Zone Off Alaska; Amendments 61/61/13/8 to Implement Major Provisions of the American Fisheries Act

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

ACTION: Final rule.

SUMMARY: NMFS issues final regulations to implement the following American Fisheries Act (AFA)-related amendments: Amendment 61 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area, Amendment 61 to the Fishery Management Plan for Groundfish of the Gulf of Alaska, Amendment 13 to the Fishery Management Plan for Bering Sea and Aleutian Islands King and Tanner Crab, and Amendment 8 to the Fishery Management Plan for the Scallop Fishery off Alaska. These four amendments incorporate the provisions of the AFA into the fishery management plans (FMPs) and their implementing regulations. The management measures include: measures that allocate the Bering Sea and Aleutian Islands Management Area (BSAI) pollock among the sectors of the pollock processing industry and restrict who may fish for and process pollock within each industry sector; measures that govern the formation and operation of fishery cooperatives in the BSAI pollock fishery; harvesting and processing limits known as sideboards to protect the participants in other fisheries from spillover effects resulting from the rationalization of the BSAI pollock fishery; measures that establish catch weighing and monitoring requirements for vessels and processors that participate in the BSAI pollock fishery; and extension of the inshore/offshore regime for pollock and Pacific cod in the Gulf of Alaska (GOA) through December 31, 2004. These amendments and management measures are necessary to implement the AFA and are intended to do so in a manner consistent with the environmental and socioeconomic objectives of AFA, the Magnuson-Stevens Fishery Management and Conservation Act (Magnuson-Stevens Act), and other applicable laws.

DATES: This regulation becomes effective on January 29, 2003 through December 31, 2007, except for amendments to §§ 679.28(c)(3), 679.28(c)(4)(iii), 679.28(g), 679.61(b), 679.61(d)(1)(iv), 679.61(d)(1)(v), 679.61(d)(2), 679.61(e)(2)(v), and 679.63(c)(2), which will become effective after Paperwork Reduction Act (PRA) approval and issuance of control numbers have been received from the Office of Management and Budget (OMB) and a **Federal Register** document has been published to make them effective.

ADDRESSES: The Final Environmental Impact Statement/Regulatory Impact Review/Final Regulatory Flexibility Analysis (FEIS/RIR/FRFA) prepared for Amendments 61/61/13/8 is available in the NEPA section of the NMFS Alaska Region home page at *http://www.fakr.noaa.gov*. Paper copies of the FEIS/RIR/FRFA prepared for Amendments 61/61/13/8 may be requested from Lori Gravel, NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802, phone: 907–586–7247, email: lori.gravel@noaa.gov. Send comments on information collection requests to NMFS and to OMB, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Kent Lind, 907–586–7228 or email: kent.lind@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

NMFS manages the groundfish fisheries in the exclusive economic zone (EEZ) of the BSAI and Gulf of Alaska (GOA) under the FMPs for groundfish in the respective areas. With Federal oversight, the State of Alaska (State) manages the commercial king crab and Tanner crab fisheries in the BSAI and the commercial scallop fishery off Alaska under the FMPs for those fisheries. The North Pacific Fishery Management Council (Council) prepared, and NMFS approved, the FMPs under the authority of the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*). Regulations implementing the FMPs appear at 50 CFR part 679. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

Subtitle II of the AFA (Div. C, Title II, Pub. L. 105–277, 112 Stat. 2681 (1998)) mandated sweeping changes to existing management program for the BSAI pollock fishery and, to a lesser extent, affected the management of the other groundfish, crab, and scallop fisheries off Alaska. In response, the Council developed Amendments 61/61/13/8 and the regulatory program set out in this final rule to give effect to the required and discretionary provisions of the AFA.

Amendments 61/61/13/8 were developed through a 3–year public process that included 12 Council meetings and numerous other public meetings held by NMFS and the Council during that period. While Amendments 61/61/13/8 were under development, the deadlines and statutory requirements of the AFA were met on an interim basis through several emergency interim rules. The final EIS for Amendments 61/61/13/8 contains a summary of the extensive public process involved in the development of the amendments and describes the AFA-related rulemaking completed to date.

The proposed rule for Amendments 61/61/13/8 was published on December 17, 2001 (66 FR 65028), with comments invited through January 31, 2002. NMFS received 12 letters of comment by the end of the comment period on the proposed rule, many of which contained extensive comments on various sections of the proposed rule. A notice of availability of Amendments 61/61/13/8 was published on November 27, 2001 (66 FR 59225), with comments on the Amendments invited through January 28, 2002. NMFS received one comment letter on the amendments that supported approval and no comments that recommended disapproval. These comments are summarized and responded to in the Response to Comments section below.

On February 27, 2002, NMFS partially approved Amendments 61/61/13/8. NMFS disapproved the December 31, 2004, sunset dates contained in the amendments because the sunset dates were inconsistent with new legislation making the AFA permanent. The remaining text in Amendments 61/61/13/8 was approved. Section 213 of the AFA as passed by Congress contained a December 31, 2004, sunset date and authorized the Council to review and extend the AFA management program in 2004. As submitted by the Council, Amendments 61/61/13/8 contained this December 31, 2004, sunset date. However, after the amendments were submitted for Secretarial review, Congress passed H.R. 2500, the ''Department of Commerce and Related Agencies Act, 2002,'' which contained a provision that removed the December 31, 2004, sunset date from the AFA. As a result, NMFS found it necessary to reconcile the sunset dates contained in the FMP amendments and proposed

rule with the newly-amended AFA which contained no such sunset date.

II. Final Rule as Adopted

The following is a summary of the major elements of the final rule. Because this final rule has been reorganized and contains various modifications from the proposed rule, we are including here a full discussion of the changes between the proposed and final rule.

A. Definitions

This final rule adds the following definitions to § 679.2 to describe vessels and processors eligible to participate in the BSAI pollock fishery under the AFA: ''AFA catcher/processor,'' ''AFA catcher vessel,'' ''AFA crab processing facility,'' ''AFA entity,'' ''AFA inshore processor,'' ''AFA mothership,'' ''Designated primary processor,'' ''Listed AFA catcher/processor,'' ''Official AFA record,'' ''Restricted AFA inshore processor,'' ''Stationary floating processor,'' ''Unlisted AFA catcher/processor,'' and ''Unrestricted AFA inshore processor.''

The definitions of ''AFA entity'' and ''Affiliation'' have been restructured to improve clarity by moving the substantive elements of the definitions of AFA entity and affiliation to a new section entitled § 679.66 *Excessive shares*. In addition, the criteria for 10–percent or greater ownership has been modified from the proposed rule by eliminating the criteria of ''shared assets and liabilities.'' This change was made in response to comment from industry that identified potential unintended effects of the definition.

A definition for ''Official AFA record'' is added to describe the relevant catch histories of all potentially qualifying vessels in the BSAI pollock fisheries. A definition of ''Stationary floating processor'' is added to define a vessel of the United States operating solely as a mothership in Alaska State waters that remains anchored or otherwise remains stationary while processing groundfish harvested in the GOA or BSAI.

Finally, this final rule revises the definition of ''Inshore component in the GOA'' and removes the definitions of ''Inshore component in the BSAI'' and ''Offshore component in the BSAI'' because the previous inshore/offshore regime for pollock in the BSAI has been superseded by the AFA.

B. AFA Permit Requirements for Vessels, Processors, and Inshore Cooperatives

This final rule establishes permit requirements for AFA catcher/processors, AFA catcher vessels, AFA motherships, AFA inshore processors, and AFA inshore cooperatives in a new § 679.4(l). Any vessel used to engage in directed fishing for a non-community development quota (CDQ) allocation of pollock in the BSAI and any processor that receives pollock harvested in a non-CDQ directed pollock fishery in the BSAI is required to maintain a valid AFA permit onboard the vessel or at the processor location at all times that non-CDQ pollock is being harvested or processed. The AFA does not limit who may participate in the CDQ pollock fishery. Therefore, vessels or processors participating in the pollock CDQ fishery are not required to have AFA permits. In addition, any vessel owner that participates in a BSAI pollock cooperative must have a valid AFA permit for every vessel that participates in a cooperative regardless of whether or not the vessel actually engages in directed fishing for pollock in the BSAI. Finally, these new AFA permits do not exempt a vessel operator, vessel owner, or pollock processor from any other applicable permit or licensing requirements required by State or Federal regulations.

AFA vessel and processor permits may not be used on or transferred to another vessel or processor, except under the replacement vessel provisions outlined below. However, AFA permits may be amended to reflect any change in the ownership of the vessel or processor. The owner or owners of an AFA vessel or AFA processor are required to notify NMFS of any changes in ownership within 60 days of the change in ownership of the AFA vessel or processor.

The final rule contains the following substantive changes to the general AFA permit requirements contained in the proposed rule:

1. *AFA permit application deadline eliminated.* The proposed rule contained a 60–day application deadline for all AFA vessel and processor permits. Several letters of comment noted that the proposed application deadline could pose difficulties for fishermen, especially if the application period occurred during a fishing season when vessel owners may be working at sea and out of contact. Therefore, we have eliminated the application deadline from the final rule.

2. AFA catcher vessel and catcher/processor permits will be renewed automatically. Under the proposed rule, all interim AFA permits would have expired 60 days after the effective date of the final rule and vessel owners would have been required to reapply for their permanent AFA permits. NMFS has reconsidered the need to collect additional information from the owners of catcher vessels and catcher processors and has decided to renew existing interim permits automatically. However, under this final rule, the owners of AFA motherships and AFA inshore processors must still reapply for permanent AFA permits. NMFS is requiring the owners of AFA motherships and AFA inshore processors to reapply for their AFA permits in order to collect data confidentiality waivers that are necessary for the administration of crab processing sideboard limits. All interim AFA mothership and AFA inshore processor permits will expire on December 31, 2002.

3. Final AFA vessel and processor permits have no expiration date. All AFA vessel and processor permits will have no expiration date and will remain valid indefinitely unless revoked by NMFS. The proposed rule contained a December 31, 2004 expiration date which was consistent with section 213 of the AFA when the proposed rule was published. However, as noted above, Congress has subsequently removed the sunset date from section 213 of the AFA.

AFA Permit Application and Administrative Appeals Process

Application forms for all AFA permits may be downloaded from the NMFS Alaska Region home page at *http://www.fakr.noaa.gov*. Paper copies of the permit applications also are available from the NMFS Alaska Region (see **ADDRESSES**).

AFA Catcher/processor Permits

Subsection 208(e) of the AFA, which took effect on January 1, 1999, lists by name catcher/processors that are eligible to harvest the catcher/processor sector BSAI pollock directed fishing allowance. Under this final rule, two categories of AFA catcher/processor permits will be issued. Vessels listed by name in paragraphs 208(e)(1) through (20) of the AFA will be issued ''listed AFA catcher/processor permits.'' Vessels qualifying for AFA catcher/processor permits under paragraph 208(e)(21) will be issued ''unlisted AFA catcher/processor permits,'' which will restrict such vessels, in the aggregate, to a harvest of no more than 0.5 percent of the catcher/processor sector pollock TAC allocation. In addition, a catcher/processor will not need an AFA catcher/processor permit to participate in the CDQ sector of the BSAI pollock fishery because the AFA does not limit participation in the CDQ pollock fishery. The owners of AFA catcher/processors are not required to reapply

for their AFA permits. NMFS will mail new permits to the owners of record of all existing AFA catcher/processors prior to the start of the 2003 fishery.

AFA Catcher Vessel Permits

Under the AFA, a catcher vessel is qualified to engage in directed fishing for BSAI pollock if it is listed by name in subsections 208(b), 208(c), or 211(e) of the AFA, or if its history of participation in the BSAI pollock fishery meets certain criteria set out in subsections 208(a), 208(b), or 208(c) of the AFA. Under this final rule, AFA catcher vessel permits will be endorsed to authorize directed fishing for pollock for delivery to one or more of the three processing sectors: Catcher/processors, inshore processors, and motherships. Under the AFA, a catcher vessel may be authorized to engage in directed fishing for pollock for delivery to both AFA inshore processors and AFA motherships, depending on its qualifying catch history. However, a vessel that is eligible to deliver to catcher/processors is ineligible for an endorsement to deliver to inshore processors or motherships. In addition, a catcher vessel will not need an AFA catcher vessel permit to participate in the CDQ sector of the BSAI pollock fishery because the AFA does not limit participation in the CDQ pollock fishery.

The owners of AFA catcher vessels are not required to reapply for their AFA permits. NMFS will mail new permits to the owners of record of all existing AFA catcher vessels prior to the start of the 2003 fishery.

Crab Sideboard Endorsements. Under subparagraph 211(c)(1)(A) of the AFA, the Council is required to recommend measures to limit the participation of AFA catcher vessels in BSAI crab fisheries. Subparagraph 211(c)(2)(C) of the AFA also prohibits section 208(b) catcher vessels (i.e., AFA catcher vessels eligible to deliver to catcher/processors) ''from participating in a directed fishery for any species of crab in the Bering Sea and Aleutian Islands Management Area unless the catcher vessel harvested crab in the directed fishery for that species of crab in such Area during 1997.'' At its June 1999 and June 2000 meetings, the Council developed final recommendations under Amendments 61/61/13/8 for limits on the participation of AFA catcher vessels in BSAI crab fisheries in order to comply with these two provisions of the AFA. These recommendations apply to all AFA catcher vessels and supersede the crab sideboards set out in subparagraph 211(c)(2)(C) of the AFA that apply to section 208(b) vessels only.

Under this final rule, NMFS will implement these catcher vessel crab sideboard limits through crab sideboard endorsements on AFA catcher vessel permits. The owner or operator of a catcher vessel who wishes to participate in a BSAI king or Tanner crab fishery is required to have a sideboard endorsement for that crab species on the vessel's AFA catcher vessel permit. An AFA catcher vessel permit will be endorsed for the Bristol Bay Red King Crab (BBRKC), St. Matthew Island blue king crab, Pribilof Island red or blue king crab, Aleutian Islands brown king crab, Aleutian Islands red king crab, Opilio Tanner crab, and Bairdi Tanner crab fisheries based on the vessel's history of participation in such crab fisheries. The specific qualifying criteria for each fishery are set out in § 679.4(l)(3)(ii)(D) of this final rule.

The Council based some of its crab sideboard recommendations on whether a particular vessel is ''License Limitation Program (LLP) qualified'' for a particular crab fishery. To implement this recommendation, the AFA catcher vessel permit application includes questions related to vessel catch history using the same qualifying years as the LLP program. This final rule requires an applicant for an AFA catcher vessel permit to indicate on the permit application which AFA crab sideboard endorsements the vessel qualifies for based on the qualifying criteria set out in this rule. NMFS will verify all claims of qualification.

Finally, the Council recommended exempting from all crab harvesting sideboards, any AFA catcher vessel that made a legal landing of crab in every BBRKC, *Opilio* Tanner crab, and *Bairdi* Tanner crab fishery opening from 1991–1997. A vessel qualifying for this exemption will receive an AFA catcher vessel permit with an endorsement indicating that the vessel is exempt from all crab harvesting sideboards. The Council recommended the exemption to mitigate the adverse effect of crab sideboards on vessels that are almost exclusively crab vessels but, due to a small amount of pollock landings, fell within the criteria for AFA eligibility. The exemption will mitigate the adverse effect of the crab sideboard restrictions on such vessels.

An owner of a catcher vessel should be aware that qualification for a crab sideboard endorsement does not, in and of itself, provide sufficient authorization to participate in a BSAI crab fishery. To participate in a BSAI crab fishery, the operator of an AFA catcher vessel must have a valid LLP license for that crab fishery as well as an AFA catcher vessel permit naming that vessel and containing an endorsement for that crab fishery.

Groundfish sideboard exemptions. Catcher vessel groundfish harvest sideboard limits apply to all AFA catcher vessels in the aggregate regardless of sector and regardless of participation in a cooperative. However, the Council recommended that certain smaller AFA catcher vessels be exempt from these sideboards if they have relatively low pollock fishing history and show a dependence on BSAI Pacific cod and/or GOA groundfish. Based on the Council's recommended criteria for these exemptions, AFA catcher vessels less than 125 ft (38.1 m) whose annual BSAI pollock landings averaged less than 1,700 mt from 1995–1997 are exempt from BSAI Pacific cod sideboards if they made 30 or more legal landings of BSAI Pacific cod in the BSAI directed fishery for Pacific cod during that 3–year period. In addition, AFA catcher vessels that meet the same vessel length and BSAI pollock landing criteria and that made 40 or more legal landings of GOA groundfish during the 1995–1997 time period are exempt from groundfish sideboards in the GOA.

In recommending these exemptions, the Council noted that many of the AFA catcher vessels with relatively low catch histories of BSAI pollock have traditionally targeted BSAI Pacific cod and GOA groundfish during much of the year and may be only minor participants in the BSAI pollock fishery. The Council believed that imposing aggregate sideboards on such vessels in the BSAI Pacific cod fishery and GOA groundfish fisheries could severely harm the owners of such vessels given their historic high levels of participation in non-pollock fisheries, and the fact that their historic dedication to groundfish fisheries other than the BSAI pollock fishery fisheries may account for their lower catch histories of BSAI pollock during the AFA qualifying years. The owners of vessels who believe their vessel may be eligible for one or both of these exemptions must apply for the sideboard exemption on their AFA catcher vessel permit application form.

AFA Mothership Permits

Under subsection 208(d) of the AFA, three named vessels are eligible for AFA permits that authorize them to process pollock harvested in the BSAI directed pollock fishery for delivery to motherships. Under this final rule, NMFS will issue to the owner of a mothership an AFA mothership permit if the mothership is listed by name in paragraphs 208(d)(1) through (3) of the AFA and the owner applies for such

permit. However, the owner of a mothership wishing to process pollock harvested by a fishery cooperative also must apply for and receive a cooperative processing endorsement on its AFA mothership permit. This requirement is necessary because NMFS must identify and issue crab processing restrictions to any AFA entity that owns or controls an AFA mothership or an AFA inshore processor that receives pollock harvested by a cooperative.

Subparagraph 211(c)(2)(A) of the AFA imposes crab processing restrictions on the owners of AFA mothership and AFA inshore processors that receive pollock from a fishery cooperative. Under the AFA, these processing limits extend not only to the AFA processing facility itself, but also to any entity that directly or indirectly owns or controls a 10–percent or greater interest in the AFA mothership or in the AFA inshore processor. To implement the crab processing restrictions contained in subparagraph 211(c)(2)(A) of the AFA, NMFS requires that applicants for AFA mothership and AFA inshore processor permits disclose on their permit applications all entities directly or indirectly owning or controlling a 10–percent or greater interest in the AFA mothership or AFA inshore processor and the names of BSAI crab processors in which such entities directly or indirectly own or control a 10–percent or greater interest. An applicant for an AFA mothership or an AFA inshore processor permit who did not disclose this crab processor ownership information could still receive an AFA mothership permit or an AFA inshore processor permit but will be denied an endorsement authorizing the processor to receive and process pollock harvested by a fishery cooperative.

AFA Inshore Processor Permits

Under the AFA, shoreside processors and stationary floating processors (collectively known as inshore processors) may be authorized to receive and process BSAI pollock harvested in the directed fishery, based on their levels of processing in both 1996 and 1997. An inshore processor is eligible for an unrestricted AFA inshore processing permit if the facility annually processed more than 2,000 mt round weight of pollock harvested in the BSAI inshore directed pollock fishery in both 1996 and 1997. An inshore processor is eligible for a restricted AFA inshore processor permit if the facility processed pollock harvested in the inshore directed pollock fishery during 1996 or 1997, but did not process annually more than 2,000 mt round weight of pollock in both 1996 and 1997. A restricted AFA inshore processor permit prohibits the inshore processing facility from processing more than 2,000 mt round weight of BSAI pollock harvested in the directed fishery in any one calendar year.

The owner of an AFA inshore processor wishing to process pollock harvested by a fishery cooperative must have a cooperative processing endorsement on the AFA inshore processing permit. The requirements for an AFA inshore processor cooperative processing endorsement are the same as those listed for AFA motherships above.

Finally, AFA inshore processors are restricted to processing BSAI pollock in a single geographic location in state waters during a fishing year. The purpose of this restriction is to implement subparagraph 208(f)(1)(A) of the AFA, which includes in the category of AFA inshore processors, vessels that operate in a single geographic location in state waters. Under the final rule, shoreside (land-based) processors are restricted to operating in the physical location in which the facility first processed pollock during a fishing year. Stationary floating processors are restricted to receiving and processing BSAI pollock in a location within Alaska state waters that is within 5 nautical miles (nm) of the position in which the stationary floating processor first processed BSAI pollock during a fishing year. NMFS believes that 5 nm is an appropriate distance for this requirement because it allows the operator of a floating processor some flexibility in choosing an appropriate anchorage, but it still requires that the processor be located in the same body of water for the duration of a fishing year while receiving and processing BSAI pollock.

Approval of Additional AFA Inshore Processors

Paragraph 208(f)(2) of the AFA provides that:

> Upon recommendation by the North Pacific Council, the Secretary may approve measures to allow catcher vessels eligible under subsection (a) to deliver pollock harvested from the directed fishing allowance under section 206(b)(1) to shoreside processors not eligible under paragraph (1) if the total allowable catch for pollock in the Bering Sea and Aleutian Islands Management Area increases by more than 10 percent above the total allowable catch in such fishery in 1997, or in the event of the actual total loss or constructive total loss of a shoreside processor eligible under paragraph (1)(A).

To implement this provision of the AFA, the final rule provides a mechanism for the Council to recommend that NMFS issue AFA inshore processor permits to inshore processors that are otherwise ineligible under the AFA. In the event that the BSAI pollock TAC exceeds 1,274,900 mt (10 percent above the 1997 combined BSAI TAC of 1,159,000 mt), or in the event of the actual total loss or constructive loss of an AFA inshore processor, the Council may recommend that an additional inshore processor (or processors) be issued AFA inshore processing permits. The Council's recommendation to NMFS must identify (1) the processor (or processors) that would be issued AFA inshore processing permits, (2) the type of AFA inshore processing permit(s) to be issued (restricted or unrestricted), and the duration of any such permit(s). The Council may recommend any length of duration for permits issued under this provision, from a single fishing season to the duration of the AFA. Or the Council may recommend that any such permits remain valid as long as the criteria that led to their issuance remain in effect (i.e., TAC remains above 1,274,900 mt).

Replacement Vessels

This final rule provides that, in the event of the actual total loss or constructive total loss of an AFA catcher vessel, AFA mothership, or AFA catcher/processor, the owner of such vessel may designate a replacement vessel that will be eligible in the same manner as the original vessel after submission of an application for an AFA replacement vessel that is subsequently approved by NMFS. The AFA contains specific restrictions on replacement vessels that are set out in detail in the final rule regulatory text at § 679.4(l)(7). Paragraph 208(g)(5) of the AFA states that a vessel may be used as a replacement vessel if:

> the eligible vessel is less than 165 feet in registered length, of fewer than 750 gross registered tons, and has engines incapable of producing less than 3,000 shaft horsepower, the replacement vessel is less than each of such thresholds and does not exceed by more than 10 percent the registered length, gross registered tons or shaft horsepower of the eligible vessel;

NMFS believes that Congress intended this clause to apply to eligible vessels with engines incapable of producing more than 3,000 shaft horsepower rather than engines incapable of producing less than 3,000 shaft horsepower. No catcher vessel operating in Alaska has engines incapable of producing less than 3,000 shaft horsepower, and construing this clause literally would make this provision a nullity. Any vessel engine regardless of size is capable of

producing less than 3,000 shaft horsepower at less than full throttle or at idle. Therefore, NMFS is using the phrase ''incapable of producing more than 3,000 shaft horsepower'' to implement paragraph 208(g)(5) of the AFA.

In the event of the loss of an approved AFA replacement vessel, the owners of the replacement vessel may designate a subsequent replacement vessel provided that the original replacement vessel is lost under conditions that meet the criteria set out in the AFA for lost vessels. In the event of multiple vessel replacements, the length, horsepower, and tonnage limits for any subsequent replacement vessels are based on the length, horsepower, and tonnage of the originally qualifying AFA vessel.

Under the final rule, any vessel that meets the replacement vessel criteria may be designated as a replacement for a lost vessel including an existing AFA vessel. In the event that an existing AFA catcher vessel is designated as a replacement for a lost AFA catcher vessel, the catch histories of the two vessels will be merged for the purpose of making inshore cooperative allocations, crab sideboard endorsements, and groundfish sideboard exemptions. However, the catch histories of two vessels will not be merged until NMFS receives and approves an application for a replacement vessel from the owner(s) of the affected vessels.

Official AFA Record and Appeals

In order to issue AFA permits, NMFS has compiled available information about vessels and processors that were used to participate in the BSAI pollock fisheries during the qualifying periods. Information in the official AFA record includes vessel ownership information, documented harvests made from vessels during AFA qualifying periods, vessel characteristics, and documented amounts of pollock processed by pollock processors during AFA qualifying periods. Under this final rule, the official AFA record is presumed to be correct for the purpose of determining eligibility for AFA permits. An applicant for an AFA permit has the burden of proving correct any information submitted in an application that is inconsistent with the AFA official record.

This final rule also establishes an appeals process under which the owners of vessels and processors may appeal NMFS determinations about either AFA eligibility or inshore cooperative allocations. The appeals process for AFA permits and inshore cooperative allocations is based on the existing appeals process in place for the individual fishing quota and LLP programs.

Restrictions on Transfer of LLP Licenses

This final rule contains a revision to the LLP program for groundfish and crab that prevents LLP licenses earned on AFA vessels from being used on non-AFA vessels. The purpose of this restriction is to prevent the owners of retired AFA vessels from re-deploying the LLP license in the groundfish and/or crab fisheries off Alaska on a new vessel that is not subject to the same sideboard restrictions as the retired AFA vessel. Without this restriction, owners of AFA vessels would be able to evade the harvesting sideboard restrictions contained in this rule by using the LLP licenses from their AFA vessels to deploy new vessels into the groundfish and crab fisheries that are not subject to AFA sideboards.

Under this restriction, no person may use an LLP license that was derived in whole or in part from the qualifying fishing history of an AFA catcher vessel or a listed AFA catcher/processor to fish for groundfish or crab on a non-AFA catcher vessel or non-AFA catcher/processor. NMFS will identify all such licenses affected by this restriction and inform the holders of such licenses of this restriction through a letter to the permit holder and/or an endorsement printed on the face of the license. Persons will be able to file an administrative appeal of NMFS' determination under § 679.4(l)(8).

C. Procedures and Formulas for Allocating the BSAI Pollock TAC

Under this final rule, the procedures for allocating pollock TAC among industry sectors and apportioning each sector's TAC between seasons and/or areas are revised to incorporate the changes required by the AFA. No changes from the proposed rule were made to the procedures and formulas for allocating the BSAI pollock TAC.

Under this final rule, 10 percent of the pollock TAC specified for the Bering Sea (BS) subarea and the Aleutian Islands (AI) subarea will be allocated to the CDQ program. The remaining TAC for each subarea, after establishment of an incidental catch allowance for pollock harvested as incidental catch in other groundfish fisheries, will be allocated 50 percent to AFA catcher vessels harvesting pollock for processing by AFA inshore processors; 40 percent to AFA catcher/processors and AFA catcher vessels harvesting pollock for processing by AFA catcher/processors, with not less than 8.5 percent of this allocation made available to AFA catcher vessels delivering to catcher/processors; and 10 percent to AFA catcher vessels harvesting pollock for processing by AFA motherships. The inshore pollock TAC will be further divided into two allocations: one allocation to vessels participating in inshore fishery cooperatives, and one allocation to vessels not participating in a fishery cooperative. The annual allocation to inshore cooperatives will be equal to the aggregate annual allocations made to each inshore cooperative. The annual allocation to the inshore open access fishery, which is composed of the remaining AFA inshore catcher vessels that are not in a cooperative, will be equal to the remaining inshore allocation after subtraction of the allocation to fishery cooperatives.

Management of the 8.5 Percent Allocation for AFA Catcher Vessels Delivering to Catcher/Processors

Under subsection 210(c) of the AFA ''not less than 8.5 percent of the [catcher/processor sector] directed fishing allowance . . . shall be available for harvest only by the catcher vessels eligible under section 208(b).'' Subsection 210(c) further provides that ''The owners of such catcher vessels may participate in a fishery cooperative with the owners of the catcher/processors eligible under paragraphs (1) through (20) of section 208(e).'' NMFS intends to implement these two related provisions by establishing two different procedures based on whether such catcher vessels are members of a cooperative with AFA catcher/processors during a given fishing year.

Allocation procedure with cooperatives. If the owners of all such AFA catcher vessels enter into a cooperative agreement, and the owners of such vessels also have entered into a cooperative agreement or inter-cooperative agreement with the owners of the listed AFA catcher/processors, and such agreement provides for at least 8.5 percent of the cooperative harvest shares for such catcher vessels, then NMFS will assume that the 8.5 percent catcher vessel allocation has been provided for within the cooperative or inter-cooperative agreement. In such event, NMFS will make a single allocation of pollock to the catcher/processor sector that is not subdivided between catcher vessels and catcher/processors. Owners of catcher/processors are then able to enter into cooperative agreements that allow them to harvest some or all of the 8.5 percent of the TAC reserved for catcher vessels, or catcher vessels could harvest some or

all of 91.5 percent catcher/processor limit.

Allocation procedure without cooperatives. If the AFA catcher vessels eligible to deliver to catcher/processors do not form a cooperative and do not enter into a cooperative or inter-cooperative agreement with the listed AFA catcher/processor fleet, then NMFS will limit AFA catcher/processors to harvesting no more than 91.5 percent of the catcher/processor sector allocation to guarantee that not less than 8.5 percent of the catcher/processor sector allocation is made available for harvest by AFA catcher vessels. In other words, AFA catcher/processors will be limited to harvesting no more than 91.5 percent of the catcher/processor allocation and only eligible catcher vessels will be able to harvest the remaining 8.5 percent of the catcher/processor sector allocation for delivery to catcher/processors. This 91.5 percent catcher/processor harvest limit will be published in the annual harvest specifications and will be applied to each fishing season.

Management of the 0.5 Percent Cap for Unlisted AFA Catcher/processors

Under paragraph 208(e)(21) of the AFA, unlisted catcher/processors are ''prohibited from harvesting in the aggregate a total of more than one-half (0.5) of a percent of the pollock apportioned to the [AFA catcher/processor sector].'' Under the final rule, this 0.5 percent limit will be apportioned seasonally using whatever seasonal apportionment formula is in effect for the overall catcher/processor sector. This is to prevent unlisted catcher/processors from taking their entire 0.5 percent limit during the roe season when pollock have higher value. However, NMFS will allow for the rollover of any uncaught amount of this 0.5 percent limit from the roe to the non-roe season so that unlisted catcher/processors could take their entire annual limit during the non-roe season if they so choose. This 0.5 percent limit is not a separate allocation to unlisted AFA catcher/processors but rather a cap on their harvest activity within the overall catcher/processor sector allocation. Consequently, if unlisted AFA catcher/processors choose not to fish, this opportunity will be foregone in favor of other AFA catcher/processors and AFA catcher vessels delivering to catcher/processors.

Inshore Cooperative Allocations

Paragraph 210(b)(1)(B) of the AFA sets out a specific formula for determining the allocation of pollock to each inshore cooperative. Under this paragraph:

> The Secretary shall allow only such catcher vessels . . . to harvest the aggregate percentage of the directed fishing allowance under section 206(b)(1) in the year in which the fishery cooperative will be in effect that is equivalent to the aggregate total amount of pollock harvested by such catcher vessels . . . in the directed pollock fishery for processing by the inshore component during 1995, 1996, and 1997 relative to the aggregate total amount of pollock harvested in the directed pollock fishery for processing by the inshore component during such years and shall prevent such catcher vessels . . . from harvesting in aggregate in excess of such percentage of such directed fishing allowance.

In other words, under the AFA, each inshore cooperative's allocation percentage is generated by dividing the aggregate inshore landings by all member vessels in the cooperative from 1995–1997 by the total inshore landings during that same period.

However, paragraph 213(c)(3) of the AFA provides the Council with the authority to recommend an alternative allocation formula:

> The North Pacific Council may recommend and the Secretary may approve conservation and management measures in accordance with the Magnuson-Stevens Act . . . that supersede the criteria required in paragraph (1) of section 210(b) to be used by the Secretary to set the percentage allowed to be harvested by catcher vessels pursuant to a fishery cooperative under such paragraph.

Using the authority provided in paragraph 213(c)(3) of the AFA, the Council has recommended three changes that supersede the inshore cooperative allocation formula set out in the AFA. These changes are contained in the final rule and described below.

Offshore compensation. The first change recommended by the Council at its June 1999 meeting allows inshore catcher vessels to receive inshore catch history credit for landings made to catcher/processors if the vessel made cumulative landings to catcher/processors of more than 499 mt of BSAI pollock during the 1995 through 1997 qualifying period. The Council recommended this change to assist the cooperatives in meeting the intent of paragraph 210(b)(4) of the AFA, which requires that:

> Any contract implementing a fishery cooperative under paragraph (1) which has been entered into by the owner of a qualified catcher vessel eligible under section 208(a) that harvested pollock for processing by catcher/processors or motherships in the directed pollock fishery during 1995, 1996, and 1997 shall, to the extent practicable, provide fair and equitable terms and conditions for the owner of such qualified catcher vessel.

The Council believed that catcher vessels with sustained participation delivering to catcher/processors, but excluded from delivering to catcher/processors under subsection 208(b) of the AFA, should not be disadvantaged by the new management regime. The Council chose 499 mt as the threshold based on information presented in the FEIS/RIR/IRFA, which indicated that 499 mt provided a good ''break point'' between vessels with significant history of delivering to catcher/processors and vessels that only had incidental deliveries to catcher/processors during the 1995 through 1997 qualifying period. The Council recommended that only deliveries to catcher/processors be considered for such ''compensation'' and not deliveries made to the three motherships listed in subsection 208(d) of the AFA, because any vessel with more than 250 mt of pollock deliveries to one of the three AFA motherships during the qualifying period will earn an endorsement to deliver pollock to AFA motherships under the AFA and, therefore, has not ''lost'' any fishing privileges as a result of the AFA.

Using the best 2 of 3 years from 1995–1997. The second change recommended by the Council at its June 1999 meeting, modifies the allocation formula so that the share of the BSAI pollock TAC that each catcher vessel brings into a cooperative is based on average annual pollock landings in its best 2 out of 3 years from 1995 through 1997. This change, along with the offshore compensation formula, was unanimously endorsed by industry representatives during public testimony at the June 1999 Council meeting. These changes were viewed as a more equitable method of allocating pollock catch because some vessels may have missed all or part of the inshore fishery in a given year due to unavoidable circumstances such as vessel breakdowns or lack of markets.

Revised open access formula. Finally, the Council recommended a third change to the allocation formula at its June 2000 meeting. This change reduces the denominator in the formula from ''the aggregate total amount of pollock harvested in the directed pollock fishery for processing by the inshore component'' to ''the aggregate total amount of pollock harvested by AFA catcher vessels with inshore sector endorsements.'' The effect of this change is to eliminate from the formula all 1995 through 1997 catch history made by vessels that are not AFA catcher vessels with inshore sector endorsements. One consequence of the formula set out in the AFA is that all inshore catch history made by non-AFA vessels, and AFA catcher vessels without inshore endorsements, defaults to the open access sector. The Council

believed that this resulted in an inshore open access allocation that was unfairly inflated to the detriment of vessels in cooperatives. The Council believed that inflating the open access quota in such a manner will provide incentives for vessels to leave cooperatives, which could disrupt the objective of rationalizing the BSAI pollock fishery. Under this change, the cooperative and the open access sectors will be treated equally and allocations to both cooperatives and the open access sector would be based only on the fishing histories of the vessels in each group. All three of these changes have been incorporated into Amendments 61/61/13/8 as management measures that supersede the AFA.

Separate allocations for Bering Sea and Aleutian Islands Subareas. Under the final rule, NMFS will use the allocation formula recommended by the Council to make annual allocations of pollock to each inshore cooperative for each subarea of the BSAI; the Bering Sea subarea and the Aleutian Islands subarea. These two subareas are treated as separate pollock stocks under the FMP and receive separate TACs during the annual specification process. The Aleutian Islands subarea is currently closed to directed fishing for pollock as a protection measure for Steller sea lions. Consequently, under this final rule, as long as Aleutian Islands subarea is closed for this or any other reason, NMFS will not make separate cooperative allocations of pollock for the Aleutian Islands subarea. Each cooperative will receive an annual allocation of Bering Sea subarea pollock only.

Each sector's annual Bering Sea Subarea allocation of pollock is further apportioned among fishing seasons. In a separate action, NMFS is implementing management measures to temporally and spatially disperse the BSAI pollock fishery to protect endangered Steller sea lions. These temporal and spatial dispersion measures will be applied to each sector's BSAI pollock allocations.

Treatment of the F/V HAZEL LORRAINE AND F/V PROVIDIAN pursuant to Public Law 106–562. In December 2000, the President signed Public Law 106–562 into law. This law, among other things, contains a provision that includes the F/V HAZEL LORRAINE and F/V PROVIDIAN as AFA inshore catcher vessels. The relevant section reads as follows:

SEC 501. TREATMENT OF VESSEL AS AN ELIGIBLE VESSEL.Notwithstanding paragraphs (1) through (3) of sections 208(a) of the American Fisheries Act . . . the catcher vessel HAZEL LORRAINE . . . and catcher vessel PROVIDIAN . . . shall be considered to be vessels that are eligible to harvest the directed fishing allowance under section 206(b)(1) of that Act pursuant to a Federal fishing permit in the same manner as, and subject to the same requirements and limitations on that harvesting as apply to, catcher vessels that are eligible to harvest that directed fishing allowance under section 208(a) of that Act.

After reviewing the legislative history of this statute including a statement by Senator Snow in the Congressional Record (S. 11894, December 15, 2000), NMFS has determined that Public Law 106–562 directs NMFS to include both the F/V HAZEL LORRAINE and F/V PROVIDIAN as eligible vessels and directs NMFS to use the 1992 through 1994 pollock catch history of the F/V OCEAN SPRAY instead of 1995 through 1997 catch history of the F/V PROVIDIAN for the purpose of determining inshore cooperative quota allocations. Consequently, the final regulations provide that the 1992 through 1994 catch history of the F/V OCEAN SPRAY would be used to determine inshore cooperative allocations for any cooperative for which the F/V PROVIDIAN is a member.

Excessive Shares Harvesting and Processing Limits

Harvesting limits. Paragraph 210(e)(1) of the AFA establishes an excessive harvesting share cap of 17.5 percent of the directed pollock fishery as follows:

HARVESTING.—No particular individual, corporation, or other entity may harvest, through a fishery cooperative or otherwise, a total of more than 17.5 percent of the pollock available to be harvested in the directed pollock fishery.

To implement this provision of the AFA, NMFS will publish in the annual harvest specifications, the tonnage amount that equates to 17.5 percent of the pollock available to be harvested in the directed pollock fishery excluding CDQ. The final rule also contains a definition of ''AFA entity'' to identify which entities are affected by this 17.5 percent excessive harvesting share limit. The definition of AFA entity is discussed in detail in the definitions section.

Processing limits. Paragraph 210(e)(2) of the AFA states that:

Under the authority of section 301(a)(4) of the Magnuson-Stevens Act (16 U.S.C. 1851(a)(4)), the North Pacific Council is directed to recommend for approval by the Secretary conservation and management measures to prevent any particular individual or entity from processing an excessive share of the pollock available to be harvested in the directed pollock fishery. In the event the North Pacific Council recommends and the Secretary approves an excessive processing share that is lower than 17.5 percent, any individual or entity that previously processed a percentage greater than such share shall be allowed to continue to process such percentage, except that their percentage may not exceed 17.5 percent (excluding pollock processed by catcher/processors that was harvested in the directed pollock fishery by catcher vessels eligible under 208(b)) and shall be reduced if their percentage decreases, until their percentage is below such share. In recommending the excessive processing share, the North Pacific Council shall consider the need of catcher vessels in the directed pollock fishery to have competitive buyers for the pollock harvested by such vessels.

At its October 2000 meeting, the Council considered various options for processing excessive share limits for the BSAI pollock fishery and adopted a BSAI pollock excessive processing share limit of 30 percent of the non-CDQ directed fishing allowance. The Council also recommended that the same 10 percent entity rules established for excessive harvesting shares be used for excessive processing shares as well. Under this final rule, NMFS will publish in the annual harvest specifications, the excessive processing share limit in tons that equates to 30 percent of the pollock available to be harvested in the non-CDQ directed pollock fishery. An AFA entity is prohibited from processing BSAI pollock from the BSAI directed pollock fishery in excess of this excessive processing share limit.

D. Regulations Governing the Formation and Operation of Fishery Cooperatives

This final rule contains regulations that govern the formation and operation of fishery cooperatives. The first set of regulations are filing deadlines and annual reporting requirements that apply to all cooperatives operating in the BSAI pollock fishery regardless of sector. The second set of regulations are required provisions of cooperative contracts that must be included in all catcher vessel cooperatives operating in the BSAI pollock fishery that are intended to govern the harvest of sideboard species by catcher vessel cooperatives. The third set of regulations are specific requirements and restrictions on inshore catcher vessel cooperatives that are applying for an inshore cooperative fishing permit to receive an annual allocation of the inshore sector BSAI pollock TAC.

Regulations that Apply to all Cooperatives

The following regulations apply to all fishery cooperatives formed for the purpose of managing directed fishing for pollock within any sector of the BSAI pollock fishery.

Filing deadlines. Each fishery cooperative must file with NMFS and the Council, a signed copy of its cooperative contract, and any material modifications to any such contract, together with a copy of a letter from a party to the contract requesting a business review letter on the fishery cooperative from the Department of Justice and any response to such request. The Council and NMFS will make this information available to the public upon request. The filing deadline for cooperatives operating in the catcher/processor and mothership sectors is 30 days prior to the start of any fishing activity conducted under the terms of the contract. The filing deadline for cooperatives operating in the AFA inshore sector is December 1 of the year prior to the year in which fishing under the contract will occur. The December 1 deadline for inshore sector cooperatives is necessary because inshore sector cooperative allocations must be included in the BSAI interim harvest specifications that are usually published prior to January 1 of each year. Under this final rule, NMFS will not make sub-allocations of pollock to catcher/processor and mothership cooperatives. Such cooperatives operate at the sector level. Consequently, catcher/processor and mothership sector cooperative information does not need to be included in the BSAI interim harvest specifications.

Designated representative. Each cooperative is required to appoint a designated representative. The designated representative is the primary contact person for NMFS on issues related to the operation of the cooperative and is responsible for fulfilling regulatory requirements on behalf of the cooperative including, but not limited to, filing of cooperative contracts, filing of annual reports, and in the case of inshore sector catcher vessel cooperatives, signing cooperative fishing permit applications and completing and submitting inshore catcher vessel pollock cooperative catch reports. The owners of the member vessels are jointly and severally responsible for compliance and ensuring that the designated representative complies with the requirements contained in this final rule.

Agent for service of process. Each cooperative is required to appoint an agent who is authorized to receive and respond to any legal process issued in the United States with respect to all owners and operators of vessels that are members of the cooperative. The agent for service of process may be the same individual as the cooperative's designated representative, or may be a different individual. Service on or notice to the cooperative's appointed agent constitutes service on or notice to all members of the cooperative. NMFS may, at its option, attempt to serve every member of the cooperative individually in addition to service on the cooperative's appointed agent. However, failure to achieve service on the individual member does affect the validity of notice if service is accomplished on the cooperative's appointed agent for service of process. The agent for service of process must be capable of accepting service on behalf of the cooperative until December 31 of the year 5 years after the calendar year for which the fishery cooperative has filed its intent to operate. If the agent is unable to complete this obligation, the cooperative is required to appoint a replacement agent who could complete the term of service.

Required contract elements for all fishery cooperatives. Under the final rule, all cooperative contracts formed for the purpose of managing directed fishing for pollock in the BSAI must: (1) list parties to the contract, (2) list all vessels and processors that will harvest and process pollock harvested under the cooperative, (3) specify the amount or percentage of pollock allocated to each party to the contract, and (4) pursuant to subsection 210(f) of the AFA, include a contract clause under which the parties to the contract agree to make payments to the State for any pollock harvested in the directed pollock fishery which is not landed in the State, in amounts which otherwise would accrue had the pollock been landed in the State subject to any landing taxes established under Alaska law. Failure to include such a contract clause or for such amounts to be paid will result in a revocation of the authority to form fishery cooperatives under section 1 of the Act of June 25, 1934 (15 U.S.C. 521 *et seq.*).

Annual reporting requirements for all cooperatives. Under this final rule all cooperatives are required to submit preliminary and final annual written reports on fishing activity to the Council. The Council will make copies of each report available to the public upon request. The preliminary report covering activities through November 1 must be submitted by December 1 of each year. The final report covering activities for an entire calendar year must be submitted by February 1 the following year.

The preliminary and final written reports must contain, at a minimum: (1) The cooperative's allocated catch of pollock and sideboard species, and any sub-allocations of pollock and sideboard species made by the cooperative to individual vessels on a vessel-by-vessel basis; (2) the cooperative's actual retained and discarded catch of pollock, sideboard species, and prohibited species catch (PSC) on an area-by-area and vessel-by-vessel basis; (3) a description of the method used by the cooperative to monitor fisheries in which cooperative vessels participated; and (4) a description of any actions taken by the cooperative to penalize vessels that exceed their allowed catch and bycatch in pollock and all sideboard fisheries.

The purpose of this annual report requirement is to assist the Council and NMFS in meeting the requirements of paragraph 210(a)(1) of the AFA, which requires that NMFS make such information available to the public in a manner that NMFS and the Council decide is appropriate. Section 210(a) requires the release of this information, despite the confidentiality provisions of the Magnuson-Stevens Act or any other law. It requires that the Secretary and Council take into account the interest of parties to any cooperative contract in protecting the confidentiality of proprietary information. The Secretary and the Council have no discretion in whether to release this information, despite the possibility that it might be confidential commercial or financial information.

After analyzing various methods of providing this information to the public, the Council determined that the most appropriate method for disseminating information about each cooperative is to require an annual report from each cooperative that could be reviewed by the Council and distributed to the public. The information that will be released is based on observer data and, except for the exception in section 210(a), such information may have been protected from public disclosure under the Freedom of Information Act.

During the development of this reporting requirement, pollock industry representatives did not present to NMFS or to the Council concerns about these reporting requirements, and have not indicated that disclosure of such information could reasonably be expected to cause substantial competitive harm. In addition, the annual report does not require the release of observer data on specific hauls (e.g., haul location, fishing depth, and catch composition) that might disclose confidential information on specific fishing operations. The requirement that each cooperative report the actual retained and discarded catch of pollock, sideboard species, and

PSC on an area-by-area and vessel-by-vessel basis will not disclose when and where individual vessels fished and what they caught at those locations which could have disclosed to competitors the identity of fishing grounds. Therefore, NMFS believes the disclosure of catch and bycatch information on an annual basis and by large management areas will not identify any vessel's specific fishing grounds and what was harvested at those specific locations.

For these reasons, NMFS has concluded that the annual reporting requirements as proposed by the Council are an appropriate way to comply with the public disclosure requirements of paragraph 210(a)(1) of the AFA.

Regulations for Cooperatives that Contain AFA Catcher Vessels

In addition to the general regulations described above that apply to all fishery cooperatives operating in the BSAI directed pollock fishery, this final rule imposes additional contract requirements for all cooperatives that contain AFA catcher vessels. These regulations apply to catcher vessel cooperatives operating in all sectors of the BSAI pollock fishery. The purpose of these regulations is to hold catcher vessel cooperatives responsible for managing the harvest of groundfish sideboard species and prevent an all out race for sideboard species by AFA catcher vessels.

Under the final rule, a cooperative contract that includes AFA catcher vessels must include adequate provisions to prevent each non-exempt member catcher vessel from exceeding an individual vessel sideboard limit for each BSAI or GOA sideboard species or species group that is issued to the vessel by the cooperative in accordance with the following criteria: (1) The aggregate individual vessel sideboard limits issued to all member vessels in a cooperative must not exceed the aggregate contributions of each member vessel towards the overall groundfish sideboard amount as announced by NMFS, or (2) in the case of two or more cooperatives that have entered into an inter-cooperative agreement, the aggregate individual vessel sideboard limits issued to all member vessels subject to the inter-cooperative agreement must not exceed the aggregate contributions of each member vessel towards the overall groundfish sideboard amount as announced by NMFS.

This requirement that catcher vessel cooperatives address the issue of sideboard management in their cooperative contracts was recommended by the Council at its December 1999 meeting as a means to prevent increased competition for sideboard species. To comply with this requirement, each cooperative contract must have penalty provisions on individual vessels that will be payable to owners of vessels outside the cooperative. The amount and type of such penalties are left to the discretion of the cooperatives. However, NMFS may disapprove an inshore cooperative fishing permit application if the Regional Administrator, Alaska Region, NMFS (Regional Administrator) determines that such penalties are inadequate.

Regulations for Inshore Catcher Vessel Cooperatives

Under the AFA, a fundamental difference exists between the fishery cooperatives authorized to operate in the AFA catcher/processor and AFA mothership sectors, and the fishery cooperatives authorized to operate in the inshore sector. AFA catcher/processor and AFA mothership cooperatives operate at the sector level and NMFS does not make sub-allocations of each sector's BSAI pollock TAC to individual cooperatives. Inseason management of the AFA catcher/processor and AFA mothership sectors will continue to occur at the sector level regardless of the presence or absence of fishery cooperatives.

However, the inshore catcher vessel cooperatives authorized by the AFA require an entirely different management structure. Subsection 210(b) of the AFA requires that NMFS make separate TAC allocations to inshore catcher vessel cooperatives that form around an AFA inshore processor and that meet certain restrictions. For this reason, inshore cooperatives require substantially greater regulatory and management infrastructure than AFA catcher/processor and AFA mothership sector cooperatives. This final rule implements the following inshore cooperative management measures as required by subsection 210(b) of the AFA.

Application for inshore cooperative fishing permits. Under this final rule, inshore catcher vessel cooperatives wishing to receive an allocation of the BSAI inshore pollock TAC are required to submit an application for an inshore cooperative fishing permit on an annual basis by December 1 of the year prior to the year in which the cooperative fishing permit will be in effect. Applications for an inshore cooperative fishing permit must be accompanied by a copy of the cooperative contract itself and by a copy of a letter from a party to the contract requesting a business review letter on the fishery cooperative from the U.S. Department of Justice and any response to such request unless the cooperative has already filed such information with NMFS and the Council. Inshore cooperative fishing permit applications that are not received by NMFS by December 1 may be disapproved.

As part of the application for an inshore cooperative fishing permit, the cooperative's designated representative, who is signing the permit application on behalf of the various members, must certify that: (1) Each catcher vessel in the cooperative is a ''qualified catcher vessel'' according to the definition of qualified catcher vessel described below, (2) the cooperative contract was signed by the owners of at least 80 percent of the qualified catcher vessels that delivered pollock harvested in the BSAI directed pollock fishery to the cooperative's designated AFA inshore processor during the year prior to the year in which the cooperative fishing permit will be in effect, (3) the cooperative contract requires that the cooperative deliver at least 90 percent of its BSAI pollock catch to its designated AFA processor, and (4) each member vessel has no permit sanctions or other type of sanctions against it that prevent it from fishing for groundfish in the BSAI. A catcher vessel that cannot legally harvest BSAI pollock due to enforcement action, permit sanctions, lack of a valid AFA catcher vessel permit, or lack of other required permit, is barred from membership in an inshore cooperative that receives an inshore cooperative fishing permit.

To add or subtract a qualified catcher vessel (other than a designated replacement for a lost vessel), the cooperative is required to submit a new application prior to the December 1 deadline, and the new application must be subsequently approved by the Regional Administrator.

Definition of qualified catcher vessel. At its June 2000 meeting, the Council voted to recommend a definition of ''qualified catcher vessel'' that supersedes the definition contained in the AFA. Paragraph 210(b)(3) of the AFA defines ''qualified catcher vessel'' as follows:

> QUALIFIED CATCHER VESSEL.—For the purposes of this subsection, a catcher vessel shall be considered a ''qualified catcher vessel'' if, during the year prior to the year in which the fishery cooperative will be in effect, it delivered more pollock to the shoreside processor to which it will deliver pollock under the fishery cooperative in paragraph (1) than to any other shoreside processor.

The effect of this definition was to prevent the retirement of catcher vessels

that are no longer needed to harvest a cooperative's annual allocation of pollock because each vessel was required to make a qualifying landing every year to remain in the cooperative in each subsequent year. At its June 2000 meeting, the Council recommended that this definition be replaced with a new definition under which an inactive vessel remains qualified to join the cooperative that is associated with the processor where it delivered more pollock to than any other inshore processor in the last year in which the vessel participated in the inshore sector of the BSAI directed pollock fishery. The Council's recommended change does not affect vessels that were active in the BSAI pollock fishery during the year prior to the year in which the cooperative fishing permit will be in effect.

The Council derives its authority to recommend an alternative definition of ''qualified catcher vessel'' from paragraph 213(c)(1) of the AFA, which provides the Council with the authority to recommend measures to supersede certain provisions of the AFA. Paragraph 213(c)(1) provides that:

CHANGES TO FISHERY COOPERATIVE LIMITATIONS AND POLLOCK CDQ ALLOCATION.—The North Pacific Council may recommend and the Secretary may approve conservation and management measures in accordance with the Magnuson-Stevens Act–

(1) that supersede the provisions of this title, except for sections 206 and 208, for conservation purposes or to mitigate adverse effects in fisheries or on owners of fewer than three vessels in the directed pollock fishery caused by this title or fishery cooperatives in the directed pollock fishery, provided such measures take into account all factors affecting the fisheries and are imposed fairly and equitably to the extent practicable among and within the sectors in the directed pollock fishery;

In making the recommendation under Amendments 61/61/13/8 to supersede the AFA definition of ''qualified catcher vessel'' the Council determined that this change will mitigate adverse effects on some owners of fewer than three catcher vessels. Some independently owned AFA catcher vessels are relatively small vessels that may be less safe to operate at great distances from shore under the new Steller sea lion protection measures which have closed many nearshore areas to pollock fishing. A requirement that all such vessels fish each year to remain qualified to join a cooperative each following year would impose unnecessary risks that could be mitigated with a revision to the definition of qualified catcher vessel. In addition, some catcher vessels that are eligible to fish for pollock under the AFA have since been lost or may no longer be safe to operate without major rebuilding. Under this change, the owners of such vessels could remain in cooperatives without the need to rebuild or deploy new vessels into the BSAI pollock fishery. In making this recommendation, the Council also noted that a primary objective of the AFA is to reduce excess capacity in the BSAI pollock fishery and that changing the definition of ''qualified catcher vessel'' will further that objective.

This final rule also makes an additional clarification to the definition of ''qualified catcher vessel.'' Under the final rule, only pollock harvested in the BSAI directed pollock fishery is used to determine vessel qualification. Pollock that is landed as incidental catch in other fisheries is not used to determine which cooperative a catcher vessel is qualified to join, and a catcher vessel cannot qualify to join a cooperative based on incidental catch of pollock in other fisheries. This clarification is necessary to prevent a vessel's incidental catch of pollock in other fisheries from inadvertently affecting its cooperative qualification. Counting incidental pollock catch could create the unintended effect of restricting the ability of catcher vessels to deliver non-pollock groundfish to other markets. Because pollock is commonly encountered as incidental catch in the Pacific cod fishery and other groundfish fisheries, AFA catcher vessels fishing for Pacific cod may land significant amounts of pollock that would be counted against the pollock incidental catch allowance and not the vessel's cooperative quota. The AFA makes no restrictions on either the delivery or processing of non-pollock groundfish species in the BSAI. Consequently, AFA catcher vessels fishing for Pacific cod are free to deliver their Pacific cod and associated incidental catch of pollock to any processor, not just to one of the eight AFA processors that are authorized to receive pollock harvested in the BSAI directed pollock fishery.

If an AFA vessel's cooperative qualification were based on all catch of pollock and not just pollock harvested in the directed fishery, then an AFA catcher vessel fishing for Pacific cod and delivering to a processor other than its AFA pollock processor could inadvertently disqualify itself from its cooperative of choice due to incidental pollock harvests in other fisheries. In fact, because Pacific cod processors other than the eight AFA inshore pollock processors also operate in the BSAI, an active AFA catcher vessel delivering Pacific cod to a non-AFA processor could inadvertently find itself ineligible to join any inshore cooperative because the processor to which it delivered more pollock than any other processor may be a non-AFA processor.

Additional contract requirements. Inshore cooperatives wishing to receive an allocation of pollock have several additional contract requirements. An inshore cooperative contract eligible for a pollock allocation must be signed by the owners of at least 80 percent of the qualified catcher vessels. In addition, inshore cooperative contracts must specify that the cooperative will deliver at least 90 percent of the pollock harvested in the directed pollock fishery to its designated inshore processor during the year in which the fishery cooperative will be in effect and that its designated inshore processor has agreed to process such pollock. Finally, a catcher vessel is barred from membership in an inshore cooperative if the vessel does not have all necessary permits to engage in directed fishing for pollock in the BSAI, or if the vessel is subject to any permit sanction that prevents it from engaging in directed fishing for pollock in the BSAI. The purpose of this restriction is to prevent the granting of a limited access fishing quota to any catcher vessel that cannot legally fish for pollock in the BSAI. If an inshore cooperative fishing permit application does not meet all of these requirements, the permit application may be denied by NMFS if after the cooperative is provided the opportunity to submit a revised contract and permit application the application remains insufficient.

Inshore cooperative fishing restrictions. This final rule imposes a variety of requirements and management standards on inshore fishery cooperatives. First, only catcher vessels listed on the cooperative's AFA inshore cooperative fishing permit are permitted to harvest the cooperative's annual cooperative allocation. This first restriction could be modified, however, under Amendment 69 to the BSAI groundfish FMP, which was submitted to the Secretary for review on June 24, 2002. Amendment 69, if approved, would allow a cooperative to contract with non-member vessels to harvest a portion of the cooperative's annual pollock allocation. Second, all BSAI inshore pollock harvested by a member vessel while engaging in directed fishing for inshore pollock accrues against the cooperative's annual pollock allocation regardless of whether the pollock was retained or discarded and regardless of where the pollock was delivered. Third, each inshore pollock cooperative is responsible for reporting to NMFS its BSAI pollock harvest on a

weekly basis according to recordkeeping and reporting requirements published as part of the annual revisions to recordkeeping and reporting requirements for the groundfish fisheries of the BSAI and GOA. Fourth, each inshore pollock cooperative is prohibited from exceeding its annual allocation of BSAI pollock, and the owners and operators of all vessels listed on the cooperative fishing permit are jointly and severally liable for overages of the cooperative's annual allocation.

Inseason management of inshore cooperatives. Under this final rule, NMFS will manage the inshore cooperative sector and inshore open access sector as two separate inshore pollock fisheries. The various inshore cooperatives will be managed as a single aggregate allocation for the purpose of making season and area TAC apportionments and for the purpose of issuing directed fishing closures. When NMFS determines that the cooperative sector has reached a season or area apportionment of BSAI pollock, NMFS will close inshore cooperative fishing for that season or area. Under this system, each inshore cooperative will be given the opportunity to harvest its entire annual allocation of BSAI pollock, but will receive no harvest guarantee for each season and area. NMFS will manage the cooperative pollock quota and various sideboard quotas in the aggregate. It may be advantageous for the various cooperatives to work together to develop a cooperative management program to govern activities by individual cooperatives and individual vessels. Cooperation between cooperatives could prevent the activities of one cooperative from affecting the plans of another cooperative.

E. Harvesting and Processing Sideboard Restrictions

The AFA requires that harvesting and processing limits be placed on AFA vessels and processors in other groundfish, crab, and scallop fisheries to protect the participants in other fisheries from spillover effects resulting from the rationalization of the BSAI pollock fishery and the formation of fishery cooperatives in the BSAI pollock fishery. Potential spillover effects could take many forms. Most obviously, excess harvesting and processing capacity from the rationalization of the BSAI pollock fishery could flood into other fisheries as a result of the AFA to the detriment of current participants in other fisheries. In addition, fishery cooperatives provide vessels with greater flexibility to schedule their fishing activity because they are no longer racing for pollock at the start of every season. As a result, vessels in cooperatives will have the ability to enter other fisheries that might previously have been conducted concurrent with the BSAI pollock fishery. Finally, companies involved in the AFA pollock fishery are expected to benefit financially from the formation of fishery cooperatives and non-AFA companies fear that such profits may be used to expand into other groundfish and crab fisheries.

To address these potential negative effects of the AFA on the participants in other groundfish, crab, and scallop fisheries, the AFA sets out a complex set of harvest and processing restrictions, which have become known as ''sideboards''. These sideboard measures have been further refined by the Council's recommendations for catcher/processor and catcher vessel sideboards under Amendments 61/61/13/8. The Council's recommendations have been incorporated into this final rule and are summarized below.

Catcher/processor Harvesting Sideboards

The AFA establishes harvest restrictions or ''sideboards,'' that restrict the participation of listed AFA catcher/processors in other BSAI groundfish fisheries and completely prohibit listed AFA catcher/processors from fishing in the GOA. These sideboards apply only to AFA catcher/processors listed in paragraphs 208(e)(1) through (20) of the AFA and are not extended to unlisted AFA catcher/processors that qualify to fish for pollock under paragraph 208(e)(21) of the AFA. The language establishing catcher/processor harvest caps is set out in paragraphs 211(b)(1) and (2) of the AFA as follows:

(b) CATCHER/PROCESSOR RESTRICTIONS.—

(1) GENERAL.—The restrictions in this sub-section shall take effect on January 1, 1999, and shall remain in effect thereafter except that they may be superceded (with the exception of paragraph (4)) by conservation and management measures recommended after the date of the enactment of this Act by the North Pacific Council and approved by the Secretary in accordance with the Magnuson-Stevens Act.

(2) BERING SEA FISHING. The catcher/processors eligible under paragraphs (1) through (20) of section 208(e) are hereby prohibited from, in the aggregate

(A) exceeding the percentage of the harvest available in the offshore component of any Bering Sea and Aleutian Islands groundfish fishery (other than the pollock fishery) that is equivalent to the total harvest by such catcher/processors and the catcher/processors listed in section 209 in the fishery in 1995, 1996, and 1997 relative to the total amount available to be harvested by the offshore component in the fishery in 1995, 1996, and 1997;

(B) exceeding the percentage of the prohibited species available in the offshore component of any Bering Sea and Aleutian Islands groundfish fishery (other than the pollock fishery) that is equivalent to the total of the prohibited species harvested by such catcher/processors and the catcher/processors listed in section 209 in the fishery in 1995, 1996, and 1997 relative to the total amount of prohibited species available to be harvested by the offshore component in the fishery in 1995, 1996, and 1997; and

(C) fishing for Atka mackerel in the eastern area of the Bering Sea and Aleutian Islands and from exceeding the following percentages of the directed harvest available in the Bering Sea and Aleutian Islands Atka mackerel fishery--

(i) 11.5 percent in the central area; and

(ii) 20 percent in the western area.

For the 1999 fishing year, NMFS implemented these provisions by publishing the harvest limits in the 1999 BSAI harvest specifications and prohibiting listed AFA catcher/processors from engaging in directed fishing for a groundfish species or species group when NMFS determined that the sideboard limit was likely to be met or exceeded. For the 2000 through 2002 fishing years these limits were set out by emergency interim rules. For the 2000 fishing year, 65 FR 4520, January 28, 2000; extended at 65 FR 39107, June 23, 2000. For the 2001 fishing year, 66 FR 7276, January 22, 2001; extended at 66 FR 35911, July 10, 2001. And for the 2002 fishing year, 67 FR 956, January 8, 2002; extended at 67 FR 34860, May 16, 2002.

At its June 1999 meeting, the Council recommended that catcher/processor harvest limits for BSAI groundfish other than Atka mackerel be based on the 1995 through 1997 retained catch of such groundfish species by the 20 listed AFA catcher/processors listed in paragraphs 208(e)(1) through (20) of the AFA and the nine ineligible catcher/processors listed in section 209 of the AFA, except for Pacific cod which will be based on 1997 retained catch only. The Council made a distinction between retained and total catch for the purpose of calculating sideboards and felt that AFA vessels should not receive sideboard credit for groundfish that was discarded and not utilized. Given NMFS' and the Council's longstanding emphasis on reduction of discards and waste in the groundfish fisheries off Alaska, the Council believed it was reasonable not to allow the members of a sector of the groundfish fleet to claim fishing privileges based on catch that they discarded and did not utilize, especially given that such discards may have resulted in foregone catch and loss

of fishing opportunities for other sectors of the industry.

In addition, the Council recommended several other relatively minor changes to the catcher/processor sideboard formula set out in the AFA. The Council recommended that only 1997 catch history be used to determine Pacific cod harvest limits, because 1997 was the first year in which the BSAI Pacific cod trawl gear allocation was split between catcher/processors and catcher vessels. Prior to 1997 the BSAI Pacific cod TAC was not allocated between catcher/processors and catcher vessels, meaning that pre–1997 Pacific cod TACs and harvest percentages by AFA catcher/processors are not directly comparable to present day Pacific cod allocations. The Council also recommended that only the years 1996 and 1997 be used to calculate Pacific ocean perch (POP) sideboard amounts because 1996 was the first year in which the POP TAC was divided between the Bering Sea and Aleutian Islands subareas.

The Atka mackerel catcher/processor sideboard percentages set out in subparagraph 211(b)(1)(C) of the AFA will be implemented unchanged. The AFA catcher/processor sideboard limit for Atka mackerel will be zero percent of the Bering Sea subarea and Eastern Aleutians annual TAC, 11.5 percent of the Central Aleutians annual TAC, and 20 percent of the Western Aleutians annual TAC. These Atka mackerel sideboard amounts will be divided by area and season and will be limited inside critical habitat in the same manner as the overall Atka mackerel TAC for each area.

The Council did not recommend any changes to the formula for establishing prohibited species catch (PSC) bycatch limits set out in subparagraph 211(b)(2)(B) of the AFA. However, the Council recommended that NMFS not implement catcher/processor sideboards for salmon and herring because extensive management measures are already in place to limit bycatch of those PSC species in the BSAI pollock fishery and incidental bycatch of salmon or herring is primarily a concern in the pollock fishery and not in the directed fisheries for other groundfish species.

Management of Catcher/Processor Harvest Sideboards

Under this final rule, catcher/processor sideboards will be managed through directed fishing closures. NMFS will evaluate each groundfish harvest limit specified according to the formula outlined previously and will authorize directed fishing by listed AFA catcher/processors only for those BSAI groundfish species for which the harvest limit is large enough to support a directed fishery by listed AFA catcher/processors. Groundfish species for which the catcher/processor harvest limit is too small to support a directed fishery will be closed to directed fishing by listed AFA catcher/processors at the beginning of the fishing year. The sideboard amounts for these species will then be specified as the incidental catch amounts harvested in other directed groundfish fisheries.

In some instances where catcher/processors have a history of harvesting a particular species as bycatch in the pollock fishery and have not traditionally retained that species, the retained catch formula for setting sideboard amounts will result in a sideboard amount for that species that likely will be far below its intrinsic bycatch rate in the BSAI pollock fishery. Squid and POP fall into this category. An expected consequence of basing sideboard amounts on retained catch rather than total catch is that actual harvests of some species as bycatch in the directed pollock fishery will exceed the published sideboard amount. As a result, NMFS established a management approach that will allow for continued incidental catch of species under sideboard provisions that acknowledge historical bycatch needs, while ensuring that listed AFA catcher/processors will not participate in directed fisheries for other BSAI groundfish species at levels that exceed their level of participation in such fisheries from 1995 through 1997. NMFS believes that this approach is consistent with the language and intent of the AFA.

Catcher Vessel Sideboards

This final rule will establish catcher vessel harvest limits for BSAI crab, BSAI and GOA groundfish, and the Alaska scallop fishery. These measure are required under subparagraph 211(c)(1)(A) of the AFA which states:

> By not later than July 1, 1999, the North Pacific Council shall recommend for approval by the Secretary conservation and management measures to . . . prevent the catcher vessels eligible under subsections (a), (b), and (c) of section 208 from exceeding in the aggregate the traditional harvest levels of such vessels in other fisheries under the authority of the North Pacific Council as a result of fishery cooperatives in the directed pollock fishery.

The Council met this requirement by adopting a comprehensive suite of catcher vessel sideboard measures at its June 1999 meeting as part of Amendments 61/61/13/8.

Because the BSAI king and Tanner crab fisheries and the Alaska scallop fishery are managed by the State of Alaska under Federal oversight, the Council recommended that crab and scallop catcher vessel sideboards be implemented jointly through state and Federal actions. Amendment 4 to the scallop FMP was approved by NMFS on June 8, 2000, and authorized an LLP for the Alaska scallop fishery under which only one AFA catcher vessel is eligible to receive a scallop license. NMFS and the Council have determined that the scallop LLP program effectively prevents additional effort in the scallop fishery by other AFA catcher vessels and that additional restrictions on entry by AFA catcher vessels are unnecessary. As a further measure under Amendments 61/61/13/8, the Council also has recommended that the state implement an AFA catcher vessel scallop sideboard limit equal to the percentage of the scallop guideline harvest level that was harvested by the AFA catcher vessel in 1997. This sideboard harvest restriction is implemented under State regulations. Therefore, scallop sideboard measures are not included in this final rule.

Under Amendments 61/61/13/8, the Council has recommended that NMFS limit participation in BSAI crab fisheries through crab sideboard endorsements on AFA catcher vessel permits. The Council has recommended that only AFA catcher vessels with a demonstrated history in a particular crab fishery may continue participating in that fishery. A catcher vessel that lacks the appropriate crab sideboard endorsements on its AFA permit is prohibited from retaining BSAI king and Tanner crab even if that vessel was authorized to do so under an LLP for that crab fishery. These sideboard endorsements are described above in the discussion of AFA catcher vessel permits.

In addition to permit restrictions, the Council also recommended that the state implement AFA catcher vessel harvest limits for the Bristol Bay red king crab and Bairdi Tanner crab fisheries to keep the AFA vessels from harvesting more such crab than they had traditionally harvested. With respect to the Bristol Bay red king crab fishery, the Council recommended an AFA catcher vessel sideboard limit equal to the percentage of Bristol Bay red king crab harvested by AFA catcher vessels from 1991 through 1997, excluding 1994 and 1995 when the fishery was closed. For the Bairdi Tanner crab fishery, the Council recommended that AFA catcher vessels be excluded from the fishery until the Council's Bairdi rebuilding goal is reached, and then be limited to their historic catch percentage from

1995–1996. The Alaska Board of Fisheries has developed a management program to implement these restrictions which has been in effect since the 2000 Bristol Bay red king crab fishery.

For the BSAI and GOA groundfish fisheries, the Council recommended that AFA catcher vessel sideboards be established based on landed catch and be managed through directed fishing closures in the same manner as AFA catcher/processor sideboards. However, a significant difference between catcher/processor and catcher vessel groundfish sideboards is that the Council recommended that certain AFA catcher vessels be exempt from some BSAI and GOA groundfish sideboards while no exemptions were recommended for listed AFA catcher/processors. These sideboard exemptions were described previously under the section on AFA catcher vessel permits. This final rule contains the Council's recommended BSAI and GOA groundfish and PSC sideboards for AFA catcher vessels, which are summarized below.

Catcher Vessel Groundfish Sideboards in the BSAI

Catcher vessel groundfish sideboards will be established for all BSAI groundfish species using a formula based on the retained catch of all non-exempt AFA catcher vessels of each sideboard species from 1995 through 1997 (1997 only for BSAI Pacific cod) divided by the available TAC for that species over the same period. AFA catcher vessel sideboards apply to all non-exempt AFA catcher vessels regardless of sector and regardless of participation in a cooperative. The criteria for catcher vessel sideboard exemptions were outlined in the AFA catcher vessel permit section.

In addition, AFA catcher vessels with mothership endorsements are exempt from Pacific cod sideboard closures after March 1 of each year.

Catcher vessel PSC sideboards for BSAI groundfish fisheries would be managed in the same manner as catcher/processor PSC sideboards; however, the sideboard amounts are calculated differently. Because individual vessel PSC catch histories are not available for AFA catcher vessels, PSC sideboard amounts are pro-rated based on percentage of groundfish catch in each BSAI groundfish fishery.

Catcher Vessel Groundfish Sideboards in the GOA

Catcher vessel sideboards for GOA groundfish fisheries will be established and managed in the same manner as the catcher vessel sideboards in the BSAI groundfish fisheries except that catcher vessels less than 125 ft (38.1 m) LOA whose annual BSAI pollock landings averaged less than 1,700 mt from 1995 through 1997 (i.e., landed less than 5,100 mt of pollock over the 3–year period) and that made 40 or more GOA groundfish landings over the same period will be exempt from sideboard closures for GOA groundfish fisheries. The catch histories of the exempt vessels will not be counted towards the sideboard amounts for non-exempt vessels. As with the BSAI Pacific cod fishery, the Council noted that many AFA catcher vessels with relatively low catch histories in BSAI pollock have traditionally participated in GOA groundfish fisheries. Indeed, many of these vessels are based in Kodiak and other GOA ports and have historically concentrated their fishing effort in GOA fisheries. The Council believed that it is inequitable to limit such vessels from participating in GOA fisheries when they have historically fished in the GOA and may have relatively low pollock catch histories in the BSAI during the AFA qualifying years due to their history of fishing primarily in the GOA.

The Council specifically limited both the BSAI Pacific cod and GOA groundfish sideboard exemptions to vessels with a significant history of participation in those fisheries and indicated that it believed such exemptions were consistent with the catcher vessel sideboard provisions at paragraph 211(c)(1) of the AFA, which require that:

> By not later than July 1, 1999, the North Pacific Council shall recommend for approval by the Secretary conservation and management measures to—
>
> (A) prevent the catcher vessels eligible under subsections (a), (b), and (c) of section 208 from exceeding in the aggregate the traditional harvest levels of such vessels in other fisheries under the authority of the North Pacific Council as a result of fishery cooperatives in the directed pollock fishery . . . .

NMFS estimates that 12 catcher vessels will be exempt from BSAI Pacific cod sideboards in the BSAI and 12 catcher vessels will be exempt from groundfish sideboards in the GOA. The Council noted that because these exempt vessels traditionally have participated at high levels in the BSAI Pacific cod and GOA groundfish fisheries, such exemptions were not likely to cause the aggregate harvest levels of all AFA catcher vessels to exceed traditional levels in these fisheries. However, the Council noted that, even if fishing in the BSAI Pacific cod and GOA groundfish fisheries by exempt vessels does cause the aggregate harvest of all AFA catcher vessels to exceed historic levels in other groundfish fisheries, the exemptions are warranted and within the authority of the Council to recommend under paragraph 213(c)(1) of the AFA, which states:

> The North Pacific Council may recommend and the Secretary may approve conservation and management measures in accordance with the Magnuson-Stevens Act—
>
> (1) that supersede the provisions of this title, except for sections 206 and 208, for conservation purposes or to mitigate adverse effects in fisheries or on owners of fewer than three vessels in the directed pollock fishery caused by this title or fishery cooperatives in the directed pollock fishery, provided such measures take into account all factors affecting the fisheries and are imposed fairly and equitably to the extent practicable among and within the sectors in the directed pollock fishery.

The Council believed that these two exemptions are warranted to mitigate adverse economic effects as described above on owners of fewer than three vessels in the directed pollock fishery given that the exempt vessels are primarily owned by independent fishermen who own fewer than three vessels in the directed pollock fishery.

Crab Processing Sideboards

Subparagraph 211(c)(2)(A) of the AFA establishes limits on crab processing by AFA inshore processors and AFA motherships that receive pollock harvested by a fishery cooperative:

> Effective January 1, 2000, the owners of the motherships eligible under section 208(d) and the shoreside processors eligible under section 208(f) that receive pollock from the directed pollock fishery under a fishery cooperative are hereby prohibited from processing, in the aggregate for each calendar year, more than the percentage of the total catch of each species of crab in directed fisheries under the jurisdiction of the North Pacific Council than facilities operated by such owners processed of each such species in the aggregate, on average, in 1995, 1996, 1997. For the purposes of this subparagraph, the term ''facilities'' means any processing plant, catcher/ processor, mothership, floating processor, or any other operation that processes fish. Any entity in which 10 percent or more of the interest is owned or controlled by another individual or entity shall be considered to be the same entity as the other individual or entity for the purposes of this subparagraph.

These crab processing limits were implemented by NMFS in the emergency interim rule published January 28, 2000 (65 FR 4520, extended at 65 FR 39107, June 23, 2000). However, at its September 2000 meeting, the Council recommended that the 1995–1997 years used to calculate crab processing sideboard amounts be revised by adding 1998 and giving it double-weight. Some crab fishermen and AFA processors expressed concern that too many non-AFA processors have

left the crab fisheries since 1997 and that the 1995–1997 years do not accurately reflect the composition of the crab processing industry at the time of passage of the AFA. Some crab fishermen were concerned that AFA crab processing caps were restricting markets for crab fishermen and having a negative effect on exvessel prices. By adding 1998 and giving it double-weight relative to 1995–1997, the Council believed that the crab processing caps will more accurately reflect the status of the crab processing industry at the time of passage of the AFA and that such a change to supersede this provision of the AFA was warranted to mitigate adverse effects on markets for crab fishermen.

Entity-based processing caps. NMFS has developed a definition of ''AFA entity'' for the purpose of implementing these crab processing limits and for the purpose of implementing the 17.5 percent excessive harvesting share limit discussed above. This definition is explained below in the section on definitions. To implement these crab processing limits, NMFS will require that the owners of an AFA mothership or AFA inshore processor intending to process pollock harvested by a cooperative identify on their permit applications all individuals, corporations, or other entities that directly or indirectly own or control a 10–percent or greater interest in the AFA mothership and/or inshore processor (collectively the AFA inshore or mothership entity), and any other crab processors in which such entities have a 10–percent or greater interest (the associated AFA crab facilities). For each BSAI king and Tanner crab fishery, NMFS will calculate the average percentage of the total crab harvest processed by the associated AFA crab facilities and issue entity-wide crab processing caps for each crab fishery to each AFA inshore or mothership entity on its AFA mothership or AFA inshore processor permit. Each individual, corporation, or other concern comprising an AFA inshore or mothership entity is responsible for ensuring that the AFA crab processing facilities associated with the AFA inshore or mothership entity do not exceed the entity's caps. The individuals, corporations and other concerns comprising the AFA inshore or mothership entity are jointly and severally liable for any overage.

Determining crab processing percentages. Upon receipt of an application for a cooperative processing endorsement from the owners of an AFA mothership or AFA inshore processor, the Regional Administrator will calculate a crab processing cap percentage for the associated AFA inshore or mothership entity. The crab processing cap percentage for each BSAI king or Tanner crab species will be equal to the percentage of the total catch of each BSAI king or Tanner crab species that the AFA crab facilities associated with the AFA inshore or mothership entity processed in the aggregate, on average, in 1995, 1996, 1997, and 1998 with 1998 given double-weight (counted twice).

Each AFA inshore or mothership entity's crab processing cap percentage for each BSAI king or Tanner crab species will be listed on the AFA mothership or AFA inshore processor permit that contains a cooperative pollock processing endorsement.

Conversion of crab processing sideboard percentages to poundage caps. Prior to the start of each BSAI king or Tanner crab fishery, NMFS will convert each AFA inshore or mothership entity's crab processing sideboard percentage to a poundage cap by multiplying the crab processing sideboard percentage by the pre-season guideline harvest level established for that crab fishery by the Alaska Department of Fish and Game. Each entity and the public will be notified of the crab processing poundage caps through notification in the **Federal Register** and/or through information bulletins published on the NMFS-Alaska Region world wide web home page (*http:\\www.fakr.noaa.gov*).

CDQ crab harvest. Under the final rule, processing of CDQ crab will not accrue against an entity's crab processing cap. Only crab harvested in the non-CDQ directed crab fisheries will accrue against an entity's crab processing cap.

Custom processing. These crab processing caps apply to all crab processed by the associated AFA crab processing facilities including any ''custom processing'' activity. Custom processing refers to a contractual relationship in which one processing facility processes crab on behalf of another processor. Custom processing of crab is not prohibited, but any custom processing of crab done under contract with an AFA crab processor will be counted against the associated AFA inshore or mothership entity's crab processing cap.

F. Excessive Share Limits for Harvesting and Processing

This final rule establishes excessive share limits for harvesting and processing of BSAI pollock. The excessive harvesting share limit is 17.5 percent of the BSAI pollock directed fishing allowance and the excessive processing share limits is 30 percent of the BSAI pollock directed fishing allowance. The excessive harvesting and processing share limits apply to all AFA entities which are in subsection 210(e) of the AFA as those individuals, corporations, or other entities that share 10–percent or greater ownership or control.

The final rule establishes a definition for ''AFA entity'' that will be used to determine compliance with the 17.5 percent pollock excessive harvesting share limit and the 30 percent pollock excessive processing limit, and will be used for establishing crab processing sideboard limits. An ''AFA entity'' is defined as a group of affiliated individuals, corporations, or other business concerns that harvest or process pollock in the BSAI directed pollock fishery.

Definition of ''Affiliation''

The concept of ''affiliation'' is central to the definition of ''AFA entity.'' Simply stated, ''affiliation'' means a relationship between two or more individuals, corporations, or other business concerns in which one concern directly or indirectly owns a 10 percent or greater interest in the other, exerts 10 percent or greater control over the other, or has the power to exert 10 percent or greater control over the other; or a third individual, corporation, or other business concern directly or indirectly owns a 10–percent or greater interest in both, exerts 10 percent or greater control over both, or has the power to exert 10 percent or greater control over both. Ownership and control are two overlapping concepts that may arise through a wide variety of relationships between two or more individuals, corporations, or other concerns. The following forms of affiliation are included in this final rule.

Affiliation through ownership. Affiliation arises between two or more individuals, corporations, or other concerns if one individual, corporation, or other concern holds a 10 percent or greater direct or indirect interest in another, or a third party holds a 10–percent or greater direct or indirect interest in both. An indirect interest is one that passes through one or more intermediate entities. NMFS is implementing a multiplicative rule to measure levels of indirect interest. Under this multiplicative rule, an entity's percentage of indirect interest in a second entity is equal to the entity's percentage of direct interest in an intermediate entity multiplied by the intermediate entity's direct or indirect interest in the second entity.

Affiliation through stock ownership. Affiliation arises if an individual, corporation, or other business concern directly or indirectly owns or controls, or has the power to control, 10 percent or more of the voting stock of a second corporation or other business concern.

Affiliation through management control. Affiliation arises if an individual, corporation, or other business concern has the right to direct the business of a second corporation or business concern; or limit the actions of or replace the chief executive officer, a majority of the board of directors, any general partner, or any person serving in a management capacity of a second corporation or business concern.

Affiliation through cooperative agreements. Affiliation arises if an individual, corporation, or other business concern (1) has the power to control a fishery cooperative through 10 percent ownership or control over a majority of the voting rights of the cooperative, (2) has the power to appoint, remove, or limit the actions of or replace the chief executive officer of the cooperative, or (3) has the power to appoint, remove, or limit the actions of a majority of the board of directors of the cooperative. In such instances the individual, corporation, or other entity in question is deemed to have 10 percent or greater control over all member vessels of the cooperative.

Affiliation through control over operations and manning. Affiliation arises if an individual, corporation, or other business concern has the power to direct the operation or manning of a vessel or processor. In such instances, the individual, corporation, or other business concern in question is deemed to have 10 percent or greater control over the vessel or processor.

Potential for multiple affiliations. Under this definition of affiliation, an individual or corporation could be affiliated with more than one AFA entity. This could occur, for example, if two different AFA entities have partial ownership in a single fishing vessel or processor. In such instances, any fishing or processing activity by a vessel or processor that is affiliated with more than one AFA entity will count simultaneously against the excessive harvesting or processing share limits of both AFA entities. However, the two parent entities would not necessarily be considered to be affiliated and, therefore, part of a single entity unless they are directly affiliated with each other.

Cooperatives are not AFA entities. Cooperatives are, by definition, not considered AFA entities. If AFA cooperatives were considered AFA entities then any cooperative that controlled the harvest of 17.5 percent or more of the BSAI pollock directed fishing allowance would be in violation of the excessive harvesting share cap. NMFS believes that such a result would be inconsistent with the purpose and intent of the AFA which authorizes AFA catcher/processors to form a single cooperative that controls 40 percent of the directed fishing allowance. However, even though a cooperative itself is not considered an AFA entity, the member vessels of a cooperative could still be considered affiliated if a single person, corporation, or other entity has the power to control the cooperative. In other words, a cooperative itself is not considered an AFA entity, but a cooperative could be included in an AFA entity for the purpose of monitoring excessive harvesting shares if the cooperative is under the control of the entity in question.

G. Observer Coverage Requirements for AFA Vessels and Processors

This final rule establishes new observer coverage requirements for AFA catcher/processors, AFA motherships, and AFA inshore processors. However, the final rule does not change observer coverage requirements for AFA catcher vessels. These new observer coverage requirements are described below.

Listed AFA Catcher/Processors and AFA Motherships

Two observer requirement. Paragraph 211(b)(6)(A) of the AFA requires that unrestricted AFA catcher/processors have two observers on board at any time the vessel is fishing for groundfish in the BSAI. This final rule establishes this requirement and extends the requirement to AFA motherships. NMFS believes it is appropriate to extend this requirement to AFA motherships because AFA motherships operate in a similar manner to AFA catcher/processors in that they receive unsorted codends from catcher vessels. In a mothership operation, all weighing and sorting of catch occurs on the mothership rather than the catcher vessel. The only practical difference between catcher/processor and mothership operations is that motherships do not actually engage in trawling. Under this final rule, a listed AFA catcher/processor or AFA mothership is required to have aboard two NMFS certified observers for each day that the vessel is used to harvest, process, or take deliveries of groundfish. In addition, at least one observer on board each AFA catcher/processor and AFA mothership must be a lead level 2 observer at all times that the vessel is fishing for groundfish or processing groundfish harvested in the BSAI or GOA.

Observer workload requirement. This final rule also extends the CDQ program observer workload limits to AFA catcher/processor and AFA motherships. These workload limits are necessary to ensure that all groundfish harvested and processed by AFA catcher/processors and motherships can be sampled by a NMFS observer. Consequently, more than two observers might be required to allow each haul brought on board the vessel to be sampled by an observer. This situation may occur for some AFA motherships, depending on how many deliveries they receive from catcher vessels in a day.

Lead level 2 observer requirement. Under this final rule, at least one observer on board each AFA catcher/processor and AFA mothership must be a lead level 2 observer (formerly known as a lead CDQ observer). The second observer position may be filled by any NMFS certified observer. Observers are an increasingly important element of NMFS' monitoring program for AFA catcher/processor and AFA mothership sector pollock harvests. Prior to the AFA, NMFS monitored offshore pollock harvests using a blend of observer data and processor weekly production reports. However, under the AFA with its statutory requirement that AFA catcher/processors carry two observers at all times and weigh their catch using NMFS-approved scales, NMFS is now relying only on observers and scale weights to provide inseason harvest data for the AFA catcher/processor sector and is no longer using vessel production data for quota management purposes. In addition, NMFS relies on observers to monitor catcher/processor groundfish sideboards as well as catcher vessel sideboards for catcher vessels delivering to catcher/processors and AFA motherships. Given this increased reliance on observers and scales, NMFS believes that the lead level 2 observer requirement is necessary to ensure that at least one of the observers aboard each AFA catcher/processor and AFA mothership has prior experience sampling on a trawl catcher/processor or mothership, is trained and experienced in the use of on-board scales, and is available to monitor the use and calibration of such scales. In addition, NMFS believes that the requirement for at least one lead level 2 observer is necessary to ensure that the compliance monitoring role of the observers aboard AFA catcher/processors can be successfully accomplished.

In order to monitor and enforce the newly imposed harvest limitations for unrestricted AFA catcher/processors and AFA motherships, observers with more experience and training must be aboard. NMFS-certified lead level 2 observers have that experience and training. Level 2 observers receive special training in sampling for species composition in situations where bycatch may be limiting, in working with vessel personnel to resolve access to catch and other sampling problems, and in using flow scales for catch weight measurements. Monitoring by level 2 observers is essential for accurate catch accounting, given the fact that a fishery cooperative has been established and that the potential exists for fishing to be curtailed when either groundfish or prohibited species harvest limitations specified for unrestricted AFA catcher/processors have been reached.

Consolidation of CDQ and AFA observer requirements. Under the emergency interim rules governing the AFA pollock fishery in 1999 and 2000, AFA catcher/processors and motherships were required to have one lead level 2 observer at all times but the second observer requirement could be filled by any NMFS-certified observer. However, the CDQ program imposed a higher requirement of one lead level 2 observer and a second level 2 observer for catcher/processor and motherships participating in the CDQ pollock fishery. Under this final rule, the observer requirements for catcher/processors and motherships in the AFA and CDQ pollock fisheries is consolidated into a single standard that requires at least one lead level 2 observer on board at all times but allows the second observer position to be filled by any NMFS certified observer.

Data quality needs for the AFA fishery take into account the vessel-specific nature of the fishery and the operational environment under which observers collect the data. This vessel-specific nature of the AFA has increased the responsibility of the observer to generate data of a quality equivalent to a ''final post-debrief'' level prior to the structured NMFS debriefing process. This raises the standard for experience and advanced training requirements. Since implementation of the AFA, the quality of data collected by observers at-sea has been assessed by the rigorous post-cruise debriefing process and has overall been found to meet expectations of high quality data at the point of collection.

The catcher/processors and motherships involved in this fishery provide the most straightforward sampling situations for observers in the groundfish fleet due to typically minimal bycatch, as well as excellent working conditions for the observer. Multiple opportunities for oversight of the work performed by the second, potentially less experienced, observer has been shown to successfully ensure all data collected from each AFA catcher/processor or mothership meets high data quality standards. Oversight of data collection and recording by the second observer is performed by the lead observer who has extensive observer experience on trawl catcher/processors. Additionally, in-season advising and supervision for observers at sea is provided on an on-going basis by NMFS Observer Program staff through communication via the ATLAS at-sea reporting system required on all catcher/processors and motherships. The NMFS Observer Program has also substantially increased field support for observers. Finally, catcher/processors operating in the BSAI pollock fishery have been considered the best assignments for new trainees, preparing them for further development as an observer. The need to keep open this opportunity to develop observer experience is essential to ensure the continued existence of a pool of qualified level 2 lead observers.

Consistency in observer requirements between the AFA program and the directed pollock fishery in the Multi-species Community Development Quota (MS CDQ) program is essential. The data quality needs for MS CDQ and AFA pollock catch accounting are virtually identical. Further, vessels often fish for MS CDQ and AFA-allocated pollock during the same fishing trip. Uniform observer requirements will simplify observer deployment logistics for such vessels. Therefore, NMFS is changing the current observer requirements under the MS CDQ program for only those catcher/processors and motherships participating in directed fishing and/or processing of MS CDQ-allocated pollock to be consistent with the AFA observer requirements for those vessel classes.

Requirements for unlisted AFA catcher/processors. Under this final rule, vessels receiving unlisted AFA catcher/processor permits under paragraph 208(e)(21) of the AFA are required to meet the same observer coverage, scale, and sampling station requirements as for listed AFA catcher/processors during any fishing trip in which the vessel engages in directed fishing for BSAI pollock or receives deliveries of pollock from AFA catcher vessels engaged in directed fishing for BSAI pollock. This requirement is necessary because NMFS must monitor the 0.5- percent pollock harvest limit on unlisted AFA catcher/processors and cannot adequately do so without scales and an observer on duty at all times. However, because the AFA catcher/processor sideboard limits in other groundfish fisheries do not apply to unlisted AFA catcher/processors, NMFS is not changing the observer coverage requirements for unlisted AFA catcher/processors when such vessels are engaged in directed fishing for groundfish other than pollock. Unlisted AFA catcher/processors participating in non-pollock fisheries are required to meet whatever observer coverage requirements are in place for the fishery in question.

AFA inshore processors. Under this final rule, an AFA inshore processor is required to have a NMFS-certified observer for each consecutive 12–hour period in which the processor takes delivery of, or processes, groundfish harvested by a vessel engaged in directed fishing for BSAI pollock. An AFA inshore processor that takes delivery of or processes pollock during more than 12 consecutive hours in any calendar day is required to have two NMFS-certified observers available during that calendar day. At least one observer assigned to work at each AFA inshore processor must be a level 2 observer during each calendar day that the processor receives or processes pollock harvested in the BSAI directed pollock fishery. Furthermore, under this final rule, observers working at AFA inshore processors may not be assigned to cover more than one processing plant during a calendar day.

NMFS is implementing these new observer coverage requirements for AFA inshore processors so that NMFS can adequately monitor cooperative pollock allocations at each AFA inshore processor. Prior to the AFA, the inshore pollock fishery was managed in the aggregate across the entire sector with NMFS issuing a single closure for the entire inshore sector upon the attainment of a seasonal allocation of pollock TAC. Under the inshore cooperative system set out in this final rule, each inshore processor and its affiliated cooperative is operating on its own proprietary pollock allocation. Because NMFS would no longer manage the inshore sector in the aggregate, increased monitoring is required at each individual processor to ensure that cooperative allocations are not exceeded.

AFA Catcher Vessels

Catcher vessels fishing for pollock may deliver an unsorted codend directly to a mothership or inshore processor, in which case sorting or weighing the

catch prior to delivery is not feasible. Alternatively, they may bring the codend onto the deck and put the catch into tanks for delivery to a mothership or inshore processor. Depending on the size of the trawl alley, sorting and discarding prohibited species at sea also may not be possible. For these reasons, complete at-sea sorting and weighing of catch is rarely possible. Because of these constraints, much of the data concerning catch weight and composition are gathered when the catch is delivered to a mothership or inshore processor. Thus, NMFS does not believe it is necessary for AFA catcher vessels to provide the same level of observer coverage or equipment that is required for AFA processors.

For this reason, the final rule does not make any changes to existing observer coverage levels for AFA catcher vessels. Under the management program set out in this final rule, the primary location for pollock and sideboard catch accounting is at the processor and NMFS is increasing monitoring at all AFA processors to accommodate these increased monitoring needs. AFA catcher vessels are required to meet the existing observer coverage requirements for catcher vessels set out at 50 CFR 679.50(c).

H. Scales and Catch-weighing Requirements

The AFA authorizes eligible vessels and processors to form cooperatives in all sectors of the BSAI pollock fishery. Inshore cooperatives that meet the criteria set out in this final rule are eligible to receive an inshore cooperative fishing permit authorizing the member vessels in the cooperative to harvest a specific allocation of the BSAI pollock TAC. The members of the cooperative may decide among themselves how to share the allocation made to that cooperative. While not an individual fishing quota (IFQ) program per se, the inshore cooperative quota program established by the AFA does share many characteristics with traditional IFQ programs in terms of how the program operates. In effect, fishery cooperatives are privately operated IFQ programs under which the cooperative, rather than NMFS, makes individual allocations to member vessels.

Fishing patterns and behaviors under the inshore cooperative program are expected to be similar to those that would be seen under a traditional IFQ program and the management demands are much the same. Just as with IFQ programs, individual cooperative members and the cooperative as a whole, have a strong incentive to maximize the amount of pollock harvested and processed in any given year within the constraints of a fixed quota of pollock granted to the cooperative. While catcher/processor and mothership sector cooperatives do not receive individual allocations of pollock from NMFS, they function in the same manner as inshore cooperatives because NMFS makes allocations of pollock to each sector and the cooperatives include all eligible participants in each sector.

To manage the AFA pollock fishery properly, NMFS must have data that will provide reliable independent estimates of the total catch by species and area for each cooperative. Because pollock cooperatives are operating under their own individual quotas, they have a vested interest in ensuring that catch data do not overestimate the pollock harvest by that cooperative. Based on experience gained under the CDQ program, NMFS anticipates that observer or NMFS estimates of catch will be routinely questioned by industry. Under a system of fishery cooperatives, a processor stands to benefit directly if catch is underweighed because that processor is operating under an individual allocation. For this reason, NMFS is implementing a catch-weighing system for AFA pollock that is more rigorous than that required in open access groundfish fisheries.

In the final EIS prepared for Amendments 61/61/13/8, NMFS identified two primary objectives for monitoring catch in the AFA fisheries. First, NMFS must be able to ensure that the total weight, species composition, and catch location for each delivery are reported accurately. An acceptable catch-monitoring system based on this objective must allow for independent verification of catch weight, species composition and haul location data; ensure that all catch is weighed accurately; and provide a record of the weight of each delivery that may be audited by NMFS. Second, the quality and level of catch monitoring should be functionally equivalent between sectors. This objective recognizes that a catch-monitoring approach that is appropriate for one sector of the industry may not be appropriate for all sectors while, at the same time, acknowledging that the overall quality of catch data should be equivalent, and no sector should be given a competitive advantage because of differences in catch monitoring standards. Based on these objectives, NMFS has developed the following catch monitoring regulations for each sector.

Scale and Catch-weighing Requirements for AFA Catcher/processors

Subparagraph 211(b)(6)(B) of the AFA requires that all listed AFA catcher/processors ''weigh [their] catch on a scale onboard approved by the National Marine Fisheries Service while harvesting groundfish in fisheries under the authority of the North Pacific Council.'' To implement this requirement of the AFA, NMFS is extending the existing catch weighing and observer sampling station requirements for catcher/processors participating in the CDQ fisheries, found at 50 CFR 679.28, to AFA catcher/processors. These catch-weighing requirements include the following:

1. Scales must meet the performance and technical requirements specified in appendix A to 50 CFR part 679. At this time, Marel hf and Skanvaegt International A/S produce scales that have been approved by NMFS for weighing total catch. Marel hf, Skanvaegt International A/S and Pols hf manufacture scales that have been approved for use in observer sampling stations.

2. Each scale must be inspected and approved annually by a NMFS-approved scale inspector.

3. Each observer sampling station scale must be accurate within 0.5 percent when its use is required.

4. The observer sampling station scale must be accompanied by accurate test weights sufficient to test the scale at 10, 25 and 50 kg.

5. Each scale used to weigh total catch must be tested daily by weighing at least 400 kg of fish or test material on the total catch weighing scale and then weighing it again on an approved observer-sampling station scale.

6. When tested, the total catch weighing scale and the observer sampling station scale must agree within 3 percent.

Observer sampling stations provide a location where observers can work safely and effectively. On June 4, 1998, NMFS published a final rule that established requirements for observer sampling stations and required their use on specified vessels participating in CDQ fisheries (63 FR 30381). Further information on, and the rationale for, observer sampling stations may be found in that rule. Observer sampling stations must meet specifications for size and location and be equipped with an observer sampling station scale, a table, adequate lighting and running water. Each observer sampling station must be inspected and approved by NMFS annually.

AFA listed catcher/processors must comply with the regulations for additional observer coverage, scales, and observer sampling stations when participating in any groundfish fishery off Alaska. Unless other regulations require them to do so, unlisted AFA catcher/processors must comply only with these regulations when engaged in directed fishing for BSAI pollock or when processing pollock harvested in the BSAI directed pollock fishery. Because unlisted AFA catcher/processors are not bound by sideboard limits when participating in other groundfish fisheries, NMFS does not believe that imposing this more rigorous catch-weighing and monitoring regime on such vessels is necessary when they are not fishing for pollock. Such unlisted AFA catcher/processors continue to be bound by all catch-weighing and monitoring requirements that are in effect for any non-pollock fishery in which they participate.

Scale and Catch-weighing Requirements for AFA Motherships

The AFA does not require that motherships weigh all catch or specify additional observer coverage for motherships. However, because motherships receive and process groundfish in a manner similar to catcher/processors, NMFS is extending the AFA catcher/processor scale and observer requirements to AFA motherships. Requirements for catch weighing, observer sampling stations and observer coverage are identical to those described above for AFA listed catcher/processors and apply at all times that the AFA mothership is receiving or processing groundfish harvested in the BSAI or GOA.

Scale and Catch-weighing Requirements for AFA Inshore Processors

This final rule establishes a new catch monitoring system for inshore processors. The catch management goals established by NMFS for the AFA pollock fishery are the same for the inshore and offshore sectors. However, NMFS does not believe that the regulations developed for catcher/processors and motherships are appropriate for inshore processors for two reasons. First, inshore processors vary more in size, facilities and layout than do catcher/processors or motherships. Second, the State is responsible for approving scales used for trade by inshore processors and has developed an effective program for their inspection and approval.

Catch monitoring and control plans. The catch weighing and monitoring system developed by NMFS for catcher/processors and motherships is based on the vessel meeting a series of design criteria. Because of the wide variations in factory layout, NMFS believes that a performance based catch monitoring system is more appropriate for inshore processors. Under this system, each plant must submit a Catch Monitoring and Control Plan (CMCP) to NMFS for approval. In this final rule, the effective date for the CMCP requirement has been delayed until June 1, 2003, to provide inshore processors with adequate time to develop their CMCPs and have them approved by NMFS. The CMCP details how the plant will meet the following requirements:

1. All catch delivered to the plant must be sorted and weighed by species. The CMCP must detail the amount and location of space for sorting catch, the number of staff devoted to catch sorting and the maximum rate that catch will flow through the sorting area.

2. Each processor must designate an ''observation area.'' The observation area is the location designated in the CMCP where an individual may monitor the flow of fish during a delivery. From the observation area, an individual must be able to monitor the entire flow of fish and ensure that no removals of catch have occurred between the delivery point and a location where all sorting has taken place and each species has been weighed.

3. Each processor must designate a ''delivery point.'' The delivery point is the first location where fish removed from a delivering catcher vessel can be sorted or diverted to more than one location. The delivery point is most likely the location where the pump first discharges the catch. If catch is removed from a vessel by brailing, this is most likely the bin or belt where the brailer discharges the catch.

4. The observation area must be located near the observer work station.

5. The observer workstation must be located where the observer has access to unsorted catch.

6. An observer work station, for the exclusive use of the observer, must provide: a platform scale of at least 50 kg capacity; an indoor working area of at least 4.5 square meters, a table, and a secure and lockable cabinet.

7. Designation of a plant liaison, who is responsible for orienting new observers to the plant, ensuring that the CMCP is implemented, and assisting in the resolution of observer concerns.

The plant will be inspected by NMFS to ensure that the plant layout conforms to the elements of the plan. A CMCP that meets all of the performance standards will be approved by NMFS for 1 year, unless during the year changes are made in plant operations or layout that do not conform to the CMCP. After 1 year, NMFS will review the CMCP with plant management to ensure that the CMCP has been implemented and that the performance standards continue to be met.

A single individual cannot effectively monitor the flow of fish from the delivery point to where they have been completely sorted and weighed at any of the existing AFA inshore processors. Therefore, none of the current AFA inshore processors will meet the performance standards without modifying the layout of the plant or developing alternative methods of monitoring catch flow. As a consequence, the process of developing the CMCP may be fairly complex. NMFS anticipates that plant management will wish to work closely with NMFS staff before making any modifications to the plant layout or purchasing equipment. NMFS staff will review draft CMCPs and will pre-inspect inshore processors as requested by plant management.

Scale requirements for AFA inshore processors. Catch weighing for catcher/processors and motherships is based on the use of scales approved by NMFS. Because NMFS and the state use different standards when approving scales, most NMFS-approved scales are not legal for trade in Alaska and most state-approved scales do not meet NMFS criteria for inseason testing and auditing. NMFS believes that the state should be the primary authority responsible for approving and testing scales in shoreplants and that weighing all catch on scales approved by NMFS is unnecessary. Under State regulations, inshore processors are required to weigh all catch that is being bought or sold on state-approved scales. These scales must be inspected annually by inspectors authorized by the Division of Measurement Standards and Commercial Vehicle Enforcement.

However, State regulations do not provide for inseason testing of scales nor do they require that scales produce a printed record of each delivery. NMFS believes that these are essential features of an acceptable catch weighing system. Therefore, in cooperation with the State, NMFS has developed a catch-weighing system that implements these additional features within the existing framework of State scale inspection and approval. The development of this system involved consultation with the Alaska State Division of Measurement Standards in acknowledgment of the State's role to ensure that scales used for trade in the State are accurate. Personnel from the Alaska Division of

Measurement Standards are responsible for inspecting and approving those scales. Scales that are not used in a trade related transaction, or scales that are used outside of State waters are generally not required to be inspected and approved.

This final rule implements two sets of catch weighing requirements. The first, is that catcher/processors and motherships are required to weigh all catch on scales approved by NMFS. These vessels weigh their catch outside of State waters and the approval and inspection of those scales does not in any way interfere with existing State programs.

The second set of conditions requires that AFA inshore processors weigh all of their catch on scales approved by the State and further requires that those scales meet additional requirements for printouts and inseason testing. In order to prevent redundant regulations or involve itself in an existing State function, NMFS has worked closely with the Alaska Division of Measurement Standards to develop these requirements. NMFS staff met with the Director of the Division and his staff twice during 2000 to discuss these requirements, and draft versions of the proposed regulations were provided to Division personnel for review and comment. In October 2000, the Administrator, Alaska Region, sent a letter to the Director of the Division of Measurement Standards expressing his acknowledgment and appreciation for the work that the State had put into assisting NMFS in developing the catch weighing regulations.

Thus, this final rule reflects cooperative State and Federal development of catch weighing requirements for AFA inshore processors and includes the following provisions:

1. Each scale used to weigh catch and its intended use must be identified by serial number in the CMCP. Each scale must be inspected and approved by the State annually.

2. As part of the CMCP, each plant must submit a scale testing plan that gives the procedure the plant will use to test each scale identified in the CMCP. The testing plan must list: the test weights and equipment required to test the scale, where the test weights and equipment are stored, and the plant personnel responsible for testing the scale. Test amounts for various scale types are set out at § 679.28(c)(4) of this final rule.

3. Test weights must be certified at least biannually by a metrology laboratory approved by the National Institute of Standards and Technology.

4. Authorized officers or NMFS-authorized personnel could request that any scale be tested in accordance with the testing plan, provided that the scale had not been tested and found accurate within the past 24 hours.

5. Each scale must be accurate within the limits specified at § 679.28(c)(4) of this final rule (maximum permissible errors and test weight amounts) when tested by the plant staff.

6. Each scale used to weigh catch must be equipped with a printer, and a printout or printouts showing the total weight of each delivery must be generated after each delivery has been weighed. The printouts must be retained by the plant and made available to NMFS-authorized personnel including observers.

I. Vessel Monitoring System (VMS) Requirements

In the proposed rule to implement Amendments 61/61/13/8 NMFS proposed new VMS requirements for all AFA catcher vessels and catcher/processors. However, VMS requirements are not included in this final rule because VMS requirements for the BSAI pollock fishery are being implemented as Steller sea lion protection measures.

J. Extension of Inshore/Offshore Regime in the GOA

Amendment 61 to the FMP for groundfish of the GOA also extends the expiration date for inshore/offshore allocations of GOA pollock and Pacific cod until December 31, 2004. During the development of Amendments 61/61/13/8, the Council voted to extend the GOA inshore/offshore sunset date until December 31, 2004, so that BSAI inshore/offshore allocations under the AFA and GOA inshore/offshore allocations would expire on the same date and could be reevaluated at the same time. At its June 2002 meeting, in light of recent legislation discussed above that removes the sunset date from the AFA, the Council voted to adopt Amendment 62 to the GOA groundfish FMP, which also removes the sunset date from the GOA inshore/offshore allocations. Therefore, if Amendment 62 is subsequently approved by NMFS, the December 31, 2004, sunset date contained in this final rule would be removed. Extensive background information on GOA inshore/offshore allocations is contained in the EA/RIR/FRFA prepared for Amendment 51/51, the most recent inshore/offshore amendments for the BSAI and GOA. Both EA/RIR/FRFA documents are available from the Council (see **ADDRESSES**).

III. Response to Comments

The proposed rule to implement Amendments 61/61/13/8 was published on December 17, 2001 (66 FR 65028), with comments invited through January 31, 2002. NMFS received 12 comment letters on the proposed rule, many of which contained extensive and detailed comments addressing specific aspects of the proposed rule. These comments were summarized and organized under five subject headings: (1) Comments on sector allocations and permit requirements, (2) comments on cooperative regulations, (3) comments on sideboards, (4) comments on catch weighing and monitoring requirements, and (5) comments on inshore/offshore allocations in the GOA.

Comments on Permit Requirements and Sector Allocations

Comment 1: The AFA and the proposed rule to implement the AFA violates national standards 4, 6, and 8 of the Magnuson-Stevens Act. National standard 4 states that if it becomes necessary to allocate fishing privileges among various United States fishermen, such allocations ''shall be fair and equitable to all such fishermen.'' National standard 6 states that ''conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.'' Finally, national standard 8 states that conservation and management measures shall ''take into account the importance of fishery resources to fishing communities.

The AFA excluded some catcher/processors that have a history in the directed pollock fishery during typical AFA qualifying years. In addition, the landings criteria for qualification as an unlisted AFA catcher/processor are not representative of the operating range of the variety of headed and gutted (H&G) catcher/processors that had participated in the directed pollock fishery. Instead, the criteria, which require that the vessel must have harvested at least 2,000 mt of pollock in the BSAI directed pollock fishery in 1997 is skewed towards only one vessel that had landings that are significantly higher than are representative for the H&G catcher/processor fleet. The AFA qualification criteria for catcher vessels and inshore processors are substantially broader and more representative of the capacities of the participants in these sectors. No Council action on any other limited entry, license limitation, recency criteria, or species endorsement regime has ever included such a

onerous and unrepresentative requirement as the qualification requirement for unlisted catcher/processors in paragraph 208(e)(21) of the AFA.

Response: The Council and NMFS do not have the authority to supersede any aspect of vessel and processor qualification criteria set out in section 208 of the AFA. Because the qualification criteria are established in statute and are non-discretionary, the Council did not consider any alternative vessel qualification criteria during the development of Amendments 61/61/13/8 and has not attempted to evaluate the extent to which any vessels with a history of participation in the BSAI directed pollock fishery were excluded under the AFA. Because NMFS was not involved in the development of the unlisted catcher/processor qualification requirement set out in paragraph 208(e)(21) of the AFA, we are unable to comment on the extent to which national standard considerations were involved in the development of the AFA. Furthermore, any modifications to these provisions would have to result from Congressional action because neither NMFS nor the Council have the authority to supersede section 208 of the AFA.

Comment 2: The preamble to the proposed rule inaccurately describes the 25–percent foreign ownership and control limit as applying only to vessels over 100 ft (30.9 m) LOA. Under the AFA this limit applies to all vessels holding a U.S. fisheries endorsement. For vessels 100 ft (30.9 m) LOA and over, this requirement is administered by MARAD. For vessels under 100 ft (30.9 m) LOA this requirement is administered by the Coast Guard.

Response: NMFS agrees and has corrected the references to the AFA's vessel ownership requirements.

Comment 3: In the proposed rule, paragraph 679.4(k)(9) *Restrictions on licenses earned on AFA catcher vessels and listed AFA catcher/processors* provides that no person may use an LLP license that was derived in whole or in part from the qualifying history of an AFA catcher vessel or a listed AFA catcher/processor to fish for groundfish or crab on a non-AFA catcher vessel or a non-AFA catcher/processor. This provision should not prevent the transfer of the LLP license from an AFA vessel that is lost to a vessel that is not AFA qualified for purposes of replacing the lost AFA vessel.

Response: NMFS agrees. This restriction on the use of LLP licenses is intended to prevent vessel owners from evading sideboard restrictions by retiring surplus AFA vessels and re-deploying the LLP permits associated with those vessels on non-AFA vessels that would not be covered by AFA sideboard restrictions. However, this restriction would not prevent the use of such LLP licenses on AFA replacement vessels because the replacement vessel is considered an AFA vessel.

Comment 4: In the proposed rule, paragraph 679.4(l)(1)(ii) *AFA permit duration* provides that, unless suspended or revoked, AFA vessel and processor permits are valid until December 31, 2004. Congress has repealed the 2004 sunset provision of the AFA. AFA vessel and processor permits therefore should not expire as of December 31, 2004.

Response: NMFS agrees. The final rule has been revised to remove the December 31, 2004, expiration date from all provisions to which it was applied in the proposed rule, except for the duration of the inshore/offshore allocations of pollock and Pacific cod in the GOA, which were not addressed by the legislation making the AFA permanent.

Comment 5: In the proposed rule, paragraph 679.4(l)(1)(v) *AFA permit application deadline* provides that all AFA vessel and processor permit applications must be received by the Regional Administrator by no later than 60 days after the effective date of the final rule. This deadline should be extended because it will likely fall during the fishing season. The preamble to the proposed rule suggests that interim permits will become invalid on that date. However, it is unlikely that permanent permits will have been issued by that date, as that is merely the closing date of an already abbreviated application period which would be followed by application processing, requests for additional information, etc. This process is likely to be fairly complicated and difficult for both applicants and the agency, as it will be the first pass at implementing the complex and somewhat subjective ownership and affiliation standards related to harvesting caps, processing caps and crab processing sideboards. The net result will almost certainly be an application processing period of fairly extended duration for many, if not all, of the qualified applicants. If during this period interim permits become invalid, and if that invalidity occurs during a fishing season, the result could be huge losses to the Nation, not to mention the pollock fleet.

The agency should also take into account how difficult it can be for vessel owners and processors to deal with matters of this type during the season. In light of these practical considerations, we suggest that permit applications should be due within some reasonable time (60 to 90 days) from the date that the RAM Division provides an AFA interim permit holder with notice that an application for a final permit must be submitted. We also suggest that interim permits remain valid through 2002 or the duration of the application and processing period, whichever is later.

Response: NMFS agrees. The final rule has been revised to eliminate the application deadline for AFA permits and has extended the duration of all interim AFA permits until December 31, 2002. Under the final rule, all interim AFA permits will continue to be valid for the duration of 2002.

Comment 6: The proposed rule states that applications received after the 60–day deadline will not be accepted by the Regional Administrator, and such vessels and processors will be permanently ineligible to receive the requested AFA permit. This is an egregiously excessive penalty. The interim permit holders are owners of vessels and plants whose AFA eligibility has been determined through interim permit applications. It is not necessary to deny eligibility in the re-application process in order to close an otherwise open class of potentially qualified participants.

Response: NMFS agrees. The final rule has no application deadline for permanent AFA permits but does require that all participants in the BSAI pollock fishery and all members of a fishery cooperative hold a valid AFA permit. In effect, this requirement means that vessels, processors, and fishery cooperatives that wish to operate during the 2003 fishing year will need to hold permanent AFA permits before beginning operations in 2003. Because the permit application deadline has been removed, no vessel will become permanently ineligible for an AFA permit due to failure to submit a timely application. We believe that these revisions in the final rule will provide industry with adequate time to apply for and receive permanent AFA permits, and will avoid any fishing interruptions during 2002.

Comment 7: In the proposed rule, paragraph 679.4(l)(7) *Replacement vessels* provides that the fishery endorsement of a replacement vessel must be issued within 36 months of the end of the last year in which the lost vessel harvested or processed pollock. This requirement reflects the provisions of section 208(g) of the AFA. However, the 36–month deadline is potentially problematic with respect to inactive vessels.

It is well recognized that one of the primary goals of the AFA was to decapitalize the Bering Sea pollock fishery. The Council has recognized that impediments to retiring or removing excess harvesting capacity may frustrate achievement of that goal, and has taken action accordingly. For example, the Council has superseded the AFA definition of ''qualified catcher vessel'' to permit vessels that are inactive to retain their eligibility to join a cooperative.

We are concerned that the 36–month time limit in the vessel replacement provisions may create a disincentive to retire excess harvesting capacity. Our concern is related to a scenario under which the retired vessel is lost or becomes a total constructive loss. If that should happen more than three years after the last year during which the vessel harvested or processed pollock in the directed pollock fishery, it would be ineligible for replacement. The vessel's ineligibility for replacement may not be significant as long as it remains an inactive member of the cooperative to which it belonged before it was lost. However, if the owner later desires to replace the vessel, in the interest of qualifying it for a different cooperative or for any other reason, the owner's ability to do so would appear to be barred by the 36–month replacement period. In order to preserve that option, the owner would have to re-employ the vessel every 3 years. This inappropriate incentive to re-employ excess capacity simply to preserve its eligibility under the AFA is comparable to the inappropriate incentive created by the original qualified vessel annual landing requirement.

To address this issue, we request that NMFS initiate an amendment to the replacement vessel provision of the proposed rule that would exempt vessels that were inactive members of a BSAI pollock fishery cooperative from the 36–month replacement deadline.

Response: The 36–month replacement deadline is set out in paragraph 208(g)(3) of the AFA which states:

(g) REPLACEMENT VESSELS.—In the event of the actual total loss or constructive total loss of a vessel eligible under subsections (a), (b), (c), (d), or (e), the owner of such vessel may replace such vessel with a vessel which shall be eligible in the same manner under that subsection as the eligible vessel, provided that . . .

(3) the fishery endorsement for the replacement vessel is issued within 36 months of the end of the last year in which the eligible vessel harvested or processed pollock in the directed pollock fishery.

NMFS is interpreting this 36–month deadline in the AFA as applying only to the issuance of fishery endorsements of newly-constructed vessels that did not exist at the time the AFA vessel was last engaged in directed fishing for pollock, or converted vessels that did not hold fishery endorsements at the time that the AFA vessel last engaged in directed fishing for pollock. The AFA does not establish any deadline for replacing a lost AFA vessel if the replacement vessel was issued a fishery endorsement before the 36–month deadline. Therefore, the 36–month deadline in the final rule applies only to the issuance of the fishery endorsement for the replacement vessel and not to the application to NMFS for a replacement vessel.

Under the final rule, the owner of a lost vessel may wait indefinitely to designate a replacement vessel. The only restriction is that the fishery endorsement for the replacement vessel must have been issued no later than 36 months from the end of the year in which the vessel last engaged in directed fishing for pollock. Once the 36–month deadline expires, the owner of the lost vessel does lose the option of constructing a new replacement vessel, but permanently retains the right to replace the lost vessel with any existing fishing vessel for which a fishery endorsement was issued before the 36–month deadline. To eliminate confusion on this point, NMFS has revised the final rule to clarify that the 36–month deadline applies only to newly-constructed or newly-converted vessels that did not hold fishery endorsements at the time that the AFA vessel last engaged in directed fishing for pollock in the BSAI.

Comment 8: In the proposed rule, paragraph 679.4(l)(7)(i)(A) *Replacement vessels* provides that a vessel owner may replace an AFA vessel only in the event of the total or constructive loss of the vessel. While this derives from the statute, it must be noted that this eventually will become a serious safety issue. While the statute was drafted with a sunset date of December 31, 2004, this issue may have seemed hypothetical. However, now that the sunset date has been removed, when a vessel becomes un-seaworthy through age, it should be possible to declare it a ''constructive total loss'' prior to its sinking and the potential loss of life.

Response: The term ''constructive total loss'' has a very specific meaning in the context of maritime insurance. Simply stated, a vessel is considered a constructive total loss when it is damaged to such an extent that the estimated cost of repairs exceeds salvaged value of the vessel. A declaration of constructive total loss is typically made as part of an insurance claim. To establish a claim for constructive total loss, the vessel owner generally must abandon what remains of the vessel to the underwriters. Because NMFS is not in a position to independently evaluate whether the constructive total loss of a vessel has occurred, we must rely on U.S. Coast Guard or insurance documentation to verify that a vessel has been declared a constructive total loss. The application for an AFA replacement vessel allows for any vessel that is declared a constructive total loss to be replaced provided that the vessel owner submits a copy of a U.S. Coast Guard Form 2692--Report of Marine Accident, Injury or Death, or insurance documentation showing that the vessel has been declared a constructive total loss and that the remains of the vessel have been abandoned to the underwriter. No provision is made for a vessel owner to make a claim of ''constructive total loss'' to NMFS that is unsupported by U.S. Coast Guard or insurance documentation.

Comment 9: In the proposed rule, paragraph 679.20(a)(5)(i)(6) *Excessive harvesting shares* provides that the excessive harvesting share cap is equal to 17.5 percent of the directed fishing allowance. Section 210(e)(1) of the AFA provides that the harvesting cap is 17.5 percent of the pollock available to be harvested in the directed pollock fishery. We note that some portion of the bycatch allowance that is deducted from the overall pollock TAC in calculating the directed fishing allowance for pollock is often released back into the pollock directed fishing allowance before the end of the year. The 17.5- percent harvesting cap should be calculated with respect to all pollock available for directed harvest, including any bycatch allowance amounts that are released for directed harvest.

Response: NMFS agrees. When unharvested amounts of the ICA are reapportioned to the directed pollock fishery, the effect is an amendment to the directed fishing allowance. The final rule has been revised to clarify that the published excessive harvesting share and excessive processing share limits are subject to revision if unharvested amounts of the ICA are reallocated to the directed pollock fishery, or vice versa.

Comment 10: In the proposed rule, paragraph 679.4(l)(3)(ii)(F) requires notary certification of permit applications. Is this also a requirement of the non-AFA Federal fisheries permit applications? Combined with an application deadline of 60 days, this could be burdensome.

Response: NMFS has reconsidered the requirement that each signature be notarized and has eliminated the notary requirement from AFA vessel and processor application forms.

Comment 11: In the lengthy discussions on the 10–percent affiliation concept at the beginning of implementation of the AFA, a consensus developed that the affiliation should involve ownership and/or control of one company over another. This approach avoids the unintended consequence of extending an affiliation through an intermediate entity to include an entity that has no true ownership or control over an AFA company. The clear intent in the proposed regulations is to cut off the affiliation relationship when it turns upstream to another entity that has no ownership or control of the AFA company. The proposed entity definitions adopt this approach in all instances except for the criteria of ''shared assets and liabilities.'' For example, under the proposed rule, if Company A (an AFA processor) and Company B (a non-AFA processor) each owns 50 percent of Company C, the language could be interpreted to make A and B affiliates even though neither has any ownership or control over the other. Company A and Company C are certainly affiliated for the purposes of the AFA, but the relationship should not flow upstream to Company B.

Response: NMFS agrees. The final rule has been revised to eliminate ''shared assets and liabilities'' from the criteria for affiliation.

Comments on Requirements for Fishery Cooperatives

Comment 12: In the proposed rule, paragraph 679.4(l)(6)(iii) provides that inshore cooperative fishing permits are valid for 1 year. We suggest that inshore cooperative permits remain valid as long as there are no changes in cooperative membership or the continuing eligibility of the member vessels to participate in the cooperative. We suggest that in cases where there are changes in membership or member eligibility, the cooperative members be required to file a new application by an annual deadline. Maintaining inshore cooperative permits on this basis would still condition their validity on satisfaction of the conditions to inshore cooperative formation set forth in the AFA and the implementing regulations, while substantially reducing the administrative workload and cost to the agency and the inshore fleet.

If NMFS does determine that inshore cooperative permits should have only 1 year duration, there are several changes we suggest be made in connection with the annual application process. We suggest that § 679.4(l)(6)(ii)(C) be amended to require that a copy of the cooperative contract be submitted with the annual application only if it has been amended since last being submitted. We suggest that § 679.4(l)(6)(ii)(E) be amended accordingly, to require that a copy of the business review request submitted to the Department of Justice and the response to the same, if any, be submitted with the annual application only if amended since last being submitted. If NMFS is concerned about being able to determine whether there have been changes, we suggest that the cooperative representative be given the alternative of certifying there have been none, rather than resubmitting the documents.

Most cooperative contracts have remained the same since they were originally executed. We know of no cooperative contract, business review request, or resulting enforcement intention letter from the Department of Justice that has not yet been submitted to the Council and to NMFS.

We suggest that once a conforming application for the year has been submitted, a cooperative representative be able to add or subtract vessels without filing a completely new application, but rather by providing written notice of the change, together with a certification concerning vessel eligibility (in cases where a vessel is being added), and a re-certification that the conditions to inshore cooperative formation will continue to be met after the change is given effect. Changes of this type often take place late in the year. It is unduly burdensome to require a cooperative representative to complete and file an entirely new application in connection with each vessel change.

Response: Because inshore cooperative permits authorize member vessels to harvest, in the aggregate, a certain tonnage of pollock during a specific fishing year, cooperative fishing permits will continue to be issued annually. Under the final rule, the cooperative's annual allocation of pollock is issued through the issuance of the cooperative fishing permit. Multi-year cooperative fishing permits are not possible because both co-op membership and TAC allocation amounts for future years would be unknown.

However, NMFS agrees in part with the recommendations to reduce paperwork burdens for inshore cooperatives. NMFS has adopted the recommendations to reduce the burden of the annual filing process for cooperatives. Under the final rule, cooperatives would be required to submit a current list of their member vessels and submit any cooperative contract revisions. Business review letters, once submitted to NMFS would not need to be resubmitted on an annual basis. NMFS also intends to provide application forms in Adobe Acrobat format that may be completed electronically. This will reduce duplication of work for co-op representatives.

Comment 13: In the proposed rule, paragraph 679.4(l)(6)(v), which establishes a December 1 deadline for inshore cooperative fishing permit applications, is inconsistent with the AFA. Paragraph 210(b)(2) of the AFA specifically provides that ''any contract implementing a fishery cooperative . . . must allow the owners of other qualified catcher vessels to enter into such contract after it is filed and before the calendar year in which fishing will begin . . . '' Paragraph 679.4(l)(6)(v) of the proposed rule requires that all inshore cooperative contract amendments that add or subtract vessels be received by the Regional Administrator by December 1 prior to the year in which the inshore cooperative fishing permit will be in effect. This proposed rule provision abbreviates the AFA opt-in period by 30 days. There is no record of which we are aware that supports NMFS' attempt to override this specific provision of the AFA.

Nor is it necessary to do so. We have discussed the reason for the December 1 ''drop dead'' date with NMFS staff. NMFS staff has informed us that the deadline was set to give the agency adequate time to finalize cooperative allocations prior to the start of the next fishing year. However, NMFS staff has also conceded that changes to cooperative allocations could be made in connection with additions or subtractions of vessels between the December 1 filing deadline and the beginning of the next calendar year; the issue in connection with such ''gap period'' changes is whether the allocation change could be made in time to be effective for the pollock roe season, or whether it would be necessary to delay the effective date of the change to the opening of the non-roe season.

This issue will arise only in cases where a vessel has changed the cooperative for which it is eligible by delivering the predominance of its BSAI directed pollock catch in the prior year to a different processor. In these cases, a vessel owner may not be able to consummate negotiations with the

cooperative and processor for which it is now qualified until after December 1. If the vessel owner does so after December 1, but prior to the beginning of the next calendar year, it has a right under the AFA to opt into the new cooperative. If the owner opts in, and it is too late to change the roe season allocation of its new cooperative accordingly, the vessel's allocation could be left in the inshore open access fishery pool for the roe season, and then allocated to the vessel's new cooperative for the non-roe season. This resolution is a reasonable balancing of NMFS' need to make timely cooperative allocations against the specific opt-in provisions of the AFA. The proposed rule should be amended accordingly.

Response: NMFS proposed a December 1 deadline for amendments to inshore co-op applications so that cooperative allocations could be issued through the publication of the BSAI interim harvest specifications, which are published prior to January 1 of each year. The current process for publishing harvest specifications is unable to accommodate allocation changes in late December due to the filing deadlines established by the Office of the Federal Register. The suggestion that late entrants into inshore cooperatives be allowed to start the fishing year in the open access fishery during the roe season and switch to cooperatives during the non-roe season would be inconsistent with paragraph 210(b)(5) of the AFA which prohibits vessels from participating in both the open access fishery and a fishery cooperative during the same fishing year.

NMFS intends to resolve this timing issue as part of proposed Amendments 48/48 which are still under development by the Council. Amendments 48/48 are intended to modify the TAC setting process to address several administrative issues, and would allow for a greater period of time between the publication of final TACs and the start of each year's fisheries. Under Amendments 48/48, NMFS expects to be able to accommodate changes in cooperative membership as late as December 31 of each year.

Comment 14: In the proposed rule, the definition of affiliation at paragraph 679.2 includes 10 percent or greater control of a fishery cooperative as a form of affiliation. We do not believe it is appropriate to include fishery cooperatives in this definition of affiliation. The intent of the 10–percent rule in the AFA is to apply ownership and control provisions to entities that own harvesting vessels. Harvesting cooperative entities do not in any way have ownership of any of the vessels in a cooperative. As such, the cooperative has no control over the operations of the harvesting vessels or the vessel owners who are not members of the cooperative. The definition of AFA entity and affiliation should not contain any reference to affiliation through cooperatives.

Response: NMFS has revised the definition of AFA entity to clarify the relationship of cooperatives to an AFA entity. Under the final rule, a cooperative on its own is not considered an AFA entity. Therefore, members of a cooperative are not automatically considered to be affiliates of each other for the purpose of defining an AFA entity. However, if one particular individual or corporation has the ability to control a fishery cooperative, and the cooperative controls the fishing activity of its member vessels, then all of the members of the cooperative would be considered to be affiliated with the entity that controls the cooperative. In other words, affiliation through cooperative agreements only arises if a particular individual or corporation has the power to control an entire cooperative and the cooperative has the power to control the fishing activity of its member vessels.

Comment 15: In the proposed rule, the prohibition at paragraph § 679.7(k)(6) uses the phrase ''through a fishery cooperative or otherwise'' which implies that the 17.5–percent excessive harvesting share limit should apply to harvest shares of the cooperative as a whole. Again, this is wholly inappropriate to the intent of the excessive harvesting share limit and any reference to affiliation through a cooperative in this section should be eliminated.

Response: See response to comment 14. The phrase ''through a fishery cooperative or otherwise'' is taken directly from paragraph 210(e)(1) of the AFA which states:

> No particular individual, corporation, or other entity may harvest, through a fishery cooperative or otherwise, a total of more than 17.5 percent of the pollock available to be harvested in the directed pollock fishery.

In revising the definition of AFA entity in this final rule, NMFS has clarified that a cooperative on its own is not considered to be an AFA entity. However, if a cooperative is controlled by a single individual or corporation and the cooperative has the power to control the fishing activity of its member vessels, then all member vessels are considered to be affiliated with the AFA entity and all of their harvests would be included under the excessive harvesting share prohibition.

Comment 16: The cooperative affiliation standard in the proposed rule is somewhat confusing, but suggests that any member who exercises 10 percent or greater control over a cooperative is ''affiliated'' with all of its members. Under that standard, a cooperative with one member that has 10 percent or more voting control would be an AFA entity under the proposed rule. Of course, under § 679.7(k)(6), no AFA entity may exceed the 17.5- percent harvesting share limit.

If our interpretation of the proposed rule's standards is correct, every member of a cooperative that had nine or fewer members with equal voting power would trigger the affiliation standard. Because the members would be affiliates of each other, the cooperative itself would be subject to the 17.5–percent cap. Under these circumstances, even if each member had the right to harvest only 2 percent of the TAC, and none of them had any ownership or control whatsoever relative to the harvest of any more than that percentage of the TAC or relative to any other AFA entity or vessel, they would all be in violation. We respectfully submit that this effectively makes the harvest limit an AFA cooperative allocation limit, and in the process violates the spirit and the letter of the AFA.

Response: See response to comment 14. The 10–percent standard applies only to measurements of ownership and not to other forms of control that do not involve ownership. Affiliation through cooperative agreements would arise only if a particular individual, corporation, or other entity has the power to control a fishery cooperative and the fishery cooperative controls the fishing activities of its member vessels. Affiliation would not automatically arise in the example of a cooperative with less than 10 members. It would only arise if a single individual, corporation or entity has the power to control the entire cooperative.

Comment 17: In the proposed rule, paragraph 679.7(k)(5)(ii) *Inshore fishery cooperative liability* provides that the owners and operators of all vessels listed on the cooperative fishing permit are responsible for ensuring that all cooperative members comply with all applicable regulations contained in part 679. In addition, the proposed rule provides that owners and operators will be held jointly and severally liable for overages of an annual cooperative allocation, and for any other violations of these regulations committed by a member vessel of a cooperative.

We do not object to requiring owners and operators of vessels listed on an

inshore cooperative fishing permit to be responsible for ensuring all cooperative members comply with the cooperative's directed fishery, sideboard and PSC allocations. We understand that doing so may be necessary for NMFS to have adequate assurances that the inshore sector pollock TAC will not be exceeded, and that the inshore cooperatives will comply with the general sideboard restrictions of section 211(c) of the AFA. Further, we understand that because NMFS does not grant or enforce vessel level allocations of pollock, sideboard species or PSC under the AFA's cooperative management structure, it may be necessary for NMFS to have the authority to impose joint and several liability on cooperative members in the case of a violation, to have adequate assurances that any overages will be penalized.

However, we see absolutely no basis in the AFA or in the policy considerations related to successfully implementing the AFA for NMFS to impose responsibility on each cooperative member for ensuring every other member is operating in compliance with all other applicable provisions of part 679, and absolutely no basis to impose joint and several liability on cooperative members if one of their number fails to do so. We think the provisions to that effect are grossly overreaching on the agency's part, and may stem from the same fundamental misunderstanding of the structure and function of AFA fishery cooperatives that impelled NMFS to include cooperative membership as an indicator of affiliation for purposes of harvest and processing cap compliance.

The AFA cooperatives are allocation structures. As such, they do not grant their members the authority to govern any of the day-to-day operations of other members' vessels, such as when and where they fish, etc. Neither the AFA cooperatives nor its members have the authority to require or ensure that any single member will comply with the provisions of part 679, other than with respect to the matters directly addressed in the AFA cooperative Membership Agreements, such as pollock allocations and sideboard and PSC limits. That being the case, it is fundamentally unfair and inappropriate to assign them that responsibility under the proposed rule, and commensurately unfair and inappropriate to impose joint and several liability for any member violation other than overharvest of a pollock directed fishing allocation or a sideboard or PSC limit. We request that § 679.7(k)(5)(ii) be amended to eliminate cooperative member joint responsibility and cooperative member joint and several liability for any violation other than cooperative allocation overharvests.

Response: NMFS agrees that the language in the proposed rule could be interpreted as overreaching. The final rule has been amended to provide that the owners and operators of vessels that are members of a fishery cooperative are responsible for ensuring that the fishery cooperative complies with the directed fishing, sideboard closures, PSC limits and other allocation restrictions that are applicable to fishery cooperatives.

Comment 18: In the proposed rule, paragraph § 679.7(k)(6) *Excessive harvesting shares* provides that it is unlawful for an AFA entity to harvest, through a fishery cooperative or otherwise, an amount of BSAI pollock that exceeds the 17.5- percent excessive share limit. Under the proposed rule, the owners and operators of individual vessels comprising the AFA entity that harvests BSAI pollock will be held jointly and severally liable for exceeding the excessive harvesting share limit.

We are deeply concerned by the imposition of joint and several liability, especially as it may apply to fishery cooperatives. We concede that a vessel owner who is not otherwise in violation of the harvesting limit could violate it through acquisition and exercise of AFA cooperative pollock harvesting shares. However, we fail to see why such action should result in unconditional joint and several liability among all cooperative members. Any such violation should be the sole responsibility of the person or persons who actually own and control the vessel(s) used to exceed the harvesting limit.

Response: See response to comments 14 and 17. In the final rule, NMFS has revised the definition of AFA entity to clarify that a fishery cooperative is not considered to be an AFA entity per se. However, if a fishery cooperative is controlled by a single individual or corporation, and the fishery cooperative controls or has the power to control the fishing activity of the member vessels, then all members of the cooperative are considered affiliated. With respect to the issue of liability for violating an excessive harvesting share cap, NMFS believes it is appropriate to hold all affiliates of an AFA entity liable for exceeding an excessive harvesting share cap because the harvesting activity of all affiliates contributed to the entity exceeding the harvesting cap. NMFS does not monitor excessive share harvesting caps on an inseason basis or inform each AFA entity when it is approaching or exceeding the excessive harvesting share cap. Rather, it is the responsibility of each AFA entity to monitor the harvesting activities of its affiliates and ensure that the harvesting cap is not exceeded.

Comment 19: In the proposed rule, paragraph 679.20(a)(5)(i), which addresses cooperatives in the catcher/processor sector provides that if by December 1st, NMFS receives cooperative contracts and/or an inter-cooperative agreement entered into by listed AFA catcher/processors and all AFA catcher vessels with catcher/processor sector endorsements, and the Regional Administrator determines that such contracts provide for distribution of the harvest between catcher/processors and catcher vessels in a manner agreed to by all members of the catcher/processor sector cooperative(s), then NMFS will not subdivide the catcher/processor sector allocation between catcher vessels and catcher/processors. On the other hand, if such contract is not filed with NMFS by December 1 in any given year, NMFS will allocate 91.5 percent of the catcher/processor sector allocation to the AFA catcher/processors engaged in directed fishing for pollock, and 8.5 percent of the catcher/processor sector allocation to catcher vessels delivering to catcher processors.

Our comments with respect to this provision are similar in nature to those we made with respect to inshore cooperative permit applications. Specifically, we submit that once copies of the cooperative contracts or of an inter-cooperative agreement that meet the requirements of this section have been submitted, the filing requirement should be suspended unless and until there has been an amendment or termination of the relevant contract(s) or agreement. Any concern NMFS may have regarding the continuing validity and integrity of the contract(s) or agreement could be addressed through a requirement that the designated representatives for all of the catcher/processor sector cooperatives annually certify that the contract(s) or agreement remain in effect and have not been amended.

Response: NMFS agrees that for the purpose of allocating 8.5 percent of the catcher/processor sector TAC to AFA catcher vessels, it is unnecessary to require annual filing of cooperative contracts and inter-cooperative agreements. Consequently, the final rule has been revised to state that if NMFS determines that such cooperatives and inter-cooperative agreements exist and are valid for the fishing year in which the specifications will be valid, then NMFS will make a single allocation to the catcher/processor sector. The annual

specification process provides for the publication of proposed and final harvest specifications. If industry believes that NMFS has made an incorrect determination about the status of cooperatives in the catcher/processor sector in the proposed specifications, then industry will have the opportunity to provide comment to NMFS and NMFS will make any necessary corrections in the final specifications.

Comment 20: In the proposed rule, paragraph 679.61(b) states that all cooperatives are required to appoint a designated representative and an agent for service of process. However, the definitions of those terms in § 679.2 suggest that the terms apply only to inshore catcher vessel cooperatives. NMFS should clarify whether these terms apply only to inshore catcher vessel cooperatives or to all AFA cooperatives.

Response: The final rule has been revised to clarify that all AFA cooperatives are required to appoint a designated representative and agent for service of process. NMFS has revised the definitions in § 679.2 to include all AFA cooperatives.

Comment 21: In the proposed rule, paragraph 679.61(g)(5) requires that each cooperative contract contain a contract clause dealing with payment of surrogate landing tax to the State of Alaska. It appears to say that failure to include the clause, and also failure to pay the surrogate tax will result in revocation of the authority to form a fishery cooperative. The inclusion of a contract clause is a clear standard, and failure to comply would have its own remedies within the contract. However, there is no clear specification for what constitutes the due date of payment in regulation, nor is it clear when revocation would take effect. Would all members of a cooperative be expected to instantly stop fishing if one member were found to be in arrears by 10 percent on the payment to the State?

Response: The landing tax requirement language in the proposed and final rules was taken verbatim from subsection 210(f) of the AFA. However, NMFS agrees that a deadline is appropriate. Therefore, the final rule has been revised to impose an April 1 deadline for payment of landing taxes to the State of Alaska. This is the same deadline imposed on all processors operating within the State of Alaska. Under the final rule, if a member of a cooperative fails to pay all landing tax owed to the State before April 1 of the year following the calendar year in which the fishing activity took place, then the cooperative is prohibited from operating in the BSAI pollock fishery until the landing tax is paid.

In addition, State law provides that the State Department of Revenue may extend the landing tax payment deadline if standardized prices are not available by April 1. This final rule also provides that in the event that the State of Alaska has extended the landing tax payment deadline for processors operating in the State of Alaska, then the deadline for AFA cooperatives is also automatically extended for the same duration. The annual cooperative report requirement also has been revised to require that cooperatives identify in their final annual reports the total landings that occurred outside the State of Alaska and whether or not the landing tax was paid to the State for such landings.

Comment 22: In the proposed rule, paragraph 679.61(l) dictates the format for submission of reports to the Council and requires single sided 8.5–inch by 11–inch paper. The agency should allow for the electronic submission of reports in Adobe Acrobat format.

Response: NMFS proposed the format requirements after consultation with Council staff to ensure that reports would be received in a format most easily duplicated for public distribution. However, NMFS agrees that some electronic formats such as Adobe Acrobat may be equally easy to duplicate. Therefore, the final rule has been revised to accommodate the submission of reports in alternate formats if the cooperative obtains the prior approval of the Council.

Comment 23: In paragraph 679.4(l) of the proposed rule, the F/V PROVIDIAN AND F/V HAZEL LORRAINE are listed as eligible vessels in accordance with Public Law 106–562, which made both vessels eligible ''in the same manner and subject to the same requirements and limitations'' as other vessels eligible under the AFA. However, the inshore co-op allocation formula set out in paragraph 679.62(b)(2) grants the F/V PROVIDIAN the 1992–1994 catch history from an entirely different vessel, the F/V OCEAN SPRAY based on a single ambiguous statement by Senator Olympia Snow in the *Congressional Record*. We strongly object to this interpretation by NMFS. Public Law 106–562 itself provides no basis for this action and to give the F/V PROVIDIAN the 1992–1994 catch history from a different vessel is counter to the intent of Pub. L. 106–562 as well as the other provisions of the AFA.

Response: The issue of catch history for the F/V PROVIDIAN was the subject of an Initial Administrative Determination by the Restricted Access Management Division of the NMFS Alaska Region, a subsequent appeal to the NMFS Office of Administrative Appeals, and a request for reconsideration by Regional Administrator under the appeals process established by the emergency interim rules to implement the AFA. After reviewing the legislative history, including a statement by Senator Olympia Snow in the *Congressional Record* (S. 11894, December 15, 2000), NMFS determined that Public Law 106–562 directed NMFS to include the F/V PROVIDIAN as an eligible vessel using the formula set out in paragraph 679.62(b)(2). The basis for this determination is complex and space considerations do not permit us to repeat the entire legal justification in this final rule. However, the full texts of the appeals decisions related to the F/V PROVIDIAN are available to the public on the NMFS Alaska Region home page at *http://www.fakr.noaa.gov/appeals.*

Comments on Sideboard Protections for Other Fisheries

Comment 24: The formula for calculating catcher/processor groundfish harvesting sideboard provisions set out in paragraph 679.64(a) of the proposed rule is inconsistent with the Council's June 1999 motion which recommended that catcher/processor groundfish sideboard amounts be based on the retained catch of AFA vessels in all target fisheries. The formula contained in the proposed rule would base catcher/processor groundfish sideboards on the retained catch by AFA vessels in non-pollock target fisheries, which is inconsistent with the Council's recommendation. No justification for this change is found within the proposed rule.

Response: The sideboard formula set out in the proposed rule was the result of a drafting error. NMFS did not intend to modify the sideboard recommendations made by the Council. The final rule has been corrected to reflect the Council's recommended catcher/processor sideboard formula.

Comment 25: We support the proposed rule's plan for managing the AFA catcher/processor harvesting sideboards through the use of directed fishing closures on the target fisheries for non-pollock groundfish. We also agree that incidental catch amounts of sideboard species should be set aside prior to the authorization of directed fisheries for such species; and that the Secretary of Commerce should not authorize directed fisheries for sideboard species where the sideboard amount is too small to support a

directed fishery. This will reduce the chance of sideboard caps being exceeded. Under no circumstances, however, do we support the use of hard caps on sideboard species that would shut down or otherwise curtail the pollock fishery itself.

The use of hard caps to shut down the pollock fishery—which is perhaps the cleanest fishery in the world insofar as incidental catch of non-target species is concerned--would be punitive in nature, have devastating economic consequences and accomplish no legitimate conservation or other management objective. It is essential to remember that the purpose of the sideboards is to protect non-AFA fishermen from adverse effects caused by AFA co-op vessels ''spilling over'' into the other non-target fisheries. This is adequately accomplished through the use of directed fishing closures on those non-pollock species with large enough sideboards to support a target fishery (cod and yellowfin sole, for example). The sideboards were not intended to be a bycatch reduction measure or to penalize fishermen for incidental catch levels that have no biological consequences.

Response: NMFS agrees. The FEIS prepared for Amendments 61/61/13/8 drew similar conclusions about the costs and benefits of managing sideboards through directed fishing closures or hard caps.

Comment 26: We believe that the Council exceeded its authority when it adopted a catcher/processor sideboard option that based sideboard amounts on the retained catch of AFA-listed vessels from 1995–1997. We are opposed to any changes in the way that catcher/processor sideboards are calculated. The AFA authorizes the Council to make changes that supersede provisions of the Act only when they are necessary ''for conservation purposes or to mitigate adverse effects'' caused by the AFA or fishery cooperatives. Nowhere in the draft EIS nor in any of the other documents that have been prepared to date in connection with the AFA amendment package has NMFS ever identified an ''adverse effect'' that needs to be mitigated or a ''conservation'' rationale for the proposed change in the AFA's C/P sideboard provisions.

Response: While NMFS agrees that the Council has the authority to supersede the provisions of paragraph 211(b)(2) of the AFA, NMFS disagrees with the premise that the Council superseded the AFA when it developed its recommended approach for catcher/processor groundfish harvesting sideboards. NMFS considers the Council's recommended approach to be a reasonable interpretation of the statutory prohibition in the AFA. Therefore, the final rule interprets but does not supersede the catcher/processor sideboard prohibitions set out in the AFA.

Subparagraph 211(b)(2)(B) of the AFA states:

''The catcher/processors eligible under paragraphs (1) through (20) of section 208(e) are hereby prohibited from, in the aggregate—

(A) exceeding the percentage of the harvest available in the offshore component of any Bering Sea and Aleutian Islands groundfish fishery (other than the pollock fishery) that is equivalent to the total harvest by such catcher/processors and the catcher/processors listed in section 209 in the fishery in 1995, 1996, and 1997 relative to the total amount available to be harvested by the offshore component in the fishery in 1995, 1996, and 1997;''

As retained catch, by definition, is a subset of total catch, it must be less than total catch. The AFA only prohibits exceeding ''the percentage of ...total harvest...'' thus, setting a limit below that total harvest threshold specifically complies with the statutory requirements.

The sideboard management approach set out in the final rule is based on the premise that the terms ''fishery'' and ''other than the pollock fishery'' refer to specific non-pollock target fisheries of interest to other fishermen. Under the final rule, sideboards would limit directed fishing by AFA catcher/processors in each BSAI groundfish fishery for which a sideboard amount was specified. If a particular sideboard amount is insufficient to support directed fishing for that species, NMFS will prohibit AFA catcher/processors from engaging in directed fishing for that sideboard species. Sideboard management becomes a matter of regulating the directed fishing activities of AFA catcher/processors in groundfish fisheries other than the BSAI pollock fishery.

Under this approach, determining the sideboard amount for a groundfish species according to the formula set out in the AFA is a matter of estimating how much of each groundfish species AFA catcher/processors harvested during 1995–1997 when they were engaged in directed fishing for that species. Basing sideboard amounts on retained catch as recommended by the Council provides a reasonable approximation of directed fishing activity by the AFA fleet in non-pollock target fisheries from 1995–1997. This is because vessels not engaged in directed fishing for a particular groundfish species generally did not retain any of that species, especially prior to 1998 which was the first year that full retention requirements for Pacific cod were implemented.

Comment 27: We urge NMFS to maintain the Council's retained catch formula for catcher vessel and catcher/processor groundfish sideboards. AFA catcher/processor companies have made various attempts to establish their sideboard limits at total catch levels rather than retained catch levels. In rejecting their effort to overreach, the Council in 1999 determined as a matter of policy that the AFA vessels should not be rewarded for past bycatch and discard history. This determination was based on longstanding efforts by the Council and NMFS to reduce bycatch and discards, a position in accordance with national standard 9. Indeed, it is hypocritical of AFA companies to suggest that their historic discards and the historic discards of the nine scrapped vessels should govern their access into non-pollock groundfish fisheries when retained pollock catch history is the standard used to govern access into the BSAI pollock fishery. If historic discards are a valid basis for access into a given fishery then many more vessels should be eligible to participate in the AFA pollock fishery based on their historic discards of pollock. Obviously however, the AFA does not grant vessels access to the BSAI pollock fishery based on their historic discards of pollock. Likewise, NMFS should set AFA catcher vessel and catcher/processor sideboards at retained catch levels and reject any suggestion from AFA companies to establish them at total catch levels.

Response: Comment noted. The final rule uses retained catch as the basis for establishing both catcher vessel and catcher/processor sideboards for the reasons described in the response to comment 26.

Comment 28: The proposed rule preamble discussion of AFA catcher vessel crab sideboard endorsements presents a requirement that ''an applicant for an AFA catcher vessel permit to indicate on the permit application which AFA crab sideboard endorsements the vessel qualifies for based on the qualifying criteria set out in this rule.'' Because there is overlap in the LLP terminology (endorsement) and in the use of LLP catch history years, it should be made explicit that failing to qualify for a ''sideboard endorsement'' has no effect on the LLP endorsement for a crab species. One continues to retain the LLP endorsement even though it can't be used under these regulations. If a vessel surrenders its AFA permit, its crab LLP endorsements should still be valid.

Response: Crab fishery endorsements on a vessel's AFA permit are independent of crab fishery endorsements on an LLP permit. The operator of an AFA vessel who wishes to fish for king or Tanner crab in the BSAI must have the appropriate endorsement on both the AFA and LLP permit in order to legally fish for crab. The comment also raises the issue of surrender of AFA permits. The final rule has no provision for the surrender of an AFA permit. The issuance of an AFA permit involves a determination by NMFS that the vessel is eligible to fish under the AFA. Under the final rule, no provision exists for a vessel owner to surrender an AFA permit or voluntarily give up AFA eligibility. Once NMFS has made a determination that a vessel is eligible under the AFA, that determination is permanent. Allowing the surrender of AFA permits would allow vessel owners to evade sideboard restrictions that the AFA intended to apply to all eligible vessels regardless of whether or not they were actively engaged in directed fishing for pollock.

Comment 29: The proposed rule preamble discussion of catcher vessel groundfish sideboards in the BSAI includes background on the exemptions to AFA catcher vessel Pacific cod sideboards. This section misrepresents the basis for providing exemptions. It states in part, that ''in most years the BSAI cod fishery is mostly concluded by March 1st.'' This is factually incorrect. The offshore pollock fishery prior to AFA was generally concluded in late February (both for mothership catcher vessels and catcher vessels delivering to catcher/processors). The codfishery is in full swing in March. There has not been a shortage of vessels in March, though most have been AFA vessels.

It also states that mothership sector vessels ''received a relatively smaller pollock quota under the AFA.'' This is not accurate. There are 20 mothership catcher vessels dividing 10 percent of the directed pollock TAC (0.50 percent/vessel), there are 7 catcher vessels in the catcher/processor sector dividing 3.4 percent of the directed pollock TAC (0.49 percent/vessel), additionally mothership vessels retained their inshore pollock catch history. To the extent that non-AFA catcher vessels are impacted in their ability to catch their 'traditional' share of the catcher vessel trawl cod allocation, it will not be because non-exempt AFA vessels have exceeded their history, but because of exemptions. To the extent there is an appropriate basis for not restricting mothership catcher vessels (or other catcher vessels) during March it is because they were not limited by a conflicting pollock fishery during that time period prior to the AFA.

Response: We appreciate this clarification of the Council's rationale.

Comment 30: The proposed formula for calculating catcher vessel groundfish sideboards uses a numerator of retained catch over a denominator of ''TAC available.'' There are various elements of asymmetry in this method of determining the numerator and denominator that should be resolved: First, the sideboard formula should be catch divided by catch rather than catch divided by TAC. The catcher/processor sideboard is calculated as retained catch divided by total catch, not retained catch divided by TAC. At a minimum, there should be consistency in how the two sectors' sideboards are calculated. Second, sideboards should either be retained catch divided by total retained catch, or total catch divided by total catch. There should be consistency between the numerator and denominator.

Response: First, the formulae for catcher vessel and catcher/processor sideboards were developed by the Council after analysis of an extensive suite of alternatives. In choosing to use a formula of catch divided by available TAC, the Council was following the approach set out in the AFA which based catcher/processor sideboards on catch divided by available TAC. The Council also recognized that basing sideboards on catch divided by catch would greatly inflate sideboard amounts in fisheries that were not fully exploited during the basis years because the resulting sideboard could greatly exceed historic catch. Second, the final rule uses the same formula of retained catch divided by available TAC to calculate both catcher vessel and catcher/processor sideboards. The catcher/processor sector is treated more generously than the catcher vessel sector because the entire retained catch history of the nine ineligible vessels is included into the sideboard formula for the catcher/processor sector while the catcher vessel sector is given credit only for the actual catch history of the AFA catcher vessel fleet. However, aside from this one distinction, the catcher vessel and catcher/processor groundfish harvesting sideboards are calculated and managed in the same manner.

Comment 31: An element that potentially impacts the catcher vessel Pacific cod sideboard arises from using TAC 'available.' In 1997 there was a year-end reallocation of the Pacific cod TAC from catcher/processors to catcher vessels that inflated the catcher vessel TAC at a point in time where it was too late to catch the fish. If this reallocated TAC is counted as part of the denominator, then it further waters down the proportionate size of our numerator. NMFS may have all ready recognized that the appropriate ''TAC available'' was the starting TAC, so this element may be moot.

Response: Comment noted. The formula NMFS uses for establishing both catcher vessel and catcher/processor sideboards is based on the published TACs and does not include year-end reallocations.

Comments on Catch Weighing and Monitoring Requirements

The following comments address catch weighing and monitoring requirements.

Comment 32: The VMS requirement should be revised to address instances where the VMS unit is not operational. AFA catcher/processors are already required to carry two observers at all times. If for some reason a VMS unit is not operational, through no fault of the vessel crew or owner, and as long as two observers are onboard, the vessel should be allowed to continue fishing until the next port of call when the VMS unit can be diagnosed and repaired or replaced.

Response: The proposed VMS requirement specific to AFA vessels has been removed from the final rule because such a requirement would be redundant with existing VMS requirements that were established for Steller sea lion protection. In January 2002, NMFS established a VMS requirement for all vessels fishing for Atka mackerel, pollock, and Pacific cod in the BSAI and GOA with gear other than jig gear as part of emergency regulations to protect Steller sea lions (67 FR 956, January 8, 2002). NMFS anticipates that this VMS requirement will be included in permanent rulemaking to protect Steller sea lions which makes a separate VMS requirement for AFA vessels redundant and unnecessary. Comments related to VMS requirements for AFA catcher/processors will be addressed in the upcoming final rule to implement Steller sea lion protection measures.

Comment 33: The scale requirement for AFA catcher/processors and AFA motherships should be relaxed in the event of a scale breakdown when fish is on board. We endorse the use of onboard scales to weigh all groundfish taken in the pollock, cod and Atka mackerel fisheries. All AFA catcher/processors are equipped with such scales. From time to time, however, the scales break or malfunction. This can be particularly problematic when fish has already been taken on board the vessel

but has not yet been processed. In such circumstances, and where the scale breakdown may be protracted, we would propose that a catcher/processor should be allowed to process the fish it has on board as long as a back-up estimate of the total catch has been or could be made by the observer. This would avoid the unnecessary wastage of valuable fish. Furthermore, observed vessels fishing in one of the non-pollock groundfish fisheries should be allowed to complete the fishing trip as long as the observer is capable of estimating catch levels in accordance with the normal procedures prescribed by the NMFS' observer program. The vessel would then be required to repair the scale at the end of the trip and would not be allowed to begin another trip until the necessary repairs have been made and the scale is in working order.

Response: Paragraph 211(b)(6) of the AFA requires that all groundfish harvested by AFA catcher/processors be weighed on NMFS-approved scales. The AFA makes no provisions for other methods of catch estimation. Like many pieces of equipment, scales can fail and it is critical that vessel crew have the expertise and parts to undertake repairs at-sea. However, at-sea scales have been in use off Alaska for more than 3 years. During this time, scale vendors and vessel crew have learned what spare parts must be carried and what training is necessary to ensure minimal down time. NMFS believes that allowing fishing to continue following a scale breakdown would act as a disincentive to an aggressive program of scale maintenance and repair on the part of fishing vessels. NMFS acknowledges, however, that under certain circumstances a scale breakdown could occur and prevent those fish already on board from being weighed. Failure to process those fish could cause a violation of increased retention/increased utilization regulations. Thus, as a matter of policy, NMFS will allow fish already on board to be processed without being weighed in cases where their discard would otherwise be necessary.

NMFS acknowledges the suggestion that a catch-weighing program be extended to the cod and Atka mackerel fisheries. The use of at-sea scales in these, and other, fisheries has been discussed by the Council but no recommendations have been made to date.

Comments on Inshore/Offshore Requirements

The following comments relate to the extension of inshore/offshore regulations in the BSAI and GOA.

Comment 34: We disagree with the inclusion of BSAI Pacific cod as part of the definition of ''inshore component in the BSAI.'' Pacific cod has never been allocated between the inshore and offshore components of the BSAI and the Council in developing its inshore/offshore amendments never intended to regulate the processing of BSAI Pacific cod. It appears that NMFS has included BSAI Pacific cod in the definition of ''inshore component in the BSAI'' in response to section 205(6) of the AFA which defines the inshore component in the BSAI as:

'' the following categories that process groundfish harvested in the Bering Sea and Aleutian Islands Management Area: (A) shoreside processors, including those eligible under section 208(f); and (B) vessels less than 125 feet in length overall that process less than 126 metric tons per week in round-weight equivalents of an aggregate amount of pollock and Pacific cod.≥

However, this definition is limited to the context of the AFA and should never have been used to modify the Council's inshore/offshore program. Including BSAI Pacific cod in this definition means that catcher/processors under 125 ft (38.1 m) that process more than 126 mt of Pacific cod in the BSAI become categorized as part of the offshore component in the BSAI. This has the effect of prohibiting such vessels from participating in the inshore component Pacific cod fishery in the GOA because of the NMFS prohibition on operating in the inshore component in the GOA and the offshore component in the BSAI during the same fishing year.

Response: NMFS agrees. To address the unintended conflict between AFA and inshore/offshore regulations, the final rule has been revised to remove all definitions and prohibitions relating to inshore/offshore in the BSAI because the AFA has superseded the inshore/offshore regime in the BSAI. The regulations governing the inshore/offshore regime in the GOA also have been revised to eliminate reference to inshore/offshore in the BSAI. The inshore/offshore prohibitions have been revised to reflect the actual restrictions on GOA inshore processors that were in effect prior to the passage of the AFA. Consequently, vessels designated as inshore processors in the GOA will have no restrictions on the processing of BSAI Pacific cod.

Classification

The Administrator, Alaska Region, NMFS, determined that Amendments 61/61/13/8 are necessary for the conservation and management of the groundfish, crab, and scallop fisheries off Alaska and that they are consistent with the Magnuson-Stevens Act and other applicable laws.

NMFS prepared a final environmental impact statement for Amendments 61/61/13/8; a notice of availability was published on March 1, 2002 (67 FR 9448). The FEIS examined the projected changes to fishing and processing patterns that are expected to result from implementation of Amendments 61/61/13/8 and how these expected changes will affect the physical and biological resources of the BSAI and GOA. The FEIS concluded that Amendments 61/61/13/8 are expected to have conditionally positive effects on Steller sea lions as a result of the expected temporal and spatial dispersion of fishing effort and the expectation that fishery cooperatives will provide increased ability to micro-manage fishing activity at the individual vessel level. This increase in management capacity is expected to facilitate the implementation of Steller sea lion protection measures. For all other components of the environment analyzed, the effects of Amendments 61/61/13/8 was found to be either insignificant or unknown.

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

NMFS prepared a FRFA as part of the final EIS that describes the impact this action will have on small entities. The FRFA describes the objectives and legal basis for the final rule. With regard to commercial fishing vessels operating in the directed pollock fishery in the BSAI, the AFA provides the legal basis for taking actions to achieve the objective of reducing excessive fishing capacity and establishes regulatory conditions that could foster operational efficiencies in this fishery (Division C, Title II of Public Law 105–277), including cooperative formation and development of sideboard measures. Mitigation of potential adverse impacts to non-AFA fishermen and processors is mandated by the AFA.

The FRFA contains a description of and an estimate of the number of small entities to which the final rule would apply. The FRFA concluded that none of the catcher/processors, motherships and inshore processors affected by this action are small entities. All of the inshore and mothership processors participating in the BSAI pollock fishery are subsidiaries or close affiliates of corporations with more than 500 employees worldwide, and exceed the criterion for small entities. In addition, all 21 AFA catcher/processors have estimated annual gross revenues in excess of the $3–million small entity criterion for fish harvesting operations.

Therefore, none of the catcher/processors, motherships, or inshore processors in the BSAI pollock fishery appear to meet the Regulatory Flexibility Act (RFA) criteria for small entities.

With respect to the catcher vessel fleet, NMFS expects that approximately 120 catcher boats will be eligible to harvest BSAI pollock under this final rule (7 in the offshore delivery sector, 92 in the inshore sector, 7 in the mothership sector, and 14 which are eligible in both the inshore and mothership sectors). Ownership information presented in the FRFA indicates that, of the 92 catcher boats that operated exclusively or partly in the inshore sector, the available ownership data identify 26 vessels owned, in whole or in part, by inshore processors. These 26 vessels may be considered to be affiliated with their respective inshore processor owners and cannot be considered small entities because none of the inshore processors in the BSAI pollock fishery, themselves, are small entities for RFA purposes. An additional 5 catcher boats have been identified as closely affiliated with an inshore floating processor. These 5 catcher boats, taken together with their affiliated processor, exceed the $3–million criterion for fish harvesting operations and are, therefore, not believed to be small entities.

Furthermore, an additional 20 catcher boats have ownership affiliations with other catcher boats or catcher processors. The gross annual receipts of each of these groups of affiliated catcher boats is believed to exceed the $3–million criterion for small entities, when all their fisheries earnings are taken as a whole. The remaining 40 catcher boats operating exclusively or partly in the inshore sector are believed to be small entities.

Twenty-eight catcher boats operated in the offshore sector exclusively (e.g., delivering to catcher/processors and motherships), while 22 operated in both inshore and offshore sectors for a total of 50 offshore catcher boats. Of the combined offshore catcher boat sector, 13 have ownership affiliations with large inshore or offshore processors and, therefore, do not meet the $3–million criterion for small entities. An additional 13 catcher boats have ownership affiliations with other vessels or operations that, taken together with their affiliated entities, are believed to exceed the $3–million gross receipts criterion for small entities. The remaining 24 catcher boats operating exclusively or partly in the offshore sector are believed to qualify as ''small entities'' (and are among the same 120 total vessels described earlier).

The FRFA further concluded that the formation of inshore fishery cooperatives among predetermined groups of catcher vessels and a corresponding inshore processor will create distinct sets of entities, large and small, and their potential for inter-related economic effects resulting from such affiliation. In the context of an RFA analysis, a fish harvesting concern is a small entity if it has annual receipts not in excess of $3 million or it is not dominant in its field (defined in 13 CFR part 121, Standard Industrial Code categorizations). An independent catcher vessel operating in the ''open access'' or non-cooperative directed pollock fishery would typically meet that criteria. However, under Small Business Administration regulations for determining entity size, businesses that are affiliated with each other through joint-venture or cooperative arrangements are not considered ''independent'' and the affiliated businesses must be taken as a whole when determining entity size. In the case of AFA inshore cooperatives, the $3–million criterion will be exceeded for every inshore cooperative meaning that once independent catcher vessels join a cooperative, they can no longer be considered a small business concern for RFA purposes.

Despite the fact that catcher vessels will lose their small entity size status upon entry into cooperatives, the FRFA nonetheless examined the economic consequences of cooperative formation on independent catcher vessels. Approximately 43 small entities, including 40 independent catcher vessels delivering to inshore processors and three neighboring communities, would be expected to be directly impacted by the establishment of AFA cooperatives. The significance of these impacts on small independent catcher vessel businesses will depend primarily on the contractual relationship between such vessels, and their delivery processor as moderated by their collective cooperative agreement and cooperative by-laws. The FRFA concluded that if conventional cooperative motives exist between processor and catcher vessel business members as to foster a mutually beneficial economic relationship, this cooperative action would not be expected to significantly impact a substantial number of these small entities. Indeed, the action would be a net gain for cooperative members and their neighboring communities. Conversely, if the processor associated with the cooperative decides to exploit its position as the sole purchaser of pollock from cooperative co-members that operate as catcher vessels, then it would be highly probable that a substantial number of small entities would be significantly impacted by this action implementing such fishery cooperatives as authorized under AFA. Until empirical data become available, likely after cooperatives have been in operation for 2 or more years, these questions cannot be definitively addressed.

At its June 2000 meeting in Portland, OR, the Council considered and postponed action on a proposal from independent fishermen, known as the ''Dooley-Hall'' proposal, that would have allowed catcher vessel owners to switch cooperatives from year-to-year without needing to spend a year in the open access fishery to qualify for the new cooperative. This proposal is identified as Alternative 5 in the FRFA. Independent fishermen made this proposal to reduce negative economic impacts of this action on their sector of small entities. The FRFA concluded that the economic implications of the Dooley-Hall alternative on independent catcher vessels would be positive. It would also allow them to both retain the exclusive harvesting privilege associated with their cooperative's collective pollock allocation as well as provide for their ability to accept the highest exvessel price for such pollock landings as offered by an eligible inshore processor.

After giving close consideration to Alternative 5, the Council decided to postpone any decision to supersede the AFA by implementing Alternative 5, and selected Alternative 3 as its preferred alternative. Adopting Alternative 5 would have required the Council to supersede the provisions of the AFA that set out the operational criteria for inshore catcher vessel cooperatives. Such action would have required that the Council determine that sufficient harm to independent catcher vessels was likely to occur under Alternative 3. After review of its analysis, and extensive public testimony, the Council determined that it did not have sufficient grounds (i.e. evidence of harm to independent catcher vessel owners) to supersede the AFA and implement Alternative 5. This determination was also supported by written comments on the Initial Regulatory Flexibility Act analysis from the original proponents of Alternative 5. These comments noted that independent catcher vessel owners have not been adversely affected by implementation of the AFA to date and further stated that original proponents

of Alternative 5 now support implementation of Council's preferred alternative as set forth in this final rule.

Alternative 3 as reflected in this final rule is a compromise that was developed in legislative and Council processes. It incorporates compromises among interest groups that were essential to bringing the AFA and the implementing regulations into existence. In particular, the difference between Alternatives 3 and 5 reflects a decision about the allocation of AFA benefits between inshore processors and inshore catcher vessels. In postponing action on the independent catcher vessel's proposal reflected in Alternative 5, the Council chose not to change the terms of this agreement after it had been reached, but indicated that it could take the issue up again at any point if evidence suggested that independent catcher vessels were harmed as a result of the co-op structure contained in the AFA. Thus Alternative 3 is the preferred alternative, although it may not absolutely maximize net benefits as interpreted in benefit-cost analysis.

Finally, the FRFA examined the impacts of catcher vessel sideboard measures on small entities, and examined the effects of this final rule on small vessels excluded from the pollock fishery under the AFA. With respect to the effects of catcher vessel sideboards on AFA catcher vessels, the FRFA examined a range of alternatives that would mitigate adverse effects on small entities, especially small catcher vessels that may have little pollock catch history in the BSAI and would, therefore, receive little benefit under the AFA. The Council recommended, and this final rule contains, an exemption from BSAI Pacific cod and GOA groundfish sideboards for catcher vessels that have less than 1,700 mt average annual pollock harvests in the BSAI from 1995–1997. The intent of this alternative is to eliminate the impact of sideboards on AFA catcher vessels that have not traditionally focused the bulk of their effort in BSAI pollock, and that are more dependent on GOA groundfish fisheries.

This final rule contains collection of information requirements subject to the PRA and which have been approved by OMB under Control Numbers 0648–0393 and 0648–0401. Public reporting burden for these collections are listed by OMB control number.

OMB No. 0648–0393: 2 hours to complete the AFA catcher vessel permit application; 2 hours to complete the AFA mothership and inshore processor permit application; 2 hours to complete the AFA inshore cooperative permit application; and 30 minutes to complete the AFA permit application for a replacement vessel.

OMB No. 0648–0401: 5 minutes to submit a copy of the cooperative contract; 5 minutes to complete the catcher vessel cooperative pollock catch report; 8 hours to complete the Cooperative preliminary report; and 8 hours to complete the annual written Cooperative final report.

This final rule also contains proposed collection-of-information requirements that have been submitted to OMB for approval. These requirements, and their associated estimated response times, are: 40 hours for submission of a catch monitoring and control plan; 5 minutes for arranging for an inspection of a catch monitoring and control plan and 2 hours for the inspection itself; 1 minute for printing scale weights; 2 hours to test scales; 40 hours for a cooperative contract, including the time to specify a designated representative or agent for a fishery cooperative, the time for a contract clause in a cooperative contract concerning the making of payments to the State of Alaska, and the time for a contract provision to prevent exceeding sideboard limits; 8 hours to report (in a preliminary or final report) on a vessel-by-vessel basis the total weight of pollock landed outside the State of Alaska; and 5 minutes for a plant manager to notify an observer of each delivery of BSAI pollock from an AFA catcher vessel.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS (see **ADDRESSES** above) and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: NOAA Desk Officer).

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB Control Number.

A formal section 7 consultation under the Endangered Species Act was initiated for Amendments 61/61/13/8. In a biological opinion dated October 19, 2001, the AA determined that fishing activities conducted under Amendments 61/61/13/8 and its implementing regulations are not likely to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS or result in the destruction or adverse modification of critical habitat.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: December 6, 2002.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 is revised to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*; Title II of Division C, Pub. L. 105–277; Sec. 3027, Pub. L. 106–31, 113 Stat. 57.

2. In § 679.1, paragraph (k) is revised to read as follows:

§ 679.1 Purpose and scope.

* * * * *

(k) *American Fisheries Act measures.* Regulations in this part were developed by NMFS and the Council under the Magnuson-Stevens Act and American Fisheries Act (AFA) to govern commercial fishing for BSAI pollock according to the requirements of the AFA. This part also governs payment and collection of the loan, under the AFA, the Magnuson-Stevens Act, and Title XI of the Merchant Marine Act, 1936, made to all those persons who harvest pollock from the directed fishing allowance allocated to the inshore component under section 206(b)(1) of the AFA.

3. In § 679.2, the definitions of ''Inshore component in the BSAI (applicable through December 31, 2004),'' ''Inshore component in the GOA (applicable through December 31, 2002),'' ''Offshore component in the BSAI (applicable through December 31, 2004),'' and ''Offshore component in the GOA (applicable through December 31, 2002),'' are removed; ''ADF&G processor code,'' ''AFA catcher/processor,'' ''AFA catcher vessel,'' ''AFA crab processing facility,'' ''AFA entity,'' ''AFA inshore processor,'' ''AFA mothership,''

''Affiliation,'' ''Appointed agent for service of process,'' ''Designated cooperative representative,'' ''Designated primary processor,'' ''Fishery cooperative or cooperative,'' ''Inshore component in the GOA,'' ''Listed AFA catcher/processor,'' ''Official AFA record,'' ''Offshore component in the GOA,'' ''Restricted AFA inshore processor,'' ''Stationary floating processor,'' ''Unlisted AFA catcher/processor,'' and ''Unrestricted AFA inshore processor'' are added in alphabetical order, and under the definition of ''Directed fishing,'' paragraph (4) is added to read as follows:

§ 679.2 Definitions.

* * * * *

ADF&G processor code means State of Alaska Department of Fish & Game (ADF&G) Intent to operate processor license number (example: F12345).

AFA catcher/processor means a catcher/processor permitted to harvest BSAI pollock under § 679.4(l)(2).

AFA catcher vessel means a catcher vessel permitted to harvest BSAI pollock under § 679.4(l)(3).

AFA crab processing facility means a processing plant, catcher/processor, mothership, floating processor or any other operation that processes any FMP species of BSAI crab, and that is affiliated with an AFA entity that processes pollock harvested by a catcher vessel cooperative operating in the inshore or mothership sectors of the BSAI pollock fishery.

AFA entity means a group of affiliated individuals, corporations, or other business concerns that harvest or process pollock in the BSAI directed pollock fishery.

AFA inshore processor means a shoreside processor or stationary floating processor permitted to process BSAI pollock under § 679.4(l)(5).

AFA mothership means a mothership permitted to process BSAI pollock under § 679.4(l)(5).

* * * * *

Affiliation for the purpose of defining AFA entities means a relationship between two or more individuals, corporations, or other business concerns in which one concern directly or indirectly owns a 10–percent or greater interest in another, exerts control over another, or has the power to exert control over another; or a third individual, corporation, or other business concern directly or indirectly owns a 10 percent or greater interest in both, exerts control over both, or has the power to exert control over both.

(1) *What is 10–percent or greater ownership*? For the purpose of determining affiliation, 10–percent or greater ownership is deemed to exist if an individual, corporation, or other business concern directly or indirectly owns 10 percent or greater interest in a second corporation or other business concern.

(2) *What is an indirect interest*? An indirect interest is one that passes through one or more intermediate entities. An entity's percentage of indirect interest in a second entity is equal to the entity's percentage of direct interest in an intermediate entity multiplied by the intermediate entity's direct or indirect interest in the second entity.

(3) *What is control*? For the purpose of determining affiliation, control is deemed to exist if an individual, corporation, or other business concern has any of the following relationships or forms of control over another individual, corporation, or other business concern:

(i) Controls 10 percent or more of the voting stock of another corporation or business concern;

(ii) Has the authority to direct the business of the entity which owns the fishing vessel or processor. The authority to ''direct the business of the entity'' does not include the right to simply participate in the direction of the business activities of an entity which owns a fishing vessel or processor;

(iii) Has the authority in the ordinary course of business to limit the actions of or to replace the chief executive officer, a majority of the board of directors, any general partner or any person serving in a management capacity of an entity that holds 10 percent or greater interest in a fishing vessel or processor. Standard rights of minority shareholders to restrict the actions of the entity are not included in this definition of control provided they are unrelated to day-to-day business activities. These rights include provisions to require the consent of the minority shareholder to sell all or substantially all the assets, to enter into a different business, to contract with the major investors or their affiliates or to guarantee the obligations of majority investors or their affiliates;

(iv) Has the authority to direct the transfer, operation or manning of a fishing vessel or processor. The authority to ''direct the transfer, operation, or manning'' of a vessel or processor does not include the right to simply participate in such activities;

(v) Has the authority to control the management of or to be a controlling factor in the entity that holds 10 percent or greater interest in a fishing vessel or processor;

(vi) Absorbs all the costs and normal business risks associated with ownership and operation of a fishing vessel or processor;

(vii) Has the responsibility to procure insurance on the fishing vessel or processor, or assumes any liability in excess of insurance coverage;

(viii) Has the authority to control a fishery cooperative through 10–percent or greater ownership or control over a majority of the vessels in the cooperative, has the authority to appoint, remove, or limit the actions of or replace the chief executive officer of the cooperative, or has the authority to appoint, remove, or limit the actions of a majority of the board of directors of the cooperative. In such instance, all members of the cooperative are considered affiliates of the individual, corporation, or other business concern that exerts control over the cooperative; and

(ix) Has the ability through any other means whatsoever to control the entity that holds 10 percent or greater interest in a fishing vessel or processor.

* * * * *

Appointed agent for service of process means an agent appointed by the members of a fishery cooperative to serve on behalf of the cooperative. The appointed agent for service of process may be the owner of a vessel listed as a member of the cooperative or a registered agent.

* * * * *

Designated cooperative representative means an individual who is designated by the members of a fishery cooperative to fulfill requirements on behalf of the cooperative including, but not limited to, the signing of cooperative fishing permit applications; submitting catcher vessel pollock cooperative catch reports, and submitting annual cooperative fishing reports.

Designated primary processor means an AFA inshore processor that is designated by an inshore pollock cooperative as the AFA inshore processor to which the cooperative will deliver at least 90 percent of its BSAI pollock allocation during the year in which the AFA inshore cooperative fishing permit is in effect.

* * * * *

Directed fishing means:

* * * * *

(4) With respect to the harvest of groundfish by AFA catcher/processors and AFA catcher vessels, any fishing activity that results in the retention of an amount of a species or species group on board a vessel that is greater than the maximum retainable percentage for that

species or species group as calculated under § 679.20.

* * * * *

Fishery cooperative or cooperative means any entity cooperatively managing directed fishing for BSAI pollock and formed under section 1 of the Fisherman's Collective Marketing Act of 1934 (15 U.S.C. 521). In and of itself, a cooperative is not an AFA entity subject to excessive harvest share limitations, unless a single person, corporation or other business entity controls the cooperative and the cooperative has the power to control the fishing activity of its member vessels.

* * * * *

Inshore component in the GOA means the following three categories of the U.S. groundfish fishery that process groundfish harvested in the GOA:

(1) Shoreside processors

(2) Vessels less than 125 ft (38.1 m) LOA that hold an inshore processing endorsement on their Federal fisheries permit, and that process no more than 126 mt per week in round-weight equivalents of an aggregate amount of pollock and GOA Pacific cod.

(3) Stationary floating processors that hold an inshore processing endorsement on their Federal processor permit, and that process pollock and/or Pacific cod harvested in a directed fishery for those species at a single geographic location in Alaska state waters during a fishing year.

* * * * *

Listed AFA catcher/processor means an AFA catcher/processor permitted to harvest BSAI pollock under § 679.4(l)(2)(i).

* * * * *

Official AFA record means the information prepared by the Regional Administrator about vessels and processors that were used to participate in the BSAI pollock fisheries during the qualifying periods specified in § 679.4(l). Information in the official AFA record includes vessel ownership information, documented harvests made from vessels during AFA qualifying periods, vessel characteristics, and documented amounts of pollock processed by pollock processors during AFA qualifying periods. The official AFA record is presumed to be correct for the purpose of determining eligibility for AFA permits. An applicant for an AFA permit will have the burden of proving correct any information submitted in an application that is inconsistent with the official record.

* * * * *

Offshore component in the GOA means all vessels not included in the definition of ''inshore component in the GOA'' that process groundfish harvested in the GOA.

* * * * *

Restricted AFA inshore processor means an AFA inshore processor permitted to harvest pollock under § 679.4(l)(5)(i)(B).

* * * * *

Stationary floating processor means a vessel of the United States operating as a processor in Alaska State waters that remains anchored or otherwise remains stationary in a single geographic location while receiving or processing groundfish harvested in the GOA or BSAI.

* * * * *

Unlisted AFA catcher/processor means an AFA catcher/processor permitted to harvest BSAI pollock under § 679.4(l)(2)(ii).

Unrestricted AFA inshore processor means an AFA inshore processor permitted to harvest pollock under § 679.4(l)(5)(i)(A).

* * * * *

4. In § 679.4, paragraph (a)(1)(iii) is revised and paragraphs (k)(10) and paragraph (l) are added to read as follows:

§ 679.4 Permits.

* * * * *

(a) * * *

(1) * * *

If program permit or card type is:	Permit is effective from issue date through the end of:	For more information see. . .
* *	*	* *
(iii) AFA	. .....	
(A) Catcher/processor	Indefinite	Paragraph (l) of this section
(B) Catcher vessel	Indefinite	Paragraph (l) of this section
(C)Mothership	Indefinite	Paragraph (l) of this section
(D) Inshore processor	Indefinite	Paragraph (l) of this section
(E) Inshore cooperative	Calendar year.	Paragraph (l) of this section
(F) Replacement vessel	Indefinite	Paragraph (l) of this section

* * * * *

(k) * * *

(10) *Restrictions on licenses earned on AFA catcher vessels and listed AFA catcher/processors.* No person may use an LLP license that was derived in whole or in part from the qualifying fishing history of an AFA catcher vessel or a listed AFA catcher/processor to fish for groundfish or crab on a non-AFA catcher vessel or non-AFA catcher/processor. NMFS will identify all such licenses affected by this restriction and inform the holders of such licenses of this restriction through a restriction printed on the face of the license.

(l) *AFA permits*—(1) *General*—(i) *Applicability.* In addition to any other permit and licensing requirements set out in this part, any vessel used to engage in directed fishing for a non-CDQ allocation of pollock in the BSAI and any shoreside processor, stationary floating processor, or mothership that receives pollock harvested in a non-CDQ directed pollock fishery in the BSAI must have a valid AFA permit onboard the vessel or at the facility location at all times while non-CDQ pollock is being harvested or processed. In addition, the owner of any vessel that is a member of a pollock cooperative in the BSAI must also have a valid AFA permit for every vessel that is a member of the cooperative, regardless of whether or not the vessel actually engages in directed fishing for pollock in the BSAI. Finally, an AFA permit does not exempt a vessel operator, vessel, or processor from any other applicable permit or licensing requirement required under this part or in other state or Federal regulations.

(ii) *Duration*—(A) *Expiration of interim AFA permits.* All interim AFA vessel and processor permits issued prior to January 1, 2002, will expire on December 31, 2002, unless extended or re-issued by NMFS.

(B) *Duration of final AFA permits.* Except as provided in paragraphs (l)(5)(v)(B)(3) and (l)(6)(iii) of this section, AFA vessel and processor permits issued under this paragraph (l) will have no expiration date, and are valid indefinitely unless suspended or revoked.

(iii) *Application for permit.* NMFS will issue AFA vessel and processor permits to the current owner(s) of a qualifying vessel or processor if the owner(s) submits to the Regional Administrator a completed AFA permit application that is subsequently approved.

(iv) *Amended permits.* AFA vessel and processor permits may not be used on or transferred to any vessel or processor that is not listed on the permit. However, AFA permits may be amended to reflect any change in the ownership of the vessel or processor. An application to amend an AFA permit must include the following:

(A) The original AFA permit to be amended, and

(B) A completed AFA permit application signed by the new vessel or processor owner.

(2) AFA catcher/processor permits--(i) Listed AFA catcher/processors. NMFS will issue to an owner of a catcher/processor a listed AFA catcher/processor permit if the catcher/processor is one of the following (as listed in AFA paragraphs 208(e)(1) through (20)):

(A) AMERICAN DYNASTY (USCG documentation number 951307);

(B) KATIE ANN (USCG documentation number 518441);

(C) AMERICAN TRIUMPH (USCG documentation number 646737);

(D) NORTHERN EAGLE (USCG documentation number 506694);

(E) NORTHERN HAWK (USCG documentation number 643771);

(F) NORTHERN JAEGER (USCG documentation number 521069);

(G) OCEAN ROVER (USCG documentation number 552100);

(H) ALASKA OCEAN (USCG documentation number 637856);

(I) ENDURANCE (USCG documentation number 592206);

(J) AMERICAN ENTERPRISE (USCG documentation number 594803);

(K) ISLAND ENTERPRISE (USCG documentation number 610290);

(L) KODIAK ENTERPRISE (USCG documentation number 579450);

(M) SEATTLE ENTERPRISE (USCG documentation number 904767);

(N) US ENTERPRISE (USCG documentation number 921112);

(O) ARCTIC STORM (USCG documentation number 903511);

(P) ARCTIC FJORD (USCG documentation number 940866);

(Q) NORTHERN GLACIER (USCG documentation number 663457);

(R) PACIFIC GLACIER (USCG documentation number 933627);

(S) HIGHLAND LIGHT (USCG documentation number 577044);

(T) STARBOUND (USCG documentation number 944658).

(ii) *Unlisted AFA catcher/processors.* NMFS will issue to an owner of a catcher/processor an unlisted AFA catcher/processor permit if the catcher/processor is not listed in § 679.4(l)(2)(i) and is determined by the Regional Administrator to have harvested more than 2,000 mt of pollock in the 1997 BSAI directed pollock fishery.

(iii) *Application for AFA catcher/processor permit.* A completed application for an AFA catcher/processor permit must contain:

(A) *Vessel information.* The vessel name, ADF&G registration number, USCG documentation number, vessel telephone number (if any), gross tons, shaft horsepower, and registered length (in feet);

(B) *Ownership information.* The managing owner name(s), tax ID number(s), signature(s), business mailing address(es), business telephone number(s), business fax number(s), business e-mail address(es), and managing company (if any);

(3) *AFA catcher vessel permits.* NMFS will issue to an owner of a catcher vessel an AFA catcher vessel permit containing sector endorsements and sideboard restrictions upon receipt and approval of a completed application for an AFA catcher vessel permit.

(i) *Qualifying criteria*—(A) *Catcher vessels delivering to catcher/processors.* NMFS will endorse an AFA catcher vessel permit to authorize directed fishing for pollock for delivery to a catcher/processor if the catcher vessel:

(*1*) Is one of the following (as listed in paragraphs 208(b)(1) through (7) of the AFA):

AMERICAN CHALLENGER (USCG documentation number 633219);

FORUM STAR (USCG documentation number 925863);

MUIR MILACH (USCG documentation number 611524);

NEAHKAHNIE (USCG documentation number 599534);

OCEAN HARVESTER (USCG documentation number 549892);

SEA STORM (USCG documentation number 628959);

TRACY ANNE (USCG documentation number 904859); or

(*2*) Is not listed in § 679.4(l)(3)(i)(A)(*1*) and is determined by the Regional Administrator to have delivered at least 250 mt and at least 75 percent of the pollock it harvested in the directed BSAI pollock fishery in 1997 to catcher/processors for processing by the offshore component.

(B) *Catcher vessels delivering to AFA motherships.* NMFS will endorse an AFA catcher vessel permit to authorize directed fishing for pollock for delivery to an AFA mothership if the catcher vessel:

(*1*) Is one of the following (as listed in paragraphs 208(c)(1) through (20) and in subsection 211(e) of the AFA):

(i) ALEUTIAN CHALLENGER (USCG documentation number 603820);

(ii) ALYESKA (USCG documentation number 560237);

(iii) AMBER DAWN (USCG documentation number 529425);

(iv) AMERICAN BEAUTY (USCG documentation number 613847);

(v) CALIFORNIA HORIZON (USCG documentation number 590758);

(vi) MAR-GUN (USCG documentation number 525608);

(vii) MARGARET LYN (USCG documentation number 615563);

(viii) MARK I (USCG documentation number 509552);

(ix) MISTY DAWN (USCG documentation number 926647);

(x) NORDIC FURY (USCG documentation number 542651);

(xi) OCEAN LEADER (USCG documentation number 561518);

(xii) OCEANIC (USCG documentation number 602279);

(xiii) PACIFIC ALLIANCE (USCG documentation number 612084);

(xiv) PACIFIC CHALLENGER (USCG documentation number 518937);

(xv) PACIFIC FURY (USCG documentation number 561934);

(xvi) PAPADO II (USCG documentation number 536161);

(xvii) TRAVELER (USCG documentation number 929356);

(xviii) VESTERAALEN (USCG documentation number 611642);

(xix) WESTERN DAWN (USCG documentation number 524423);

(xx) LISA MARIE (USCG documentation number 1038717); or

(*2*) Is not listed in § 679.4(l)(3)(i)(B)(*1*) and is determined by the Regional Administrator to have delivered at least 250 mt of pollock for processing by motherships in the offshore component of the BSAI directed pollock fishery in any one of the years 1996 or 1997, or between January 1, 1998, and September 1, 1998, and is not eligible for an endorsement to deliver pollock to catcher/processors under § 679.4(l)(3)(i)(A).

(C) *Catcher vessels delivering to AFA inshore processors.* NMFS will endorse an AFA catcher vessel permit to authorize directed fishing for pollock for delivery to an AFA inshore processor if the catcher vessel is:

(*1*) One of the following vessels authorized by statute to engage in directed fishing for inshore sector pollock:

HAZEL LORRAINE (USCG documentation number 592211),

LISA MARIE (USCG documentation number 1038717),

PROVIDIAN (USCG documentation number 1062183); or

(*2*) Is not listed in § 679.4(l)(3)(i)(A), and:

(*i*) Is determined by the Regional Administrator to have delivered at least 250 mt of pollock harvested in the directed BSAI pollock fishery for processing by the inshore component in any one of the years 1996 or 1997, or between January 1, 1998, and September 1, 1998; or

(*ii*) Is less than 60 ft (18.1 meters) LOA and is determined by the Regional Administrator to have delivered at least 40 mt of pollock harvested in the directed BSAI pollock fishery for processing by the inshore component in any one of the years 1996 or 1997, or

between January 1, 1998, and September 1, 1998.

(ii) *Application for AFA catcher vessel permit.* A completed application for an AFA catcher vessel permit must contain:

(A) *Vessel information.* The vessel name, ADF&G registration number, USCG documentation number, vessel telephone number (if any), gross tons, shaft horsepower, and registered length (in feet);

(B) *Ownership information.* The managing owner name(s), tax ID number(s), signature(s), business mailing address(es), business telephone number(s), business fax number(s), business e-mail address(es), and managing company (if any);

(C) *Vessel AFA qualification information.* The AFA catcher vessel permit sector endorsement(s) requested.

(D) *Vessel crab activity information required for crab sideboard endorsements.* The owner of an AFA catcher vessel wishing to participate in any BSAI king or Tanner crab fishery must apply for a crab sideboard endorsement authorizing the catcher vessel to retain that crab species. An AFA catcher vessel permit may be endorsed for a crab species if the owner requests a crab sideboard endorsement and if the Regional Administrator verifies the legal landing(s) according to the following criteria:

(*1*) *Bristol Bay Red King Crab (BBRKC).* A legal landing of any BSAI king or Tanner crab species in 1996, 1997, or on or before February 7, 1998. A BBRKC sideboard endorsement also authorizes a vessel to retain Bairdi Tanner crab harvested during the duration of a BBRKC opening if the vessel is otherwise authorized to retain Bairdi Tanner crab while fishing for BBRKC under state and Federal regulations.

(*2*) *St. Matthew Island blue king crab.* A legal landing of St. Matthew Island blue king crab in that fishery in 1995, 1996, or 1997.

(*3*) *Pribilof Island red and blue king crab.* A legal landing of Pribilof Island blue or red king crab in that fishery in 1995, 1996, or 1997.

(*4*) *Aleutian Islands (Adak) brown king crab.* A legal landing of Aleutian Islands brown king crab in each of the 1997/1998 and 1998/1999 fishing seasons.

(*5*) *Aleutian Islands (Adak) red king crab.* A legal landing of Aleutian Islands red king crab in each of the 1995/1996 and 1998/1999 fishing seasons.

(*6*) *Opilio Tanner crab.* A legal landing of Chionoecetes (C.) opilio Tanner crab in each of 4 or more years from 1988 to 1997.

(*7*) *Bairdi Tanner crab.* A legal landing of C. bairdi Tanner crab in 1995 or 1996.

(*8*) *Exemption to crab harvesting sideboards.* An AFA catcher vessel permit may be endorsed with an exemption from all crab harvesting sideboards if the owner requests such exemption and provides supporting documentation that the catcher vessel made a legal landing of crab in every BBRKC, Opilio Tanner crab, and Bairdi Tanner crab fishery opening from 1991 to 1997 and if the Regional Administrator verifies the legal landings.

(E) *Vessel exemptions from AFA catcher vessel groundfish sideboard directed fishing closures.* An AFA catcher vessel permit may contain exemptions from certain groundfish sideboard directed fishing closures. If a vessel owner is requesting such an exemption, the application must provide supporting documentation that the catcher vessel qualifies for the exemption based on the following criteria. The Regional Administrator will review the vessel's catch history according to the following criteria:

(*1*) *BSAI Pacific cod.* For a catcher vessel to qualify for an exemption from AFA catcher vessel sideboards in the BSAI Pacific cod fishery, the catcher vessel must: Be less than 125 ft (38.1 m) LOA, have landed a combined total of less than 5,100 mt of BSAI pollock in the BSAI directed pollock fishery from 1995 through 1997, and have made 30 or more legal landings of Pacific cod in the BSAI directed fishery for Pacific cod from 1995 through 1997.

(*2*) *GOA groundfish species.* For a catcher vessel to qualify for an exemption from AFA catcher vessel sideboards in the GOA groundfish fisheries, the catcher vessel must: Be less than 125 ft (38.1 m) LOA, have landed a combined total of less than 5,100 mt of BSAI pollock in the BSAI directed pollock fishery from 1995 through 1997, and made 40 or more legal landings of GOA groundfish in a directed fishery for GOA groundfish from 1995 through 1997.

(4) *AFA mothership permits.* NMFS will issue to an owner of a mothership an AFA mothership permit if the mothership is one of the following (as listed in paragraphs 208(d)(1) through (3) of the AFA):

EXCELLENCE (USCG documentation number 967502);

GOLDEN ALASKA (USCG documentation number 651041); and

OCEAN PHOENIX (USCG documentation number 296779).

(i) *Cooperative processing endorsement.* The owner of an AFA mothership who wishes to process pollock harvested by a fishery cooperative formed under § 679.61 must apply for and receive a cooperative processing endorsement on the vessel's AFA mothership permit.

(ii) *Application for AFA mothership permit.* A completed application for an AFA mothership permit must contain:

(A) *Type of permit requested.* Type of processor and whether requesting an AFA cooperative endorsement.

(B) *Vessel information.* The mothership name, ADF&G processor code, USCG documentation number, Federal fisheries permit number, gross tons, shaft horsepower, and registered length (in feet).

(C) *Ownership information.* The managing owner name(s), tax ID number(s), signature(s), business mailing address(es), business telephone number(s), business fax number(s), business e-mail address(es), and managing company (if any);

(D) *AFA crab facility ownership information.* If the applicant is applying for a cooperative pollock processing endorsement, the AFA mothership application must list the name, type of facility, ADF&G processor code, and percentage of ownership or control of each AFA crab facility that is affiliated with the AFA entity that owns or controls the AFA mothership;

(E) *Data confidentiality waiver.* If the applicant is applying for a cooperative pollock processing endorsement, the AFA mothership application must contain a valid signed data confidentiality waiver for each crab processing facility listed on the permit application that authorizes public release of the 1995–1998 total processing history of each BSAI king and Tanner crab species.

(5) *AFA inshore processor permits.* NMFS will issue to an owner of a shoreside processor or stationary floating processor an AFA inshore processor permit upon receipt and approval of a completed application.

(i) *Qualifying criteria*—(A) *Unrestricted processors.* NMFS will issue an unrestricted AFA inshore processor permit to a shoreside processor or stationary floating processor if the Regional Administrator determines that the processor facility processed annually more than 2,000 mt round-weight of pollock harvested in the inshore component of the directed BSAI pollock fishery during each of 1996 and 1997.

(B) *Restricted processors.* NMFS will issue a restricted AFA inshore processor permit to a shoreside processor or stationary floating processor if the Regional Administrator determines that

the facility processed pollock harvested in the inshore component of the directed BSAI pollock fishery during 1996 or 1997, but did not process annually more than 2,000 mt round-weight of BSAI pollock during each of 1996 and 1997.

(ii) *Cooperative processing endorsement.* The owner of an AFA inshore processor who wishes to process pollock harvested by a fishery cooperative formed under § 679.62 must apply for and receive a cooperative processing endorsement on the AFA inshore processor permit.

(iii) *Single geographic location requirement.* An AFA inshore processor permit authorizes the processing of pollock harvested in the BSAI directed pollock fishery only in a single geographic location during a fishing year. For the purpose of this paragraph, single geographic location means:

(A) *Shoreside processors.* The physical location at which the land-based shoreside processor first processed BSAI pollock harvested in the BSAI directed pollock fishery during a fishing year;

(B) *Stationary floating processors.* A location within Alaska state waters that is within 5 nm of the position in which the stationary floating processor first processed BSAI pollock harvested in the BSAI directed pollock fishery during a fishing year.

(iv) *Application for permit.* A completed application for an AFA inshore processor permit must contain:

(A) *Type of permit requested.* Type of processor, whether requesting an AFA cooperative endorsement, and amount of BSAI pollock processed in 1996 and 1997;

(B) *Stationary floating processor information.* The vessel name, ADF&G processor code, USCG documentation number, Federal processor permit number, gross tons, shaft horsepower, registered length (in feet), and business telephone number, business FAX number, and business e-mail address used on board the vessel.

(C) *Shoreside processor information.* The processor name, Federal processor permit number, ADF&G processor code, business street address; business telephone and FAX numbers, and business e-mail address.

(D) *Ownership information.* The managing owner name(s), tax ID number(s), signature(s), business mailing address(es), business telephone number(s), business fax number(s), business e-mail address(es), and managing company (if any);

(E) *AFA crab facility ownership information.* If the applicant is applying for a cooperative pollock processing endorsement, the AFA inshore processor application must list the name, type of facility, ADF&G processor code, and list the percentage of ownership or control and describe the nature of the interest in each AFA crab facility that is affiliated with the AFA entity that owns or controls the AFA inshore processor;

(F) *Data confidentiality waiver.* If the applicant is applying for a cooperative pollock processing endorsement, the AFA mothership application must contain a valid signed data confidentiality waiver for each crab processing facility listed on the permit application that authorizes public release of the 1995–1998 total processing history of each BSAI king and Tanner crab species by that facility.

(v) *Authorization of new AFA inshore processors.* If the Council recommends and NMFS approves a combined BSAI pollock TAC that exceeds 1,274,900 mt for any fishing year, or in the event of the actual total loss or constructive loss of an existing AFA inshore processor, the Council may recommend that an additional inshore processor (or processors) be issued AFA inshore processing permits.

(A) *Timing of Council action.* At any time prior to or during a fishing year in which the combined BSAI pollock TAC exceeds 1,274,900 mt, or at any time after the actual total loss or constructive total loss of an existing AFA inshore processor, the Council may, after opportunity for public comment, recommend that an additional inshore processor (or processors) be issued AFA inshore processor permits.

(B) *Required elements in Council recommendation.* Any recommendation from the Council to add an additional inshore processor (or processors) must include the following information:

(*1*) *Identification of inshore processor(s).* The Council recommendation must identify by name the inshore processor(s) to which AFA inshore processor permits would be issued;

(*2*) *Type of AFA inshore processor permit(s).* The Council recommendation must specify whether the identified inshore processor(s) should be issued a restricted or unrestricted AFA inshore processor permit.

(*3*) *Duration of permit.* The Council recommendation must specify the recommended duration of the permit. Permit duration may be for any duration from a single fishing season to the duration of section 208 of the AFA. Alternatively, the Council may recommend that the permit be valid as long as the conditions that led to the permit remain in effect. For example, the Council could recommend that a permit issued under this paragraph remain valid as long as the combined annual BSAI pollock TAC remains above 1,274,900 mt. or a lost AFA inshore processor is not reconstructed.

(*4*) *Council procedures.* The Council may establish additional procedures for the review and approval of requests to authorize additional AFA inshore processors. However, such procedures must be consistent with the Magnuson-Stevens Act, the national standards, and other applicable law.

(*5*) *Action by NMFS.* Upon receipt of a recommendation from the Council to authorize additional AFA inshore processors, NMFS may issue an AFA inshore processor permit to the identified inshore processor(s) of the type and duration recommended by the Council, provided the Council has met the requirements identified in paragraphs (l)(5)(v)(B)(*1*) through (*4*) of this section, and the owner(s) of the identified inshore processor has submitted a completed application for an AFA inshore processor permit that is subsequently approved.

(6) *Inshore cooperative fishing permits*—(i) *General.* NMFS will issue to an inshore catcher vessel cooperative formed pursuant to 15 U.S.C. 521 for the purpose of cooperatively managing directed fishing for pollock for processing by an AFA inshore processor an AFA inshore cooperative fishing permit upon receipt and approval of a completed application.

(ii) *Application for permit.* A completed application for an inshore cooperative fishing permit must contain the following information:

(A) *Cooperative contact information.* Name of cooperative; name of cooperative representative; and business mailing address, business telephone number, business fax number, and business e-mail address of the cooperative;

(B) *Designated cooperative processor.* The name and physical location of AFA Inshore Processor who is designated in the cooperative contract as the processor to whom the cooperative has agreed to deliver at least 90 percent of its BSAI pollock catch;

(C) *Cooperative contract information.* A copy of the cooperative contract and a written certification that:

(*1*) The contract was signed by the owners of at least 80 percent of the qualified catcher vessels;

(*2*) The cooperative contract requires that the cooperative deliver at least 90 percent of its BSAI pollock catch to its designated AFA processor; and

(*3*) Each catcher vessel in the cooperative is a qualified catcher vessel

and is otherwise eligible to fish for groundfish in the BSAI, has an AFA catcher vessel permit with an inshore endorsement, and has no permit sanctions or other type of sanctions against it that would prevent it from fishing for groundfish in the BSAI;

(D) *Qualified catcher vessels.* For the purpose of this paragraph, a catcher vessel is a qualified catcher vessel if it meets the following permit and landing requirements:

(*1*) *Permit requirements*—(i) *AFA permit.* The vessel must have a valid AFA catcher vessel permit with an inshore endorsement;

(*ii*) *LLP permit.* The vessel must be named on a valid LLP permit authorizing the vessel to engage in trawling for pollock in the Bering Sea subarea and in the Aleutian Islands subarea if the vessel's Aleutian Islands subarea fishing history is used to generate a cooperative allocation for the Aleutian Islands subarea; and

(*iii*) *Permit sanctions.* The vessel has no permit sanctions that otherwise make it ineligible to engage in fishing for pollock in the BSAI.

(*2*) *Landing requirements*—(i) *Active vessels.* The vessel delivered more pollock harvested in the BSAI inshore directed pollock fishery to the AFA inshore processor designated under paragraph (l)(6)(ii)(B) of this section than to any other shoreside processor or stationary floating processor during the year prior to the year in which the cooperative fishing permit will be in effect; or

(ii) *Inactive vessels.* The vessel delivered more pollock harvested in the BSAI inshore directed pollock fishery to the AFA inshore processor designated under paragraph (l)(6)(ii)(B) of this section than to any other shoreside processor or stationary floating processor during the last year in which the vessel delivered BSAI pollock harvested in the BSAI directed pollock fishery to an AFA inshore processor.

(E) *Business review letter.* A copy of a letter from a party to the contract requesting a business review letter on the fishery cooperative from the Department of Justice and of any response to such request;

(F) *Vessel information.* For each cooperative catcher vessel member: Vessel name, ADF&G registration number, USCG documentation number, AFA permit number; and

(G) *Certification of notary and applicant.* Signature and printed name of cooperative representative, date of signature, and notary stamp or seal, signature and date commission expires of a notary public.

(iii) *Duration of cooperative fishing permits.* Inshore cooperative fishing permits are valid for 1 calendar year.

(iv) *Addition or subtraction of vessels.* The cooperative representative must submit a new application to add or subtract a catcher vessel to or from an inshore cooperative fishing permit to the Regional Administrator prior to the application deadline. Upon approval by the Regional Administrator, NMFS will issue an amended cooperative fishing permit.

(v) *Application deadline.* An inshore cooperative fishing permit application and any subsequent contract amendments that add or subtract vessels must be received by the Regional Administrator by December 1 prior to the year in which the inshore cooperative fishing permit will be in effect. Inshore cooperative fishing permit applications or amendments to inshore fishing cooperative permits received after December 1 will not be accepted by the Regional Administrator for the subsequent fishing year.

(7) *Replacement vessels.* (i) In the event of the actual total loss or constructive total loss of an AFA catcher vessel, AFA mothership, or AFA catcher/processor, the owner of such vessel may replace such vessel with a replacement vessel. The replacement vessel will be eligible in the same manner as the original vessel after submission and approval of an application for an AFA replacement vessel, provided that:

(A) Such loss was caused by an act of God, an act of war, a collision, an act or omission of a party other than the owner or agent of the vessel, or any other event not caused by the willful misconduct of the owner or agent;

(B) The replacement vessel was built in the United States and, if ever rebuilt, rebuilt in the United States;

(C) The USCG certificate of documentation with fishery endorsement for the replacement vessel is issued within 36 months of the end of the last year in which the eligible vessel harvested or processed pollock in the directed pollock fishery;

(D) If the eligible vessel is greater than 165 ft (50.3 meters (m)) in registered length, or more than 750 gross registered tons, or has engines capable of producing more than 3,000 shaft horsepower, the replacement vessel is of the same or lesser registered length, gross registered tons, and shaft horsepower;

(E) If the eligible vessel is less than 165 ft (50.3 m) in registered length, fewer than 750 gross registered tons, and has engines incapable of producing more than 3,000 shaft horsepower, the replacement vessel is less than each of such thresholds and does not exceed by more than 10 percent the registered length, gross registered tons, or shaft horsepower of the eligible vessel; and

(F) If the replacement vessel is already an AFA catcher vessel, the inshore cooperative catch history of both vessels may be merged in the replacement vessel for the purpose of determining inshore cooperative allocations except that a catcher vessel with an endorsement to deliver pollock to AFA catcher/processors may not be simultaneously endorsed to deliver pollock to AFA motherships or AFA inshore processors.

(G) Replacement of replacement vessels. In the event that a permitted replacement vessel is lost under the circumstances described in paragraph (l)(7)(i)(A) of this section, the replacement vessel may be replaced according to the provisions of this paragraph (l)(7). However, the maximum length, tonnage, and horsepower of any subsequent replacement vessels are determined by the length, tonnage, and horsepower of the originally qualifying AFA vessel and not by those of any subsequent replacement vessels.

(ii) *Application for permit.* A completed application for an AFA permit for a replacement vessel must contain:

(A) *Identification of lost AFA eligible vessel.*

(*1*) Name, ADF&G vessel registration number, USCG documentation number, AFA permit number, gross tons, shaft horsepower, and registered length from USCG documentation of the vessel;

(*2*) Name(s), tax ID number(s), business mailing address(es), telephone number(s), FAX number(s), and e-mail address(es) of owner(s);

(*3*) The last year in which the vessel harvested or processed pollock in a BSAI directed pollock fishery; and

(*4*) Description of how the vessel was lost or destroyed. Attach a USCG Form 2692 or insurance papers to verify the claim.

(B) *Identification of replacement vessel.*

(*1*) Name, ADF&G vessel registration number, USCG documentation number, gross tons, shaft horsepower, registered length, net tons from USCG documentation, length overall (in feet), and Federal Fisheries Permit number of the vessel;

(*2*) Name(s), tax ID number(s), business mailing address(es), business telephone number(s), business FAX number(s), and business e-mail address(es) of the owner(s);

(*3*) YES or NO indication of whether the vessel was built in the United States; and

(*4*) YES or NO indication of whether the vessel has ever been rebuilt, and if so whether it was rebuilt in the United States.

(C) *Certification of applicant and notary*. Signature(s) and printed name(s) of owner(s) and date of signature; signature, notary stamp or seal of notary public, and date notary commission expires.

(8) *Application evaluations and appeals*—(i) *Initial evaluation*. The Regional Administrator will evaluate an application for an AFA fishing or processing permit submitted in accordance with paragraph (1) of this section and compare all claims in the application with the information in the official AFA record. Claims in the application that are consistent with information in the official AFA record will be accepted by the Regional Administrator. Inconsistent claims in the application, unless supported by evidence, will not be accepted. An applicant who submits claims based on inconsistent information or fails to submit the information specified in the application for an AFA permit will be provided a single 60–day evidentiary period to submit the specified information, submit evidence to verify the applicant's inconsistent claims, or submit a revised application with claims consistent with information in the official AFA record. An applicant who submits claims that are inconsistent with information in the official AFA record has the burden of proving that the submitted claims are correct.

(ii) *Additional information and evidence*. The Regional Administrator will evaluate the additional information or evidence to support an applicant's claims submitted within the 60–day evidentiary period. If the Regional Administrator determines that the additional information or evidence meets the applicant's burden of proving that the inconsistent claims in his or her application are correct, the official AFA record will be amended and the information will be used in determining whether the applicant is eligible for an AFA permit. However, if the Regional Administrator determines that the additional information or evidence does not meet the applicant's burden of proving that the inconsistent claims in his or her application is correct, the applicant will be notified by an initial administrative determination that the applicant did not meet the burden of proof to change information in the official AFA record.

(iii) *Sixty-day evidentiary period*. The Regional Administrator will specify by letter a 60–day evidentiary period during which an applicant may provide additional information or evidence to support the claims made in his or her application, or to submit a revised application with claims consistent with information in the official AFA record, if the Regional Administrator determines that the applicant did not meet the burden of proving that the information on the application is correct through evidence provided with the application. Also, an applicant who fails to submit required information will have 60 days to provide that information. An applicant will be limited to one 60–day evidentiary period. Additional information or evidence, or a revised application received after the 60–day evidentiary period specified in the letter has expired will not be considered for the purposes of the initial administrative determination.

(iv) *Initial administrative determinations (IAD)*. The Regional Administrator will prepare and send an IAD to the applicant following the expiration of the 60–day evidentiary period if the Regional Administrator determines that the information or evidence provided by the applicant fails to support the applicant's claims and is insufficient to rebut the presumption that the official AFA record is correct or if the additional information, evidence, or revised application is not provided within the time period specified in the letter that notifies the applicant of his or her 60–day evidentiary period. The IAD will indicate the deficiencies in the application, including any deficiencies with the information, the evidence submitted in support of the information, or the revised application. The IAD will also indicate which claims cannot be approved based on the available information or evidence. An applicant who receives an IAD may appeal under the appeals procedures set out at § 679.43. An applicant who avails himself or herself of the opportunity to appeal an IAD will receive an interim AFA permit that authorizes a person to participate in an AFA pollock fishery and will have the specific endorsements and designations based on the claims in his or her application. An interim AFA permit based on claims contrary to the Official Record will expire upon final agency action.

(v) *Effect of cooperative allocation appeals*. An AFA inshore cooperative may appeal the pollock quota share issued to the cooperative under § 679.62; however, final agency action on the appeal must occur prior to December 1 for the results of the appeal to take effect during the subsequent fishing year.

5. In § 679.7, paragraphs (a)(7) and (k) are revised to read as follows:

§ 679.7 Prohibitions.

(a) * * *

(7) *Inshore/offshore*—(i) Operate a vessel in the ''inshore component in the GOA'' as defined in § 679.2 without a valid inshore processing endorsement on the vessel's Federal fisheries or Federal processor permit.

(ii) Operate a vessel as a ''stationary floating processor'' in the ''inshore component in the GOA'' as defined in § 679.2, and as a catcher/processor in the BSAI during the same fishing year.

(iii) Operate a vessel as a ''stationary floating processor'' in the ''inshore component in the GOA'' as defined in § 679.2, and as an AFA mothership in the BSAI during the same fishing year.

(iv) Operate any vessel in the GOA in more than one of the three categories included in the definition of ''inshore component in the GOA,'' in §§ 679.2, during any fishing year.

(v) Operate any vessel in the GOA under both the ''inshore component in the GOA'' and the ''offshore component in the GOA'' definitions in §§ 679.2 during the same fishing year.

(vi) Use a stationary floating processor with an GOA inshore processing endorsement to process pollock or GOA Pacific cod harvested in a directed fishery for those species in more than one single geographic location during a fishing year.

* * * * *

(k) *Prohibitions specific to the AFA*. It is unlawful for any person to do any of the following:

(1) *Catcher/processors*—(i) *Permit requirement*. Use a catcher/processor to engage in directed fishing for non-CDQ BSAI pollock without a valid AFA catcher/processor permit on board the vessel.

(ii) *Fishing in the GOA*. Use a listed AFA catcher/processor to harvest any species of fish in the GOA.

(iii) *Processing BSAI crab*. Use a listed AFA catcher/processor to process any species of crab harvested in the BSAI.

(iv) *Processing GOA groundfish*. Use a listed AFA catcher/processor to process any pollock harvested in a directed pollock fishery in the GOA and any groundfish harvested in Statistical Area 630 of the GOA.

(v) *Directed fishing after a sideboard closure*. Use a listed AFA catcher/processor to engage in directed fishing for a groundfish species or species group in the BSAI after the Regional

Administrator has issued an AFA catcher/processor sideboard directed fishing closure for that groundfish species or species group under § 679.20(d)(1)(iv) or § 679.21(e)(3)(v).

(vi) *Catch weighing*—(A) *Listed AFA catcher/processors.* Process any groundfish that was not weighed on a NMFS-approved scale that complies with the requirements of § 679.28(b). Catch may not be sorted before it is weighed and each haul must be sampled by an observer for species composition.

(B) Unlisted AFA catcher/processors. Process groundfish harvested in the BSAI pollock fishery that was not weighed on a NMFS-approved scale that complies with the requirements of § 679.28(b). Catch may not be sorted before it is weighed and each haul must be sampled by an observer for species composition.

(vii) *Observer sampling station*—(A) *Listed AFA catcher/processors.* Process any groundfish without an observer sampling station as described at § 679.28(d). A valid observer sampling station inspection report must be on board at all times when an observer sampling station is required.

(B) *Unlisted AFA catcher/processors.* Process groundfish harvested in the BSAI pollock fishery without an observer sampling station as described at § 679.28(d). A valid observer sampling station inspection report must be on board at all times when an observer sampling station is required.

(2) *Motherships*—(i) *Permit requirement.* Use a mothership to process pollock harvested in a non-CDQ directed fishery for pollock in the BSAI without a valid AFA permit on board the mothership.

(ii) *Cooperative processing endorsement.* Use an AFA mothership to process groundfish harvested by a fishery cooperative formed under § 679.61 unless the AFA mothership permit contains a valid cooperative pollock processing endorsement.

(iii) *Catch weighing.* Process any groundfish that was not weighed on a NMFS-approved scale that complies with the requirements of § 679.28(b). Catch may not be sorted before it is weighed and each delivery must be sampled by an observer for species composition.

(iv) *Observer sampling station.* Process any groundfish without an observer sampling station as described at § 679.28(d). A valid observer sampling station inspection report must be on board at all times when an observer sampling station is required.

(3) *AFA inshore processors*—(i) *Permit requirement.* Use a shoreside processor or stationary floating processor to process pollock harvested in a non-CDQ directed fishery for pollock in the BSAI without a valid AFA inshore processor permit at the facility or on board vessel.

(ii) *Cooperative processing endorsement.* Use a shoreside processor or stationary floating processor required to have an AFA inshore processor permit to process groundfish harvested by a fishery cooperative formed under § 679.62 unless the AFA inshore processor permit contains a valid cooperative pollock processing endorsement.

(iii) *Restricted AFA inshore processors.* Use an AFA inshore processor with a restricted AFA inshore processor permit to process more than 2,000 mt round weight of non-CDQ pollock harvested in the BSAI directed pollock fishery in any one calendar year.

(iv) *Single geographic location requirement.* Use an AFA inshore processor to process pollock harvested in the BSAI directed pollock fishery at a location other than the single geographic location defined as follows:

(A) *Shoreside processors.* The physical location at which the land-based shoreside processor first processed BSAI pollock harvested in the BSAI directed pollock fishery during a fishing year.

(B) *Stationary floating processors.* A location within Alaska State waters that is within 5 nm of the position in which the stationary floating processor first processed BSAI pollock harvested in the BSAI directed pollock fishery during a fishing year.

(v) *Catch weighing.* Process any groundfish that was not weighed on a scale approved by the State of Alaska and meeting the requirements specified in § 679.28(c).

(vi) *Catch monitoring and control plan (CMCP).* Take deliveries or process groundfish delivered by a vessel engaged in directed fishing for BSAI pollock without following an approved CMCP as described at § 679.28(g). A copy of the CMCP must be maintained on the premises and made available to authorized officers or NMFS-authorized personnel upon request.

(4) *Catcher vessels*—(i) *Permit requirement.* Use a catcher vessel to engage in directed fishing for non-CDQ BSAI pollock for delivery to any AFA processing sector (catcher/processor, mothership, or inshore) unless the vessel has a valid AFA catcher vessel permit on board that contains an endorsement for the sector of the BSAI pollock fishery in which the vessel is participating.

(ii) *Crab sideboard endorsement.* Use an AFA catcher vessel to retain any BSAI crab species unless the catcher vessel's AFA permit contains a crab sideboard endorsement for that crab species.

(iii) *Groundfish sideboard closures.* Use an AFA catcher vessel to engage in directed fishing for a groundfish species or species group in the BSAI or GOA after the Regional Administrator has issued an AFA catcher vessel sideboard directed fishing closure for that groundfish species or species group under § 679.20(d)(1)(iv), § 679.21(d)(8) or § 679.21(e)(3)(iv), if the vessel's AFA permit does not contain a sideboard exemption for that groundfish species or species group.

(5) *AFA inshore fishery cooperatives*—(i) *Overages by vessel.* Use an AFA catcher vessel listed on an AFA inshore fishery cooperative fishing permit to harvest non-CDQ BSAI pollock in excess of the fishery cooperative's annual allocation of pollock specified under § 679.62.

(ii) *Overages by fishery cooperative.* An inshore pollock fishery cooperative is prohibited from exceeding its annual allocation of BSAI pollock TAC.

(6) *Excessive harvesting shares.* It is unlawful for an AFA entity to harvest, through a fishery cooperative or otherwise, an amount of BSAI pollock that exceeds the 17.5–percent excessive share limit specified under § 679.20(a)(5)(i)(A)(*6*). The owners and operators of the individual vessels comprising the AFA entity that harvests BSAI pollock will be held jointly and severally liable for exceeding the excessive harvesting share limit.

(7) *Excessive processing shares.* It is unlawful for an AFA entity to process an amount of BSAI pollock that exceeds the 30- percent excessive share limit specified under § 679.20(a)(5)(i)(A)(*7*). The owners and operators of the individual processors comprising the AFA entity that processes BSAI pollock will be held jointly and severally liable for exceeding the excessive processing share limit.

(8) *Crab processing limits.* It is unlawful for an AFA entity that processes pollock harvested in the BSAI directed pollock fishery by an AFA inshore or AFA mothership catcher vessel cooperative to use an AFA crab facility to process crab in excess of the crab processing sideboard cap established for that AFA inshore or mothership entity under § 679.66. The owners and operators of the individual entities comprising the AFA inshore or mothership entity will be held jointly and severally liable for any overages of

the AFA inshore or mothership entity's crab processing sideboard cap.

6. In § 679.20, paragraph (a)(5)(ii) is redesignated as paragraph (a)(5)(iii), new paragraphs (a)(5)(ii) and (d)(1)(iv) are added, and paragraphs (a)(5)(i)(A), (a)(6), (b)(1)(i), and (c)(4) are revised to read as follows:

§ 679.20 General limitations.

* * * * *

(a) * * *

(5) * * *

(i) *Bering Sea Subarea*—(A) *AFA allocations*. The pollock TAC apportioned to the Bering Sea Subarea, after subtraction of the 10 percent CDQ reserve under § 679.31(a), will be allocated as follows:

(*1*) *Incidental catch allowance*. The Regional Administrator will establish an incidental catch allowance to account for projected incidental catch of pollock by vessels engaged in directed fishing for groundfish other than pollock and by vessels harvesting non-pollock CDQ. If during a fishing year, the Regional Administrator determines that the incidental catch allowance has been set too high or too low, he/she may issue inseason notification in the **Federal Register** that reallocates incidental catch allowance to the directed fishing allowance, or vice versa, according to the proportions established under paragraph (a)(5)(i)(A) of this section.

(*2*) *Directed fishing allowance*. The remaining pollock TAC apportioned to the Bering Sea subarea is established as a directed fishing allowance.

(*3*) *Inshore sector allocation*. Fifty percent of the directed fishing allowance will be allocated to AFA catcher vessels harvesting pollock for processing by AFA inshore processors. The inshore allocation will be further divided into separate allocations for cooperative and open access fishing.

(i) *Inshore cooperatives*. The inshore cooperative allocation will be equal to the aggregate annual allocations of all AFA inshore catcher vessel cooperatives that receive pollock allocations under § 679.62(e).

(ii) *Inshore open access*. The inshore open access allocation will equal that portion of the inshore sector allocation that is not allocated to inshore cooperatives.

(*4*) *Catcher/processor sector allocation*. Forty percent of the directed fishing allowance will be allocated to AFA catcher/processors and AFA catcher vessels delivering to catcher processors.

(*i*) *Catcher/processor and catcher vessel cooperatives*. If by December 1 of the year prior to the year when fishing under the cooperative agreement will begin, NMFS receives filing of cooperative contracts and/or an inter-cooperative agreement entered into by listed AFA catcher/processors and all AFA catcher vessels with catcher/processor sector endorsements, and the Regional Administrator determines that such contracts provide for the distribution of harvest between catcher/processors and catcher vessels in a manner agreed to by all members of the catcher/processor sector cooperative(s), then NMFS will not subdivide the catcher/processor sector allocation between catcher vessels and catcher/processors.

(*ii*) *Catcher vessel allocation*. If such contract is not filed with NMFS by December 1 of the preceding year, then NMFS will allocate 91.5 percent of the catcher/processor sector allocation to AFA catcher/processors engaged in directed fishing for pollock and 8.5 percent of the catcher/processor sector allocation to AFA catcher vessels delivering to catcher/processors.

(*iii*) *Unlisted AFA catcher processors*. Unlisted AFA catcher/processors will be limited to harvesting not more than 0.5 percent of catcher/processor sector allocation.

(*5*) *Mothership sector allocation*. Ten percent of the directed fishing allowance will be allocated to AFA catcher vessels harvesting pollock for processing by AFA motherships.

(*6*) *Excessive harvesting share*. NMFS will establish an excessive harvesting share limit equal to 17.5 percent of the sum of the directed fishing allowances established under paragraphs (a)(5)(i) and (a)(5)(ii) of this section. The excessive harvesting share limit will be published in the annual harvest specifications and is subject to revision on an inseason basis if NMFS reallocates unharvested amounts of the incidental catch allowance to the directed fishing allowance, or vice versa.

(*7*) *Excessive processing share*. NMFS will establish an excessive processing share limit equal to 30.0 percent of the sum of the directed fishing allowances established under paragraphs (a)(5)(i) and (a)(5)(ii) of this section. The excessive processing share limit will be published in the annual harvest specifications and is subject to revision on an inseason basis if NMFS reallocates unharvested amounts of the incidental catch allowance to the directed fishing allowance, or vice versa.

* * * * *

(ii) *Aleutian Islands Subarea and Bogoslof District*. If the Aleutian Islands subarea and/or Bogoslof District is open to directed fishing for pollock by regulation, then the pollock TAC for those areas will be allocated according to the same procedure established for the Bering Sea subarea at paragraph (a)(5)(i) of this section. If the Aleutian Islands subarea and/or Bogoslof District is closed to directed fishing for pollock by regulation then the entire TAC for those areas will be allocated as an incidental catch allowance.

* * * * *

(6) *GOA inshore/offshore allocations*—(i) *GOA pollock*. The apportionment of pollock in all GOA regulatory areas and for each seasonal allowance described in paragraph (a)(5)(iii) of this section will be allocated entirely to vessels harvesting pollock for processing by the inshore component in the GOA after subtraction of an amount that is projected by the Regional

Administrator to be caught by, or delivered to, the offshore component in the GOA incidental to directed fishing for other groundfish species.

(ii) *GOA Pacific cod*. The apportionment of Pacific cod in all GOA regulatory areas will be allocated 90 percent to vessels harvesting Pacific cod for processing by the inshore component in the GOA and 10 percent to vessels harvesting Pacific cod for processing by the offshore component in the GOA.

* * * * *

(b) *Reserves*—(1) *BSAI*—(i) *General*. Fifteen percent of the BSAI TAC for each target species and the ''other species'' category, except pollock and the hook-and-line and pot gear allocation for sablefish, is automatically placed in a reserve, and the remaining 85 percent of the TAC is apportioned for each target species and the ''other species'' category, except pollock and the hook-and-line and pot gear allocation for sablefish.

* * * * *

(c) * * *

(4) *AFA and inshore/offshore allocations*—(i) *BSAI pollock*. The annual harvest specifications will specify the allocation of pollock for processing by each AFA industry component in the BSAI, and any seasonal allowances thereof, as authorized under paragraph (a)(5) of this section.

(ii) *GOA pollock and Pacific cod*. The annual harvest specifications will specify the allocation of GOA pollock and GOA Pacific cod for processing by the inshore component in the GOA and the offshore component in the GOA, and any seasonal allowances thereof, as

authorized under paragraphs (a)(5) and (a)(6) of this section.

* * * * *

(d) * * *

(1) * * *

(iv) *AFA sideboard limitations*—(A) If the Regional Administrator determines that any sideboard harvest limit for a group of AFA vessels established under § 679.64 has been or will be reached, the Regional Administrator may establish a sideboard directed fishing allowance for the species or species group applicable only to the identified group of AFA vessels.

(B) In establishing a directed fishing allowance under paragraph (d)(1)(iv)(A) of this section, the Regional Administrator will consider the amount of the sideboard limit established for a group of AFA vessels under § 679.64 that will be taken as incidental catch by those vessels in directed fishing for other species.

(C) If the Regional Administrator determines that a sideboard amount is insufficient to support a directed fishery for that species then the Regional Administrator may set the sideboard directed fishing allowance at zero for that species or species group.

* * * * *

7. In § 679.21, paragraphs (d)(8) and (e)(3)(v) are added to read as follows:

§ 679.21 Prohibited species bycatch management.

* * * * *

(d) * * *

(8) *AFA halibut bycatch limitations*. Halibut bycatch limits for AFA catcher vessels will be established according to the procedure and formula set out in § 679.64(b) and managed through directed fishing closures for AFA catcher vessels in the groundfish fisheries to which the halibut bycatch limit applies.

(e) * * *

(3) * * *

(v) *AFA prohibited species catch limitations*. Halibut and crab PSC limits for AFA catcher/processors and AFA catcher vessels will be established according to the procedures and formulas set out in § 679.64(a) and (b) and managed through directed fishing closures for AFA catcher/processors and AFA catcher vessels in the groundfish fisheries for which the PSC limit applies.

* * * * *

8. In § 679.28, paragraph (c) is revised, and a new paragraph (g) is added to read as follows:

§ 679.28 Equipment and operational requirements.

* * * * *

(c) *Scales approved by the State of Alaska*. Scale requirements in this paragraph are in addition to those requirements set forth by the State of Alaska, and nothing in this paragraph may be construed to reduce or supersede the authority of the State to regulate, test, or approve scales within the State of Alaska or its territorial sea. Scales used to weigh groundfish catch that are also required to be approved by the State of Alaska under Alaska Statute 45.75 must meet the following requirements:

(1) *Verification of approval*. The scale must display a valid State of Alaska sticker indicating that the scale was inspected and approved within the previous 12 months.

(2) *Visibility*. The owner and manager of the processor must ensure that the scale and scale display are visible simultaneously to the observer. Observers, NMFS personnel, or an authorized officer must be allowed to observe the weighing of fish on the scale and be allowed to read the scale display at all times.

(3) *Printed scale weights*. (i) The owner and manager of the processor must ensure that printouts of the scale weight of each haul, set, or delivery are made available to observers, NMFS personnel, or an authorized officer at the time printouts are generated and thereafter upon request for the duration of the fishing year. The owner and manager must retain scale printouts as records as specified in § 679.5(a)(13).

(ii) A scale identified in a CMCP (see paragraph (g) of this section) must produce a printed record for each delivery, or portion of a delivery, weighed on that scale. If approved by NMFS as part of the CMCP, scales not designed for automatic bulk weighing may be exempted from part or all of the printed record requirements. The printed record must include:

(A) The processor name;

(B) The weight of each load in the weighing cycle;

(C) The total weight of fish in each delivery, or portion of the delivery that was weighed on that scale;

(D) The total cumulative weight of all fish or other material weighed on the scale since the last annual inspection;

(E) The date and time the information is printed;

(F) The name and ADF&G number of the vessel making the delivery. This information may be written on the scale printout in pen by the scale operator at the time of delivery.

(4) *Inseason scale testing*. Scales identified in an approved CMCP (see paragraph (g) of this section) must be tested by plant personnel in accordance with the CMCP when testing is requested by NMFS-staff or NMFS-authorized personnel. Plant personnel must be given no less than 20 minutes notice that a scale is to be tested and no testing may be requested if a scale test has been requested and the scale has been found to be accurate within the last 24 hours.

(i) *How does a scale pass an inseason test*? To pass an inseason test, NMFS staff or NMFS-authorized personnel will verify that the scale display and printed information are clear and easily read under all conditions of normal operation, weight values are visible on the display until the value is printed, and the scale does not exceed the maximum permissible errors specified below:

Test Load in Scale Divisions	Maximum Error in Scale Divisions
(A) 0–500	1
(B) 501–2,000	2
(C) 2,001–4,000	3
(D) >4,000	5

(ii) How much weight is required to do an inseason scale test? Scales must be tested with the amount and type of weight specified for each scale type in the following tables:

(A) Automatic hopper 0 to 150 kg (0 to 300 lb) capacity.

Certified Test Weights	*Other test material*
(*1*) Minimum weighment or 10 kg (20 lb), whichever is greater	Minimum
(*2*) Maximum	Maximum

(B) Automatic hopper > 150 kg (300 lb) capacity.

Certified Test Weights	*Other test material*
(*1*) Minimum weighment or 10 kg (20 lb), whichever is greater	Minimum
(*2*) 25 percent of maximum or 150 kg (300 lb), whichever is greater.	Maximum

(C) Platform or flatbed 0 to 150 kg (0 to 300 lb) capacity.

Certified Test Weights	*Other test material*
(*1*) 10 kg (20 lb)	Not Acceptable
(*2*) Midpoint	Not Acceptable
(*3*) Maximum	Not Acceptable

(D) Platform or flatbead > 150 kg (300 lb) capacity.

Certified Test Weights	*Other test material*
(*1*) 10 kg (20 lb)	Not Acceptable
(*2*) 12.5 percent of maximum or 75 kg (150 lb), whichever is greater	50 percent of maximum or 75 kg (150 lb), whichever is greater
(*3*) 25 percent of maximum or 150 kg (300 lb), whichever is greater	75 percent of maximum or 150 kg (300 lb), whichever is greater

(E) Observer sampling scale > 50 kg capacity.

Certified Test Weights	*Other test material*
(*1*) 10 kg	Not Acceptable
(*2*) 25 kg	Not Acceptable
(*3*) 50 kg	Not Acceptable

(iii) *Certified test weights*. Each test weight used for inseason scale testing must have its weight stamped on or otherwise permanently affixed to it. The weight of each test weight must be certified by a National Institute of Standards and Technology approved metrology laboratory every 2 years. An observer platform scale must be provided with sufficient test weights to test the scale at 10 kg, 25 kg, and 50 kg. All other scales identified in an approved CMCP must be provided with sufficient test weights to test the scale as described in this paragraph (c)(4) of this section. Test weights for observer platform scales must be denominated in kilograms. Test weights for other scales may be denominated in pounds.

(iv) *Other test material*. When permitted in paragraph (c)(4)(ii) of this section, a scale may be tested with test material other than certified test weights. This material must be weighed on an accurate observer platform scale at the time of each use.

(v) *Observer sampling scales*. Platform scales used as observer sampling scales must:

(A) Have a capacity of no less than 50 kg;

(B) Have a division size of no less than 5 g;

(C) Indicate weight in kilograms and decimal subdivisions; and

(D) Be accurate within plus or minus 0.5 percent when tested at 10 kg, 25 kg, and 50 kg by NMFS staff or a NMFS-certified observer.

* * * * *

(g) *Catch monitoring and control plan requirements (CMCP)* (Effective June 1, 2003)—(1) *What is a CMCP*? A CMCP is a plan submitted by the owner and manager of a processing plant, and approved by NMFS, detailing how the processing plant will meet the catch monitoring and control standards detailed in paragraph (g)(6) of this section.

(2) *Who is required to prepare and submit a CMCP for approval*? The owner and manager of an AFA inshore processor is required to prepare and submit a CMCP which must be approved by NMFS prior to the receipt of pollock harvested in the BSAI directed pollock fishery.

(3) *How is a CMCP approved by NMFS*? NMFS will approve a CMCP if it meets all the performance standards specified in paragraph (g)(6) of this section. The processor must be inspected by NMFS prior to approval of the CMCP to ensure that the processor conforms to the elements addressed in the CMCP. NMFS will complete its review of the CMCP within 14 working days of receiving a complete CMCP and conducting a CMCP inspection. If NMFS disapproves a CMCP, the plant owner or manager may resubmit a revised CMCP or file an administrative appeal as set forth under the administrative appeals procedures described at § 679.43.

(4) *How is a CMCP inspection arranged*? The time and place of a CMCP inspection may be arranged by submitting a written request for an inspection to NMFS, Alaska Region. NMFS will schedule an inspection within 10 working days after NMFS receives a complete application for an inspection. The inspection request must include:

(i) Name and signature of the person submitting the application and the date of the application;

(ii) Address, telephone number, fax number, and email address (if available) of the person submitting the application;

(iii) A proposed CMCP detailing how the processor will meet each of the performance standards in paragraph (g)(6) of this section.

(5) *For how long is a CMCP approved*? NMFS will approve a CMCP for 1 year if it meets the performance standards specified in paragraph (e)(2) of this section. An owner or manager must notify NMFS in writing if changes are made in plant operations or layout that do not conform to the CMCP.

(6) *How do I make changes to my CMCP*? An owner and manager may change an approved CMCP by submitting a CMCP addendum to NMFS. NMFS will approve the modified CMCP if it continues to meet the performance standards specified in paragraph (e)(2) of this section. Depending on the nature and magnitude of the change requested, NMFS may require a CMCP inspection as described in paragraph (g)(3) of this section. A CMCP addendum must contain:

(i) Name and signature of the person submitting the addendum;

(ii) Address, telephone number, fax number and email address (if available) of the person submitting the addendum;

(iii) A complete description of the proposed CMCP change.

(7) *Catch monitoring and control standards*—(i) *Catch sorting and weighing requirements*. All groundfish delivered to the plant must be sorted and weighed by species. The CMCP must detail the amount and location of space for sorting catch, the number of staff assigned to catch sorting and the maximum rate that catch will flow through the sorting area.

(ii) *Scales used for weighing groundfish*. The CMCP must identify by serial number each scale used to weigh groundfish and describe the rational for its use.

(iii) *Scale testing procedures*. Scales identified in the CMCP must be accurate within the limits specified in paragraph (c)(4)(i) of this section. For each scale identified in the CMCP a testing plan must be developed that:

(A) Describes the procedure the plant will use to test the scale;

(B) Lists the test weights and equipment required to test the scale;

(C) Lists where the test weights and equipment will be stored; and

(D) Lists the plant personnel responsible for conducting the scale testing.

(iv) *Printed record*. The owner and manager must ensure that the scale produces a complete and accurate printed record of the weight of each species in a delivery. All of the groundfish in a delivery must be weighed on a scale capable of producing a complete printed record as described in paragraph (c)(3) of this section. However, NMFS may exempt scales not designed for automatic bulk weighing from some or all of the printed record requirements if the CMCP identifies any scale that cannot produce a complete printed record, states how the processor will use the scale, and states how the plant intends to produce a complete record of the total weight of each delivery.

(v) *Delivery point*. Each CMCP must identify a single delivery point. The delivery point is the first location where fish removed from a delivering catcher vessel can be sorted or diverted to more than one location. If the catch is pumped from the hold of a catcher vessel or a codend, the delivery point normally will be the location where the pump first discharges the catch. If catch

is removed from a vessel by brailing, the delivery point normally will be the bin or belt where the brailer discharges the catch.

(vi) *Observation area.* Each CMCP must designate an observation area. The observation area is a location designated on the CMCP where an individual may monitor the flow of fish during a delivery. The owner and manager must ensure that the observation area meets the following standards:

(A) *Access to the observation area.* The observation area must be freely accessible to NMFS staff or NMFS-authorized personnel at any time a valid CMCP is required.

(B) *Monitoring the flow of fish.* From the observation area, an individual must have an unobstructed view or otherwise be able to monitor the entire flow of fish between the delivery point and a location where all sorting has taken place and each species has been weighed.

(vii) *Observer work station.* Each CMCP must identify and include an observer work station for the exclusive use of NMFS-certified observers. Unless otherwise approved by NMFS, the work station must meet the following criteria:

(A) *Location of observer work station.* The observer work station must be located in an area protected from the weather where the observer has access to unsorted catch.

(B) *Platform scale.* The observer work station must include a platform scale as described in paragraph (c)(4) of this section;

(C) *Proximity to observer work station.* The observer area must be located near the observer work station. The plant liaison must be able to walk between the work station and the observation area in less than 20 seconds without encountering safety hazards.

(D) *Workspace.* The observer work station must include: A working area of at least 4.5 square meters, a table as specified in paragraph (d)(4) of this section, and meet the other requirements as specified in paragraph (d)(6) of this section.

(E) *Lockable cabinet.* The observer work station must include a secure and lockable cabinet or locker of at least 0.5 cubic meters.

(viii) *Communication with observer.* The CMCP must describe what communication equipment such as radios, pagers or cellular phones, is used to facilitate communications within the plant. The plant owner must ensure that the plant manager provides the NMFS-certified observer with the same communications equipment used by plant staff.

(ix) Plant liaison. The CMCP must designate a plant liaison. The plant liaison is responsible for:

(A) Orienting new observers to the plant;

(B) Assisting in the resolution of observer concerns; and

(C) Informing NMFS if changes must be made to the CMCP.

(x) *Scale drawing of plant.* The CMCP must be accompanied by a scale drawing of the plant showing:

(A) The delivery point;

(B) The observation area;

(C) The observer work station;

(D) The location of each scale used to weigh catch; and

(E) Each location where catch is sorted.

9. In § 679.31, paragraph (a) is revised to read as follows:

§ 679.31 CDQ reserves.

* * * * *

(a) *Pollock CDQ reserve*—(1) *Bering Sea.* In the annual harvest specifications required by § 679.20(c), 10 percent of the Bering Sea subarea pollock TAC will be allocated to a CDQ reserve.

(2) *Aleutian Islands Subarea and Bogoslof District.* In the annual harvest specifications required by § 679.20(c), 10 percent of the Aleutian Islands subarea and Bogoslof District pollock TAC will be allocated to a CDQ reserve unless the Aleutian Islands subarea and/or Bogoslof District is closed to directed fishing for pollock by regulation. If the Aleutian Islands subarea and/or Bogoslof District is closed to directed fishing for pollock by regulation, then no pollock CDQ reserve will be established for those areas and incidental harvest of pollock by CDQ groups will accrue against the incidental catch allowance for pollock established under § 679.20(a)(5)(i)(A)(*1*).

* * * * *

10. In § 679.32, a new paragraph (c)(3)(vi) is added to read as follows:

§ 679.32 Groundfish and halibut CDQ catch monitoring.

* * * * *

(c) * * *

(3) * * *

(vi) *AFA inshore processors.* Take deliveries from a vessel engaged in directed fishing for pollock CDQ without following an approved CMCP as described at § 679.28(g).

* * * * *

11. In § 679.50, the section heading, and paragraph (c)(4)(i) are revised, paragraph (c)(6) is removed, and paragraphs (c)(5) and (d)(5) are added to read as follows:

§ 679.50 Groundfish Observer Program applicable through December 31, 2007.

* * * * *

(c) * * *

(4) * * *

(i) *Motherships or catcher/processors using trawl gear*—(A) *Multi-species CDQ fishery.* A mothership or catcher/processor using trawl gear to participate in the multi-species CDQ fishery must have at least two level 2 observers as described at paragraphs (j)(1)(v)(D) and (E) of this section aboard the vessel, at least one of whom must be certified as a lead level 2 observer.

(B) *Pollock CDQ fishery.* A mothership or catcher/processor using trawl gear to participate in a directed fishery for pollock CDQ must have at least two NMFS-certified observers aboard the vessel, at least one of whom must be certified as a lead level 2 observer.

* * * * *

(5) *AFA catcher/processors and motherships*—(i) *Coverage requirement*—(A) *Listed AFA catcher/processors and AFA motherships.* The owner or operator of a listed AFA catcher/processor or AFA mothership must provide at least two NMFS-certified observers, at least one of which must be certified as a lead level 2 observer, for each day that the vessel is used to harvest, process, or take deliveries of groundfish. More than two observers are required if the observer workload restriction at paragraph (c)(5)(iii) of this section would otherwise preclude sampling as required under § 679.63(a)(1).

(B) *Unlisted AFA catcher/processors.* The owner or operator of an unlisted AFA catcher/processor must provide at least two NMFS-certified observers for each day that the vessel is used to engage in directed fishing for pollock in the BSAI, or takes deliveries of pollock harvested in the BSAI. At least one observer must be certified as a lead level 2 observer. When an unlisted AFA catcher/processor is not engaged in directed fishing for BSAI pollock and is not receiving deliveries of pollock harvested in the BSAI, the observer coverage requirements at paragraph (c)(1)(iv) of this section apply.

(ii) *Observer work load.* The time required for the observer to complete sampling, data recording, and data communication duties may not exceed 12 consecutive hours in each 24–hour period, and, the observer may not sample more than 9 hours in each 24–hour period.

(d) * * *

(5) *AFA inshore processors*—(i) *Coverage level.* An AFA inshore

processor is required to provide a NMFS certified observer for each 12 consecutive hour period of each calendar day during which the processor takes delivery of, or processes, groundfish harvested by a vessel engaged in a directed pollock fishery in the BSAI. An AFA inshore processor that takes delivery of or processes pollock harvested in the BSAI directed pollock fishery for more than 12 consecutive hours in a calendar day is required to provide two NMFS-certified observers for each such day.

(ii) *Multiple processors*. An observer deployed to an AFA inshore processor may not be assigned to cover more than one processor during a calendar day in which the processor receives or processes pollock harvested in the BSAI directed pollock fishery.

(iii) *Observers transferring between vessels and processors*. An observer transferring from an AFA catcher vessel to an AFA inshore processor may not be assigned to cover the AFA inshore processor until at least 12 hours after offload and sampling of the catcher vessel's delivery is completed.

* * * * *

12. In 50 CFR part 679, Subpart F—American Fisheries Act Management Measures is added to read as follows:

Subpart F—American Fisheries Act Management Measures

Sec.

679.60 Authority and related regulations.
679.61 Formation and operation of fishery cooperatives.
679.62 Inshore sector cooperative allocation program.
679.63 Catch weighing requirements for vessels and processors.
679.64 Harvesting sideboard limits in other fisheries.
679.65 Crab processing sideboard limits.

Subpart F—American Fisheries Act Management Measures

§ 679.60 Authority and related regulations.

Regulations under this subpart were developed by the National Marine Fisheries Service and the North Pacific Fishery Management Council to implement the American Fisheries Act (AFA) [Div. C, Title II, Subtitle II, Public Law 105–277, 112 Stat. 2681 (1998)]. Additional regulations in this part that implement specific provisions of the AFA are set out at §§ 679.2 Definitions, 679.4 Permits, 679.5 Recordkeeping and reporting, 679.7 Prohibitions, 679.20 General limitations, 679.21 Prohibited species bycatch management, 679.28 Equipment and operational requirements for Catch Weight Measurement, 679.31 CDQ reserves, and 679.50 Groundfish observer program. Regulations developed by the Department of Transportation to implement provisions of the AFA are found at 50 CFR part 356.

§ 679.61 Formation and operation of fishery cooperatives.

(a) *Who is liable for violations by a fishery cooperative and cooperative members*? A fishery cooperative must comply with the provisions of this section. The owners and operators of vessels that are members of a fishery cooperative are responsible for ensuring that the fishery cooperative complies with the directed fishing, sideboard closures, PSC limits and other allocations and restrictions that are applicable to the fishery cooperative. The owners and operators of vessels that are members of a fishery cooperative are responsible for ensuring that all fishery cooperative members comply with the directed fishing, sideboard closures, PSC limits and other allocations and restrictions that are applicable to the fishery cooperative.

(b) *Who must comply this section*? Any fishery cooperative formed under section 1 of the Fisherman's Collective Marketing Act 1934 (15 U.S.C. 521) for the purpose of cooperatively managing directed fishing for BSAI pollock must comply with the provisions of this section. The owners and operators of all the member vessels that are signatories to a fishery cooperative are jointly and severally responsible for compliance with the requirements of this section.

(c) *Designated representative and agent for service of process*. Each cooperative must appoint a designated representative and agent for service of process and must ensure that the cooperative's designated representative and agent for service of process comply with the regulations in this part.

(1) *What is a designated representative*? Any cooperative formed under this section must appoint a designated representative to fulfill regulatory requirements on behalf of the cooperative including, but not limited to, filing of cooperative contracts, filing of annual reports, and in the case of inshore sector catcher vessel cooperatives, signing cooperative fishing permit applications and completing and submitting inshore catcher vessel pollock cooperative catch reports. The designated representative is the primary contact person for NMFS on issues relating to the operation of the cooperative.

(2) *What is an agent for service of process*? Any cooperative formed under this section must appoint an agent who is authorized to receive and respond to any legal process issued in the United States with respect to all owners and operators of vessels that are members of the cooperative. The cooperative must provide the Regional Administrator with the name, address and telephone number of the appointed agent. Service on or notice to the cooperative's appointed agent constitutes service on or notice to all members of the cooperative.

(3) *What is the term of service and process for replacing the agent for service of process*? The agent for service of process must be capable of accepting service on behalf of the cooperative until December 31 of the year 5 years after the calendar year for which the fishery cooperative has filed its intent to operate. The owners and operators of all member vessels of a cooperative are responsible for ensuring that a substitute agent is designated and the Agency is notified of the name, address and telephone number of the substitute agent in the event the previously designated agent is no longer capable of accepting service on behalf of the cooperative or the cooperative members within that 5–year period.

(d) *Annual filing requirements*. You must file on an annual basis, with the Council and NMFS, a signed copy of your fishery cooperative contract, and any material modifications to any such contract, together with a copy of a letter from a party to the contract requesting a business review letter on the fishery cooperative from the Department of Justice and any response to such request. The Council and NMFS will make this information available to the public upon request.

(1) *Must multi-year contracts be re-filed annually*? If your cooperative contract was previously filed with NMFS and the Council under paragraph (c) of this section, then you may submit a renewal letter to NMFS and the Council by the filing deadline in lieu of the cooperative contract and business review letter. The renewal letter must provide notice that the previously filed cooperative contract will remain in effect for the subsequent fishing year. The renewal letter also must detail any material modifications to the cooperative contract that have been made since the last filing including, but not limited to, any changes in cooperative membership.

(2) *Where must contracts or renewal letters be filed*? You must send a signed copy of your cooperative contract or renewal letter and the required supporting materials to the North Pacific Fishery Management Council, 605 West 4th Ave, Suite 306, Anchorage, AK 99501; and to the NMFS

Alaska Region. The mailing address for the NMFS Alaska Region is P.O. Box 21668, Juneau, AK 99802. The street address for delivery by private courier is 709 West 9th St., Suite 401, Juneau, AK 99801.

(3) *What is the deadline for filing*? The contract or renewal letter and supporting materials must be received by NMFS and by the Council at least 30 days prior to the start of any fishing activity conducted under the terms of the contract. In addition, an inshore cooperative that is also applying for an allocation of BSAI pollock under § 679.62 must file its contract, any amendments hereto, and supporting materials no later than December 1 of the year prior to the year in which fishing under the contract will occur.

(e) *What are the required elements in a cooperative contract*? (1) *Requirements for all fishery cooperatives.* Any cooperative contract filed under paragraph (c) of this section must:

(i) List parties to the contract.

(ii) List all vessels and processors that will harvest and process pollock harvested under the cooperative.

(iii) Specify the amount or percentage of pollock allocated to each party to the contract.

(iv) Specify a designated representative and agent for service of process.

(v) Include a contract clause under which the parties to the contract agree to make payments to the State of Alaska for any pollock harvested in the directed pollock fishery that are not landed in the State of Alaska, in amounts which would otherwise accrue had the pollock been landed in the State of Alaska subject to any landing taxes established under Alaska law. Failure to include such a contract clause or for such amounts to be paid will result in a revocation of the authority to form fishery cooperatives under section 1 of the Act of June 25, 1934 (15 U.S.C. 521 *et seq.*).

(2) *Additional required elements in all fishery cooperatives that include AFA catcher vessels.* A cooperative contract that includes catcher vessels must include adequate provisions to prevent each non-exempt member catcher vessel from exceeding an individual vessel sideboard limit for each BSAI or GOA sideboard species or species group that is issued to the vessel by the cooperative in accordance with the following formula:

(i) The aggregate individual vessel sideboard limits issued to all member vessels in a cooperative must not exceed the aggregate contributions of each member vessel towards the overall groundfish sideboard amount as calculated by NMFS under § 679.64(b) and as announced to the cooperative by the Regional Administrator, or

(ii) In the case of two or more cooperatives that have entered into an inter-cooperative agreement, the aggregate individual vessel sideboard limits issued to all member vessels subject to the inter-cooperative agreement must not exceed the aggregate contributions of each member vessel towards the overall groundfish sideboard amount as calculated by NMFS under § 679.64(b) and as announced by the Regional Administrator.

(f) *Annual reporting requirement.* Any fishery cooperative governed by this section must submit preliminary and final annual written reports on fishing activity to the North Pacific Fishery Management Council, 605 West 4th Ave, Suite 306, Anchorage, AK 99501. The Council will make copies of each report available to the public upon request.

(1) *What are the submission deadlines*? You must submit the preliminary report by December 1 of each year. You must submit the final report by February 1 of the following year. Annual reports must be postmarked by the submission deadline or received by a private courier service by the submission deadline.

(2) *What information must be included*? The preliminary and final written reports must contain, at a minimum:

(i) The cooperative's allocated catch of pollock and sideboard species, and any sub-allocations of pollock and sideboard species made by the cooperative to individual vessels on a vessel-by-vessel basis;

(ii) The cooperative's actual retained and discarded catch of pollock, sideboard species, and PSC on an area-by-area and vessel-by-vessel basis;

(iii) A description of the method used by the cooperative to monitor fisheries in which cooperative vessels participated;

(iv) A description of any actions taken by the cooperative in response to any vessels that exceed their allowed catch and bycatch in pollock and all sideboard fisheries; and

(v) The total weight of pollock landed outside the State of Alaska on a vessel-by-vessel basis.

(3) *What is the required format*? You must submit at least one copy of each annual report ready for duplication on unbound single-sided 8.5- by 11–inch paper, or in an alternative format approved in advance by the Council.

(g) *Landing tax payment deadline.* You must pay any landing tax owed to the State of Alaska under subsection 210(f) of the AFA and paragraph (d)(1)(v) of this section before April 1 of the following year, or the last day of the month following the date of publication of statewide average prices by the Alaska State Department of Revenue, whichever is later. All members of the cooperative are prohibited from harvesting pollock in the BSAI directed pollock fishery after the payment deadline if any member vessel has failed to pay all required landing taxes from any landings made outside the State of Alaska by the landing deadline. Members of the cooperative may resume directed fishing for pollock once all overdue landing taxes are paid.

§ 679.62 Inshore sector cooperative allocation program.

(a) *How will inshore sector cooperative allocations be made*? An inshore catcher vessel cooperative that applies for and receives an AFA inshore cooperative fishing permit under § 679.4(l)(6) will receive a sub-allocation of the annual Bering Sea subarea inshore sector directed fishing allowance. If the Aleutian Islands Subarea is open to directed fishing for pollock then the cooperative also will receive a sub-allocation of the annual Aleutian Islands Subarea inshore sector directed fishing allowance. Each inshore cooperative's annual allocation amount(s) will be determined using the following procedure:

(1) *Determination of individual vessel catch histories.* The Regional Administrator will calculate an official AFA inshore cooperative catch history for every inshore-sector endorsed AFA catcher vessel according to the following steps:

(i) *Determination of annual landings.* For each year from 1995 through 1997 the Regional Administrator will determine each vessel's total non-CDQ inshore pollock landings from the Bering Sea Subarea and Aleutian Islands Subarea separately, except for the F/V PROVIDIAN (USCG documentation number 1062183).

(ii) *Determination of annual landings for the F/V PROVIDIAN.* For the F/V PROVIDIAN, pursuant to Public Law 106–562, the Regional Administrator will substitute the 1992 through 1994 total Bering Sea subarea and Aleutian Islands subarea pollock non-CDQ inshore landings made by the F/V OCEAN SPRAY (USCG documentation number 517100 for the purpose of determining annual cooperative quota share percentage.

(iii) *Offshore compensation*. If a catcher vessel made a total of 500 or more mt of landings of non-CDQ Bering Sea Subarea pollock or Aleutian Islands Subarea pollock to catcher/processors or offshore motherships other than the EXCELLENCE (USCG documentation number 967502); GOLDEN ALASKA (USCG documentation number 651041); or OCEAN PHOENIX (USCG documentation number 296779) over the 3–year period from 1995 through 1997, then all non-CDQ offshore pollock landings made by that vessel during from 1995 through 1997 will be added to the vessel's inshore catch history by year and subarea.

(iv) *Best two out of three years*. After steps (a)(1)(i) and (ii) of this section are completed, the 2 years with the highest landings will be selected for each subarea and added together to generate the vessel's official AFA inshore cooperative catch history for each subarea. A vessel's best 2 years may be different for the Bering Sea subarea and the Aleutian Islands Subarea.

(2) *Conversion of individual vessel catch histories to annual cooperative quota share percentages*. Each inshore pollock cooperative that applies for and receives an AFA inshore pollock cooperative fishing permit will receive an annual quota share percentage of pollock for each subarea of the BSAI that is equal to the sum of each member vessel's official AFA inshore cooperative catch history for that subarea divided by the sum of the official AFA inshore cooperative catch histories of all inshore-sector endorsed AFA catcher vessels. The cooperative's quota share percentage will be listed on the cooperative's AFA pollock cooperative permit.

(3) *Conversion of quota share percentage to TAC allocations*. Each inshore pollock cooperative that receives a quota share percentage for a fishing year will receive an annual allocation of Bering Sea and/or Aleutian Islands pollock that is equal to the cooperative's quota share percentage for that subarea multiplied by the annual inshore pollock allocation for that subarea. Each cooperative's annual pollock TAC allocation may be published in the interim, and final BSAI TAC specifications notices.

(b) *What are the restrictions on fishing under an inshore cooperative fishing permit*? Any cooperative that receives a cooperative fishing permit under § 679.4(l)(6) must comply with the following fishing restrictions. The owners and operators of all the member vessels that are named on an inshore cooperative fishing permit are jointly and severally responsible for compliance.

(1) *What vessels are eligible to fish under an inshore cooperative fishing permit*? Only catcher vessels listed on a cooperative's AFA inshore cooperative fishing permit are permitted to harvest any portion of an inshore cooperative's annual pollock allocation.

(2) *What harvests accrue against the cooperative allocation*? All BSAI inshore pollock harvested by a member vessel while engaging in directed fishing for inshore pollock in the BSAI during the fishing year for which the annual cooperative allocation is in effect will accrue against the cooperative's annual pollock allocation regardless of whether the pollock was retained or discarded.

(3) *How must cooperative harvests be reported*? Each inshore pollock cooperative must report its BSAI pollock harvest to NMFS on a weekly basis according to the recordkeeping and reporting requirements set out at § 679.5(o).

§ 679.63 Catch weighing requirements for vessels and processors.

(a) *What are the requirements for listed AFA catcher/processors and AFA motherships*? (1) *Catch weighing*. All groundfish landed by listed AFA catcher/processors or received by AFA motherships must be weighed on a NMFS-certified scale and made available for sampling by a NMFS certified observer. The owner and operator of a listed AFA catcher/processor or an AFA mothership must ensure that the vessel is in compliance with the scale requirements described at § 679.28(b), that each groundfish haul is weighed separately, and that no sorting of catch takes place prior to weighing.

(2) *Observer sampling station*. The owner and operator of a listed AFA catcher/processor or AFA mothership must provide an observer sampling station as described at § 679.28(d) and must ensure that the vessel operator complies with the observer sampling station requirements described at § 679.28(d) at all times that the vessel harvests groundfish or receives deliveries of groundfish harvested in the BSAI or GOA.

(b) *What are the requirements for unlisted AFA catcher/processors*? The owner or operator of an unlisted AFA catcher/processor must comply with the catch weighing and observer sampling station requirements set out in paragraph (a) of this section at all times the vessel is engaged in directed fishing for pollock in the BSAI.

(c) *What are the requirements for AFA inshore processors*? (1) *Catch weighing*. All groundfish landed by AFA catcher vessels engaged in directed fishing for pollock in the BSAI must be sorted and weighed on a scale approved by the State of Alaska as described in § 679.28(c), and be made available for sampling by a NMFS certified observer. The observer must be allowed to test any scale used to weigh groundfish in order to determine its accuracy.

(2) The plant manager or plant liaison must notify the observer of the offloading schedule for each delivery of BSAI pollock by an AFA catcher vessel at least 1 hour prior to offloading. An observer must monitor each delivery of BSAI pollock from an AFA catcher vessel and be on site the entire time the delivery is being weighed or sorted.

§ 679.64 Harvesting sideboards limits in other fisheries.

(a) *Harvesting sideboards for listed AFA catcher/processors*. The Regional Administrator will restrict the ability of listed AFA catcher/processors to engage in directed fishing for non-pollock groundfish species to protect participants in other groundfish fisheries from adverse effects resulting from the AFA and from fishery cooperatives in the directed pollock fishery.

(1) *How will groundfish sideboard limits for AFA listed catcher/processors be calculated*? (i) For each groundfish species or species group in which a TAC is specified for an area or subarea of the BSAI, the Regional Administrator will establish annual AFA catcher/processor harvest limits as follows:

(ii) *Pacific cod*. The Pacific cod harvest limit will be equal to the 1997 aggregate retained catch of Pacific cod by catcher/processors listed in paragraphs 208(e)(1) through (20) and 209 of the AFA in non-pollock target fisheries divided by the amount of Pacific cod caught by trawl catcher/processors in 1997 multiplied by the Pacific cod TAC available for harvest by trawl catcher/processors in the year in which the harvest limit will be in effect.

(2) *Aleutian Islands Pacific ocean perch*. (i) The Aleutian Islands Pacific ocean perch harvest limit will be equal to the 1996 through 1997 aggregate retained catch of Aleutian Islands Pacific ocean perch by catcher/processors listed in paragraphs 208(e)(1) through (20) and 209 of the AFA in non-pollock target fisheries divided by the sum of the Aleutian Islands Pacific ocean perch catch in 1996 and 1997 multiplied by the Aleutian Islands Pacific ocean perch TAC available for harvest in the year in which the harvest limit will be in effect.

(ii) If the amount of Pacific ocean perch calculated under paragraph (a)(1)(ii)(A) of this section is determined by the Regional Administrator to be insufficient to meet bycatch needs of AFA catcher/processors in other directed fisheries for groundfish, the Regional Administrator will prohibit directed fishing for Aleutian Islands Pacific ocean perch by AFA catcher processors and establish the sideboard amount equal to the amount of Aleutian Islands Pacific ocean perch caught by AFA catcher processors incidental to directed fishing for other groundfish species.

(3) *Atka mackerel.* The Atka mackerel harvest limit for each area and season will be equal to:

(i) Bering Sea subarea and Eastern Aleutian Islands, zero;

(ii) Central Aleutian Islands, 11.5 percent of the annual TAC specified for Atka mackerel; and

(iii) Western Aleutian Islands, 20 percent of the annual TAC specified for Atka mackerel.

(4) *Remaining groundfish species.* (i) Except as provided for in paragraphs (a)(1)(i) through (a)(1)(iii) of this section, the harvest limit for each BSAI groundfish species or species group will be equal to the 1995 through 1997 aggregate retained catch of that species by catcher/processors listed in paragraphs 208(e)(1) through (20) and section 209 of the AFA in non-pollock target fisheries divided by the sum of the catch of that species in 1995 through 1997 multiplied by the TAC of that species available for harvest by catcher/processors in the year in which the harvest limit will be in effect.

(ii) If the amount of a species calculated under paragraph (a)(1)(iv) of this section is determined by the Regional Administrator to be insufficient to meet bycatch needs for AFA catcher/processors in other directed fisheries for groundfish, the Regional Administrator will prohibit directed fishing for that species by AFA catcher processors and establish the sideboard amount equal to the amount of that species caught by AFA catcher processors incidental to directed fishing for other groundfish species.

(5) *How will halibut and crab PSC sideboard limits be calculated*? For each halibut or crab PSC limit specified for catcher/processors in the BSAI, the Regional Administrator will establish an annual listed AFA catcher/processor PSC limit equal to the estimated aggregate 1995 through 1997 PSC bycatch of that species by catcher/processors listed in paragraphs 208(e)(1) through (20) and 209 of the AFA while engaged in directed fishing for species other than pollock divided by the aggregate PSC bycatch limit of that species for catcher/processors from 1995 through 1997 multiplied by the PSC limit of that species available to catcher/processors in the year in which the harvest limit will be in effect.

(6) *How will AFA catcher/processor sideboard limits be managed*? The Regional Administrator will manage groundfish harvest limits and PSC bycatch limits for AFA catcher/processors through directed fishing closures in non-pollock groundfish fisheries in accordance with the procedures set out in §§ 679.20(d)(1)(iv), and 679.21(e)(3)(v).

(b) *Harvesting sideboards for AFA catcher vessels.* The Regional Administrator will restrict the ability of AFA catcher vessels to engage in directed fishing for other groundfish species to protect participants in other groundfish fisheries from adverse effects resulting from the AFA and from fishery cooperatives in the directed pollock fishery.

(1) *To whom do the catcher vessel sideboard limits apply*? Catcher vessel harvest limits and PSC bycatch limits apply to all AFA catcher vessels participating in all GOA groundfish fisheries and all non-pollock groundfish fisheries in the BSAI except vessels qualifying for sideboard exemptions in the specific fisheries identified in paragraph (b)(2) of this section.

(2) *Who is exempt from catcher vessel sideboards*? (i) BSAI Pacific cod sideboard exemptions--(A) AFA catcher vessels less than 125 ft (38.1 m) LOA that are determined by the Regional Administrator to have harvested a combined total of less than 5,100 mt of BSAI pollock, and to have made 30 or more legal landings of Pacific cod in the BSAI directed fishery for Pacific cod from 1995 through 1997 are exempt from sideboard closures for BSAI Pacific cod.

(B) AFA catcher vessels with mothership endorsements are exempt from BSAI Pacific cod catcher vessel sideboard directed fishing closures after March 1 of each fishing year.

(ii) *GOA groundfish sideboard exemptions.* AFA catcher vessels less than 125 ft (38.1 m) LOA that are determined by the Regional Administrator to have harvested less than 5,100 mt of BSAI pollock and to have made 40 or more landings of GOA groundfish from 1995 through 1997 are exempt from GOA groundfish catcher vessel sideboard directed fishing closures.

(3) *How will groundfish sideboard limits be calculated*? For each groundfish species or species group in which a TAC is specified for an area or subarea of the GOA and BSAI; the Regional Administrator will establish annual AFA catcher vessel groundfish harvest limits as follows:

(i) *BSAI groundfish other than Pacific cod.* The AFA catcher vessel groundfish harvest limit for each BSAI groundfish species or species group other than BSAI Pacific cod will be equal to the aggregate retained catch of that groundfish species or species group from 1995 through 1997 by all AFA catcher vessels; divided by the sum of the TACs available to catcher vessels for that species or species group from 1995 through 1997; multiplied by the TAC available to catcher vessels in the year or season in which the harvest limit will be in effect.

(ii) *BSAI Pacific cod.* The AFA catcher vessel groundfish harvest limit for BSAI Pacific cod will be equal to the retained catch of BSAI Pacific cod in 1997 by AFA catcher vessels not exempted under paragraph (b)(2)(i)(A) of this section divided by the BSAI Pacific cod TAC available to catcher vessels in 1997; multiplied by the BSAI Pacific cod TAC available to catcher vessels in the year or season in which the harvest limit will be in effect.

(iii) *GOA groundfish.* The AFA catcher vessel groundfish harvest limit for each GOA groundfish species or species group will be equal to the aggregate retained catch of that groundfish species or species group from 1995 through 1997 by AFA catcher vessels not exempted under paragraph (b)(2)(ii) of this section; divided by the sum of the TACs of that species or species group available to catcher vessels from 1995 through 1997; multiplied by the TAC available to catcher vessels in the year or season in which the harvest limit will be in effect.

(4) *How will PSC bycatch limits be calculated*? The AFA catcher vessel PSC bycatch limit for halibut in the BSAI and GOA, and each crab species in the BSAI for which a trawl bycatch limit has been established will be a portion of the PSC limit equal to the ratio of aggregate retained groundfish catch by AFA catcher vessels in each PSC target category from 1995 through 1997 relative to the retained catch of all vessels in that fishery from 1995 through 1997.

(5) *How will catcher vessel sideboard limits be managed*? The Regional Administrator will manage groundfish harvest limits and PSC bycatch limits for AFA catcher vessels using directed fishing closures according to the procedures set out at §§ 679.20(d)(1)(iv) and 679.21(d)(8) and (e)(3)(v).

§ 679.65 Crab processing sideboard limits.

(a) *What is the purpose of crab processing limits*? The purpose of crab processing sideboard limits is to protect processors not eligible to participate in the directed pollock fishery from adverse effects as a result of the AFA and the formation of fishery cooperatives in the directed pollock fishery.

(b) *To whom do the crab processing sideboard limits apply*? The crab processing sideboard limits in this section apply to any AFA inshore or mothership entity that receives pollock harvested in the BSAI directed pollock fishery by a fishery cooperative established under § 679.61 or § 679.62

(c) *How are crab processing sideboard percentages calculated*? Upon receipt of an application for a cooperative processing endorsement from the owners of an AFA mothership or AFA inshore processor, the Regional Administrator will calculate a crab processing cap percentage for the associated AFA inshore or mothership entity. The crab processing cap percentage for each BSAI king or Tanner crab species will be equal to the percentage of the total catch of each BSAI king or Tanner crab species that the AFA crab facilities associated with the AFA inshore or mothership entity processed in the aggregate, on average, in 1995, 1996, 1997, and 1998 with 1998 given double-weight (counted twice).

(d) *How will AFA entities be notified of their crab processing sideboard percentages*? An AFA inshore or mothership entity's crab processing cap percentage for each BSAI king or Tanner crab species will be listed on each AFA mothership or AFA inshore processor permit that contains a cooperative pollock processing endorsement.

(e) *How are crab processing sideboard percentages converted to poundage caps*? Prior to the start of each BSAI king or Tanner crab fishery, NMFS will convert each AFA inshore or mothership entity's crab processing sideboard percentage to a poundage cap by multiplying the crab processing sideboard percentage by the pre-season guideline harvest level established for that crab fishery by ADF&G.

(f) *How will crab processing sideboard poundage caps be announced*? The Regional Administrator will notify each AFA inshore or mothership entity of its crab processing sideboard poundage cap through a letter to the owner of the AFA mothership or AFA inshore processor. The public will be notified of each entity's crab processing sideboard poundage cap through information bulletins published on the NMFS-Alaska Region world wide web home page ((*http://www.fakr.noaa.gov*)

§§ 679.7, 679.30, 679.32 and 679.50 [Amended]

13. In §§ 679.7, 679.30, 679.32 and 679.50, at each of the paragraphs shown in the first column, remove the phrase indicated, respectively, second column, CHANGE FROM and replace it with the phrase indicated, respectively, in the third column, CHANGE TO, to read as follows:

BILLING CODE 3510–22–S

In Paragraph:	CHANGE FROM	CHANGE TO	FREQUENCY
§ 679.7(d)(15)	CDQ observer	level 2 observer	1
§ 679.30(a)(5)(i)(A)(2)(i)	CDQ observers	level 2 observers	1
§ 679.30(a)(5)(i)(A)(2)(i)	CDQ observer	level 2 observer	2
§ 679.30(a)(5)(ii)(D)	CDQ observer	level 2 observer	2
§ 679.32(c)(2)(i)(B)	CDQ observer	level 2 observer	1
§ 679.32(c)(2)(i)(C)	CDQ observer	level 2 observer	1
§ 679.32(c)(2)(ii)(A)	CDQ observer	level 2 observer	1
§ 679.32(c)(2)(ii)(B)(1)	CDQ observer	level 2 observer	1
§ 679.32(c)(2)(ii)(B)(2)	CDQ observer	level 2 observer	1
§ 679.32(c)(3)(i)	CDQ observer	level 2 observer	2
§ 679.32(c)(3)(iv)	CDQ observer	level 2 observer	1
§ 679.32(c)(4)(i)	CDQ observer(s)	level 2 observer(s)	2
§ 679.32(c)(4)(iv)	CDQ observer	level 2 observer	1
§ 679.32(c)(4)(iv)	CDQ observers	level 2 observers	1
§ 679.32(c)(4)(v)	CDQ observer	level 2 observer	1
§ 679.32(d)(2)(ii)	CDQ observer	level 2 observer	1
§ 679.32(d)(2)(iii)	CDQ observer's	level 2 observer's	1
§ 679.32(d)(2)(iv)(A)	CDQ observer's	level 2 observer's	1
§ 679.32(d)(2)(iv)(B)	CDQ observer's	level 2 observer's	1
§ 679.32(d)(2)(v)	CDQ observer's	level 2 observer's	1
§ 679.32(d)(2)(vi)	CDQ observer's	level 2 observer's	1
§ 679.50(c)(4) introductory	CDQ observer	level 2 observer	2
§ 679.50(c)(4)(i)	CDQ observers	level 2 observers	1
§ 679.50(c)(4)(i)	CDQ observer	level 2 observer	1
§ 679.50(c)(4)(ii)	CDQ observer	level 2 observer	4
§ 679.50(c)(4)(ii)	CDQ observers	level 2 observers	2
§ 679.50(c)(4)(iii)	CDQ observer	level 2 observer	1
§ 679.50(c)(4)(iv)	CDQ observer	level 2 observer	1
§ 679.50(d)(4)	CDQ observer	level 2 observer	3
§ 679.50(d)(4)(iii)	CDQ observer	level 2 observer	2
§ 679.50(h)(1)(i)(D)	CDQ observer	level 2 observer	1
§ 679.50(h)(1)(i)(D)(3)	CDQ observer	level 2 observer	1
§ 679.50(h)(1)(i)(E) introductory	CDQ observer	level 2 observer	1
§ 679.50(h)(1)(i)(E)(1)	CDQ observer	level 2 observer	1
§ 679.50(h)(1)(i)(E)(2)	CDQ observer	level 2 observer	1
§ 679.50(h)(1)(i)(E)(3)	CDQ observer	level 2 observer	1

[FR Doc. 02–31700 Filed 12–27–02; 8:45 am]
BILLING CODE 3510–22–C

Federal Register

Monday,
December 30, 2002

Part III

Department of Transportation

Coast Guard

Maritime Security; Notice

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2002–14069]

Maritime Security

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings; request for comments.

SUMMARY: The Coast Guard is holding seven public meetings to discuss requirements for security assessments, plans, and specific security measures for ports, vessels, and facilities. Discussions will aid the Coast Guard in determining the types of vessels and facilities that pose a risk of being involved in a transportation security incident, and in identifying security measures and standards to deter such incidents. Discussions will also focus on aligning domestic maritime security requirements with the International Ship and Port Facility Security (ISPS) Code and recent amendments to the International Convention for the Safety of Life at Sea (SOLAS), to comply with section 102 (Port security) of the recently enacted Maritime Transportation Security Act of 2002 (MTSA). We encourage interested individuals and organizations to attend the meetings and submit comments for discussion during the meetings. We also seek comments from anyone unable to attend the meetings.

DATES: The public meetings will be held on the following dates and at the following locations.

- January 27, 2003, 9 a.m. to 5 p.m., New Orleans, LA.
- January 30, 2003, 2 p.m. to 7 p.m., Cleveland, OH.
- January 31, 2003, 12 (noon) to 6 p.m., St. Louis, MO.
- February 3, 2003, 9 a.m. to 5 p.m., Seattle, WA.
- February 5, 2003, 9 a.m. to 5 p.m., Los Angeles-Long Beach, CA.
- February 7, 2003, 9 a.m. to 5 p.m., Jacksonville, FL.
- February 11, 2003, 9 a.m. to 5 p.m., New York City, NY.

Comments and related material intended for inclusion in the public docket (USCG–2002–14069) must reach the Docket Management Facility on or before February 28, 2003. Comments and related material containing protected information, such as proprietary or security information, intended for inclusion in the Coast Guard's internal docket for protected information also must reach the Coast Guard's Office of Regulations and Administrative Law (G–LRA) on or before February 28, 2003.

ADDRESSES: The meetings will be held at the following locations:

- New Orleans, LA—Hilton Riverside, 2 Poydras St., New Orleans, LA 70140.
- Cleveland, OH—Sheraton Cleveland City Centre Hotel, Dorothy Fuldheim Room, 777 St. Clair Ave., Cleveland, OH 44144.
- St. Louis, MO—Robert A. Young Federal Building (R.A.Y. Building), 1222 Spruce St., St. Louis, MO 63017.
- Seattle, WA—Boeing Field, 7755 East Marginal Way South, Building 2–22, Auditorium, Seattle, WA 98108.
- Los Angeles-Long Beach, CA—Port of Los Angeles, 425 S. Palos Verdes St., San Pedro, CA 90731.
- Jacksonville, FL—Florida Department of Law Enforcement (FDLE), 921 N. Davis St., Building E, Jacksonville, FL 32209.
- New York City, NY—Customs House Auditorium, Alexander Hamilton U.S. Customs House, 1 Bowling Green, New York, NY 10004.

You may submit your public comments directly to the Docket Management Facility. Please see the *Request for Comments* section below for more information regarding submitting comments that contain protected information. To make sure that your public comments and related material do not enter the docket (USCG–2002–14069) more than once, please submit them by only one of the following means:

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

(2) By fax to the Docket Management Facility at 202–493–2251.

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

(4) By mail to the Docket Management Facility, (USCG–2002–14069), U.S. Department of Transportation, room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001.

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the public docket, will become part of this public docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this notice in the public docket on the Internet at *http://dms.dot.gov/*.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review the Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov/*.

Comments containing protected information, as explained in the *Request for Comments* section below, must be submitted in writing and must be mailed or hand-delivered to Commandant (G–LRA)/Room 3406, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593.

FOR FURTHER INFORMATION CONTACT: For information concerning this notice or the public meetings, write or call Mr. Martin Jackson of the Office of Standards Evaluation and Development (G–MSR), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593, *mjackson@comdt.uscg.mil*, or at 202–267–1140.

For questions regarding submissions of protected information, contact Ms. Kathryn Sinniger of the Office of Regulations and Administrative Law (G–LRA), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593, or at 202–267–1534.

For questions on viewing or submitting material to the public docket, call Ms. Dorothy Beard, Chief of Dockets, Department of Transportation, at 202–366–5149.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in these meetings by submitting comments and related material. If you do so, please include your name and address, identify the docket number (USCG–2002–14069) and give the reason for each comment.

If you wish to submit any protected information in your comments, you must submit your comment by mail or hand delivery to the Office of Regulations and Administrative Law (G–LRA) at the address under **ADDRESSES.** Protected information includes confidential or privileged business or commercial information that is not normally released to the public. It also includes security information that, if released, would be detrimental to the safety of persons in transportation.

Examples of the latter include vulnerability assessments (or portions thereof), specific security actions to be taken by your company or vessel, and draft plans that would comply with the International Ship and Port Facility Security (ISPS) Code or any of the Navigation and Vessel Inspection Circulars (NVICs) referenced in this notice. Please be sure to indicate whether the entire submission constitutes protected information, or if it is only portions of the submission that need to be protected. If the latter, please identify those portions which constitute protected information clearly within your submission. If you are submitting confidential or privileged business information, please explain, within your submission, how this information is normally treated within your company or organization.

You may submit your public comments and material electronically, by fax, by delivery, or by mail to the Docket Management Facility at the address under **ADDRESSES**; but please submit your public comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

Public Meetings

The Coast Guard encourages the following individuals and organization representatives to attend the public meetings:

- Owners and operators of vessels, facilities, and other structures located on or adjacent to U.S. navigable waters;
- Federal, State, and local agencies in law enforcement and emergency planning;
- Port authorities;
- State and local government organizations;
- Shipping agents;
- Insurance companies;
- Protection and Indemnity Clubs;
- Classification societies;
- Maritime industry associations; and
- Other interested persons.

Meeting attendees will have the opportunity to orally comment on topics scheduled for discussion on the agenda. Appendix A provides the intended format of the meetings. We may ask questions to clarify comments given by an attendee. Unless otherwise noted, the meetings will be held each day from 9 a.m. to 5 p.m. on the dates and locations identified under **DATES** and **ADDRESSES.** Attendees will be responsible for making their own arrangements for lunch at the mid-day break, scheduled for 1 p.m. each day. The meetings will reconvene at 2 p.m. and are scheduled to end at 5 p.m. We may end the meetings early if we have covered all of the agenda topics and if the people attending have no further comments. All statements, questions and answers, or comments made orally at the public meetings will become part of the public docket. In addition to these public meetings, the Coast Guard will request its Federal Advisory Committees, as appropriate, to include maritime security issues and the content of this notice on their agendas in order to provide further opportunities for comment.

Information on Services for Individuals With Disabilities

To obtain information on facilities or services for individuals with disabilities or to ask that we provide special assistance at the meetings, please notify Mr. Martin Jackson at the address or phone number under **FOR FURTHER INFORMATION CONTACT**.

Background and Purpose

In the aftermath of September 11, 2001, the Commandant of the Coast Guard reaffirmed the Coast Guard's Maritime Homeland Security mission and its lead role, in coordination with the Department of Defense; Federal, State, and local agencies; owners and operators of vessels and maritime facilities; and others with interests in our nation's marine transportation system, to detect, deter, disrupt, and respond to attacks against U.S. territory, population, vessels, facilities, and critical maritime infrastructure by terrorist organizations.

In November 2001, the Commandant of the Coast Guard addressed the International Maritime Organization (IMO) General Assembly, urging that body to consider an international scheme for port and shipping security. Recommendations and proposals for comprehensive security requirements, including amendments to SOLAS and the new ISPS Code, were developed at a series of intersessional maritime security work group meetings held at the direction of the IMO's Maritime Safety Committee.

The Coast Guard submitted comprehensive security proposals to the intersessional maritime security work group meetings based on work it had been coordinating since October 2001. Prior to each intersessional meeting, the Coast Guard held public meetings as well as coordinated several industry meetings with representatives from major U.S. and foreign associations for shipping, labor, and ports. Maritime security was also a major agenda item at Federal Advisory Committee meetings held by the Coast Guard during the past year. Additional meetings were also held with Federal agencies having complementary security responsibilities.

In January 2002, the Coast Guard held a two-day public workshop in Washington, DC, attended by more than 300 individuals, including members of the public and private sectors, and representatives of the national and international marine industry (66 FR 65020, December 17, 2001; docket number USCG–2001–11138). Their comments indicated the need for specific threat identification, analysis of threats, and methods for developing performance standards to plan for response to maritime threats. Additionally, the public comments stressed the importance of uniformity in the application and enforcement of requirements and the need to establish threat levels with a means to communicate threats to the marine transportation system.

The Coast Guard considered and advanced U.S. proposals for maritime security that took into account this public and agency input. We consider the International Convention for the Safety of Life at Sea (SOLAS) amendments and the ISPS Code, as adopted by the International Maritime Organization (IMO) Diplomatic Conference in December 2002, to reflect current industry, public, and agency concerns. The entry into force date of both the ISPS Code and related SOLAS amendments is July 1, 2004, with the exception of the Automatic Identification System (AIS) whose implementation was accelerated to no later than December 31, 2004, depending on the particular class of SOLAS vessel.

Domestically, the Coast Guard had previously developed regulations for security that are contained in 33 CFR parts 120 and 128. Complementary guidance can be found in Navigation and Vessel Inspection Circular (NVIC) 3–96, Change 2, Security for Passenger Vessels and Passenger Terminals. Prior to development of additional regulations, the Coast Guard, with input from the public, needed to assess the current state of port and vessel security and their vulnerabilities. As mentioned previously, to accomplish this, the Coast Guard conducted a public workshop January 28–30, 2002, to assess existing Maritime Transportation System

security standards and measures and to gather ideas on possible improvements. Based on the comments received at the workshop, the Coast Guard cancelled NVIC 3–96 (Security for Passenger Vessels and Passenger Terminals) and issued a new NVIC 4–02 (Security for Passenger Vessels and Passenger Terminals) that incorporated guidelines consistent with international initiatives (the ISPS Code and SOLAS amendments). Additional NVICs were also published, including NVIC 9–02 (Guidelines for Port Security Committees, and Port Security Plans Required for U.S. Ports), NVIC 10–02 (Security Guidelines for Vessels); and NVIC 11–02 (Security Guidelines for Facilities [not yet available]). The documents are or will be available in the public docket (USCG–2002–14069) for review at the locations under **ADDRESSES.**

On November 25, 2002, President George W. Bush signed into effect Public Law 107–295, the Maritime Transportation Security Act of 2002 (MTSA), which had been proposed to Congress the year before as the Port and Maritime Security Act (S. 1214). The MTSA requires the Secretary to issue an interim final rule, as soon as practicable, as a temporary regulation to implement the Port Security section of the Act. The MTSA expressly waives the requirements of the Administrative Procedure Act, including notice and comment, for this purpose. Nevertheless, the Coast Guard believes it is important to get the preliminary views of the public, especially affected maritime interests, prior to issuing the interim final rule. The temporary interim rule may be superseded by a final rule within one year of the enactment of the MTSA. The requirements of MTSA section 102 directly align with the security requirements embodied in the SOLAS amendments and ISPS Code; however, the MTSA has broader application that includes domestic vessels and facilities. Thus, the Coast Guard intends to implement the MTSA through the requirements in the SOLAS amendments and the ISPS Code parts A and B for all vessels and facilities that are currently required to meet SOLAS, as well as those vessels exclusively on domestic trade and facilities that are at risk of being involved in a transportation security incident.

The Coast Guard considers that the implementation of these requirements is best done through mandating compliance with the SOLAS amendments and the ISPS Code including part A and part B (see Appendix B). The Coast Guard considers part B an essential element to ensure full and effective compliance with the intent of the MTSA. Foreign flag vessels entering the U.S. would be expected to verify compliance with part B or provide proof that any alternatives are equivalent to that part. Verification of compliance could be established by flag administration documents or endorsements that indicate that the Ship Security Certificate was issued based upon full compliance with part B.

Because of the broad application in the MTSA, the discussions in this notice use the term ''vessels'' rather than the term ''ships'' as found in the SOLAS amendments and the ISPS Code. These terms can be used interchangeably but serve to emphasize the Coast Guard's intention to apply security measures to those vessels we have determined are at risk of being involved in a transportation security incident.

In addition, under MTSA, the terms ''Area Maritime Transportation Security Plan'' means a Port Security Plan developed in accordance with NVIC 9–02; ''Area Security Advisory Committee'' means the Port Security Committee; and ''Federal Maritime Security Coordinator'' means the cognizant Captain of the Port. The Coast Guard intends to align any future rulemaking with the MTSA terminology.

The Coast Guard plans to publish a temporary interim rule no later than June 2003 and a final rule by November 2003. These dates are critical in order to uniformly implement the ISPS Code and SOLAS amendments, as well as meet the urgency set by the mandates in the MTSA.

As such, the Coast Guard is announcing seven public meetings and requesting comments that will aid them in drafting the mandated interim rule and final rule.

What Will Be Discussed at the Public Meetings?

Attendees should be prepared to discuss the implementation of SOLAS amendments and ISPS Code, including application to vessels engaged in domestic voyages in accordance with the MTSA, as well as domestic implications of implementing the recommended security measures described in recently published guidance (NVICs).

How Should I Prepare for the Public Meeting?

Attendees should review the SOLAS amendments and ISPS Code, published NVICs, existing regulations in 33 CFR parts 120 and 128, section 102 of the MTSA, preliminary cost analysis, and associated supporting documents to evaluate the feasibility of recommended or required security measures.

The ISPS Code and SOLAS amendments, and the preliminary costs analysis are included in this notice as Appendix B and Appendix C, respectively. The NVICs, MTSA, related public comments, and associated supporting documents are available for review in the public docket (USCG–2002–14069) at the locations under **ADDRESSES.**

After evaluating these documents, the public should then prepare statements to be presented at the meetings or submit to the public docket (USCG–2002–14069) expressing any concerns and suggesting ways to implement the required measures. Attendees also should propose possible equivalencies to the SOLAS amendments and ISPS Code, and the MTSA requirements.

Who Should Attend the Public Meetings?

Port Stakeholders. While the Coast Guard will be primarily responsible for ensuring the new SOLAS amendments and ISPS Code, and section 102 of the MTSA for U.S. ports are implemented through the development of Port Security Plans and establishment of Port Security Committees, we will need the cooperation of other Federal agencies, port authorities, State and local governments, local emergency responders, maritime industry associations, facility and vessel owners and operators and other port community stakeholders such as the owners of other structures located on or adjacent to U.S. navigable waters.

Because Port Security Plans are overarching and address many areas of the maritime community, the plans will apply to commercial vessels and facilities, as well as to such entities as—

- Recreational vessels and uninspected passengers vessels.
- Nautical school vessels and sailing school vessels.
- Small passenger vessels on domestic voyages.
- Uninspected fishing vessels.
- Oil spill response vessels.
- Military installations and vessels.
- Facilities that transfer, store, or otherwise handle dry bulk or general cargo.
- Marinas.
- Ship repair facilities.
- Waterfront areas that are densely populated or host large public events.
- Other areas within the port that are critical to port operations or public safety.

Vessel Owners, Operators, and Charterers. Requirements are being

considered for operators of certain vessels to develop Vessel Security Assessments and Plans, designate Company and Vessel Security Officers, and implement security measures (*see* Appendix A). The Coast Guard considers these security measures to be integral for vessel security and appropriate for the majority of vessels operating in U.S. waters. Therefore, the Coast Guard would apply these requirements to such commercial vessels as—

- All foreign ships, both cargo and passenger, required to comply with SOLAS;
- All foreign ships, both cargo and passenger, of countries not signatory to SOLAS;
- All vessels subject to 46 CFR subchapter I (cargo vessels);
- All vessels subject to 46 CFR subchapter L (offshore supply vessels);
- All passenger vessels subject to 46 CFR subchapters H and K;
- All passenger vessels subject to 46 CFR subchapter T engaged on an International voyage;
- All barges subject to 46 CFR subchapters D, I, and O;
- All tankships subject to 46 CFR subchapters D and O;
- All Mobile Offshore Drilling Units (MODUs) subject to 46 CFR subchapter I–A; and
- All towing vessels greater than 6 meters in registered length.

Facility Owners or Operators. Requirements are being considered for operators of certain facilities to develop Facility Security Assessments and Plans, designate Facility Security Officers, and implement security measures (*see* Appendix A). The Coast Guard considers these security measures to be integral for facility security and appropriate for the majority of facilities servicing vessels that operate in U.S. waters or facilities that are on or adjacent to U.S. waters and pose a risk to them. Therefore, the Coast Guard would apply these requirements to such facilities as—

- Facilities that handle cargo regulated under 33 CFR parts 126, 127, and 154;
- Facilities that service vessels certified to carry more than 150 passengers; and
- Facilities that receive vessels on international voyages including vessels solely navigating the Great Lakes.

As an Affected Entity, What Information Should I Bring to the Public Meetings?

Attendees should bring their recommendations and responses to the questions provided in Appendix A. Attendees should also be prepared to offer their best practices with regard to the security issues and comments on application, implementation and operating costs.

What Will Be the Format of the Public Meetings?

The public meetings will follow a question-answer format. A facilitator will describe the SOLAS amendment and ISPS Code requirements and the Coast Guard's implementation strategy. The facilitator then will pose a series of questions and solicit attendees' responses. We will discuss, in this order, general security provisions, port security provisions, vessel security provisions, facility security provisions, and other security provisions. Appendix A provides the intended format of the meetings.

What Other Information Would Assist the Coast Guard in Drafting the Temporary Interim Security Rule?

We request information about all current Federal, State, and local governmental laws, procedures, regulations, and standards that are either functioning or that are planned. We also request industry to provide any current and planned standards and procedures covering the security of vessels and facilities, and recommendations toward additional regulations.

What Are the Estimated Costs of Implementing the SOLAS Amendments, the ISPS Code, and Section 102 of the MTSA, as Discussed in This Notice?

For the purposes of good business practice and in order to comply with regulations promulgated by other Federal and State agencies, many companies have spent, to date, a substantial amount of money and resources to upgrade and improve security. The costs discussed in Appendix C do not include resources these companies have already spent to enhance security. To estimate costs, we contacted operators to determine what specific security improvements they had made and the costs they had incurred since the events of September 11, 2001. We found that these operators were reluctant to share their information with us. Consequently, the estimates in the following analysis are based heavily on Coast Guard judgments.

We realize that each company engaged in maritime commerce would not implement the ISPS Code exactly as presented in this analysis. Depending on each company's choices, some companies could spend much less than what is estimated herein while others could spend significantly more. In general, we assume that each company would implement the ISPS Code based on the types of vessels and facilities it owns or operates and whether it engages in international or domestic trade.

Based on this analysis, the first year cost would be approximately $1.4 billion, with costs of approximately Present Value (PV) $6.0 billion over the next 10 years (2003–2012, 7 percent discount rate). The preliminary cost analysis in Appendix C presents the costs in three sections: vessel security, facility security, and port security. The following is a summary of the preliminary cost analysis.

- *Vessel Security.* The first-year cost of purchasing equipment, hiring security officers, and preparing paperwork is approximately $188 million. Following initial implementation, the annual cost is approximately $144 million. Over the next 10 years, the cost would be PV $1.1 billion approximately. The paperwork burden associated with planning would be approximately 140,000 hours in the first year and 7,000 hours in subsequent years.
- *Facility Security.* The first-year cost of purchasing equipment, hiring security officers, and preparing paperwork is an estimated $963 million. Following initial implementation, the annual cost is approximately $535 million. Over the next 10 years, the cost would be PV $4.4 billion approximately. The paperwork burden associated with planning would be approximately 465,000 hours in the first year and 17,000 hours in subsequent years.
- *Port Security.* The first-year cost of establishing Port Security Committees and creating Port Security Plans for all port areas is an estimated $120 million. The second-year cost is approximately $106 million. In subsequent years, the annual cost is approximately $46 million. Over the next 10 years, the cost would be PV $477 million approximately. The paperwork burden associated with planning would be approximately 1,090,000 hours in 2003, 1,278,000 hours in 2004, and 827,000 hours in subsequent years.

Dated: December 20, 2002.

Paul J. Pluta,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety, Security and Environmental Protection.

Appendix A: Maritime Security Issues for Discussion

General Security Provisions

1. *Obligations of Contracting Government with respect to security.* The SOLAS amendments (regulation 3) and ISPS Code (part A, section 4, and part B, paragraph 4) lay out a series of requirements for

Contracting Governments and Administrations to mandate security levels that are appropriate for their vessels and ports. The Coast Guard intends to implement these requirements in coordination with the Homeland Security Advisory System (HSAS). Homeland Security Presidential Directive (HSPD)–3 defines a five-tiered system for setting threat levels. We intend to implement Maritime Security (MARSEC) levels, which directly correspond to security levels as discussed in the SOLAS amendments and the ISPS Code. The MARSEC levels will be linked to the HSAS, as follows, to serve as the maritime sector's tool for communicating risk.

Homeland Security Advisory System (HSAS)	Maritime Security (MARSEC) Level
Low: Green	MARSEC Level 1.
Guarded: Blue	
Elevated: Yellow	
High: Orange	MARSEC Level 2.
Severe: Red	MARSEC Level 3.

We intend to communicate these MARSEC levels to our vessels and ports using such methods as Broadcast Notice to Mariners, community public alert systems, fax and e-mail alert lists, or other similar methods, and intend that these communication processes be addressed in the port security plan. To meet the SOLAS requirement to have a point of contact through which vessels and facilities can request advice or assistance or report any security concerns (chapter XI–2, regulation 7), we anticipate using the toll-free phone number of our National Response Center or a regional toll-free number as coordinated with other agencies. This number and point of contact information would be published in the Coast Pilot, on Web sites, and in other public information formats.

• From a port perspective, would these communication processes meet your needs? Why or why not?

• From a vessel perspective, would these communication processes meet your needs? Why or why not?

2. *Procedures for Authorizing a Recognized Security Organization.* The ISPS Code (part A, section 4, and part B, paragraph 4) allows Contacting Governments to delegate certain security related duties to Recognized Security Organizations (RSO). In order to ensure proper implementation at the outset of the MTSA as well as the international mandates, and because of the accelerated implementation timeline, the Coast Guard does not intend to delegate its authority to an RSO. However, in the future the Coast Guard may consider such delegation.

• Do you believe the Coast Guard should delegate its authority to an RSO keeping in mind the limitations in the ISPS Code (part A, section 4.3)?

• Do you believe there should be additional qualification and competency requirements to those listed in the ISPS Code part B, paragraph 4.5 for RSOs?

3. *Consideration of other Organizations competent in Maritime Security.* The Coast Guard recognizes that security assessments and plans for the maritime community may require the assistance of organizations with maritime security competency. Currently there is not a standard for these organizations or companies; however, a benchmark has been established in the ISPS Code part B, paragraph 4.5.

• Should the Coast Guard formalize professional standards for companies or organizations that seek to do business providing guidance on vessel and facility security assessments and plans?

• Should the Coast Guard vet these organizations or are you aware of an alternative quality standard that should be associated with them?

4. *Procedures for Accepting Alternatives and Equivalencies.* The SOLAS amendments to chapter XI–2, regulation 11 and 12 along with part B, paragraph 4.26 and 4.27 of the ISPS Code allow Contracting Governments to permit alternatives and equivalencies to the security requirements if they are at least as effective as the mandates and are reported to the Organization. This concept aligns with traditional SOLAS language and provides for some flexibility in implementation. The Coast Guard intends to allow alternatives and equivalencies for vessels and some facilities, as appropriate. The Coast Guard would consider allowing a company that operates a number of similar vessels and terminals, to develop a master plan provided all aspects of the operation are addressed in lieu of individual plans as provided for in SOLAS chapter XI–2, regulation 11 and 12. Provisions for the submission of requests for the Coast Guard to consider alternatives or equivalencies will be similar to that already permitted in 46 CFR Subchapters, for example 46 CFR 30.15 or 70.15.

• Do you anticipate that your organization would request an alternative or equivalency? If so, why?

• Do you believe the submission format proposed by the Coast Guard is appropriate?

5. *Procedures for Accepting Industry Standards.* In addition to the equivalencies and alternative provisions discussed above, the Coast Guard is considering, for those vessels that are currently not required to meet SOLAS, accepting industry standards for security requirements to be used as an equivalent or alternative. To ensure security for our maritime community remains high, these standards would be reviewed and approved nationally. The Coast Guard also believes that in order to be deemed acceptable, compliance with an industry standard should be subject to verification by a third party audit procedure acceptable to the Coast Guard. The concept of this provision aligns with the current SOLAS provisions in chapter XI–2, regulations 11 and 12. The submission process will be similar to that found at 46 CFR 50.20–30, ''alternative materials or methods of construction'', whereby the proposed industrial standard will be submitted to the Commandant for review.

• Do you know of an industry standard that may be considered equivalent (or could be equivalent with revision) to the requirements of the SOLAS amendments and the ISPS Code?

• If an industry standard were available, would you consider implementing it? If so, why?

6. *Declaration of Security (DoS).* The ISPS Code (part A, section 5) requires Contracting Governments to determine when a DoS is required for vessels and facilities conducting vessel/port interface or vessel-to-vessel activities. A DoS is a document that establishes an agreement between a vessel and a facility, or between vessels, on their security arrangements to ensure their coordination and communication is clearly set out. At this time, the Coast Guard intends to issue national guidelines when a DoS must be executed, and the form of the DoS. The Coast Guard also intends to have each Port Security Committee determine the conditions for executing a DoS. Declarations of Security will be addressed in each Port Security Plan. In addition, the Port Security Committee will be asked to consider and include guidance in the Port Security Plan on what actions to take when vessels request a DoS or request to enter the Port with a security level higher than the Port's level. The ISPS Code also allows Administrations to give guidance on when their ships should request a DoS during a port call or when interacting with other vessels. The Coast Guard intends to issue this as guidance, either within regulations or as a separate document (NVIC), to assist ship owners in the development of their vessel security plans.

• During what operations or security levels do you believe a DoS would be appropriate to facilitate coordination of security measures between a facility and a vessel?

• What format, either regulation or guidance, would you prefer to assist you in developing your vessel security plan to address DoSs?

7. *Security of information contained in port, vessel and facility security assessments and plans.* The ISPS Code (part A, sections 9 and 16) and the MTSA (46 U.S.C. section 70101(d)) require documents related to security, especially security assessments and plans, to be kept in a manner that is protected from unauthorized access or disclosure. However, the Coast Guard will require access to vessel and facility records, as well as those held by other structures located on or adjacent to U.S. navigable waters, for the purpose of conducting or verifying assessments and plans. This information may be required to be provided upon request by the Coast Guard. The Coast Guard intends to require information related to Port Security, Vessel Security, and Facility Security Plans to be designated as Security Sensitive Information (SSI) in a manner similar to that used by the airline industry. Transportation Security Administration (TSA) is considering revisions to the SSI regulations (49 CFR part 1520) to enable this classification.

• Do you believe that a SSI classification will be sufficient? If not, why?

• Do you have a suggestion for an alternative way to protect this information yet allow approvals and review?

Port Security Provisions

8. *Port Security Plans and Committees.* The requirements for ports stem from the development of the new SOLAS amendments and the ISPS Code as well as the MTSA (46 U.S.C. sections 70103, 70104 and 70112). The

definition of port facilities is broad and covers all aspects of the interface between a ship and a facility, including anchorages and other areas typically considered by the United States as public waterways, as well as other structures located on or adjacent to U.S. navigable waters. Thus, the Coast Guard intends to invoke the alternative provided in part A, section 16.4 of the ISPS Code and combine facility plans with a port plan to encompass all of our U.S. navigable waters. The majority of the SOLAS amendments and ISPS Code requirements would be applied to U.S. facilities to ensure a seamless ship-to-facility security interface. However, the port security requirements will be the overarching instrument for implementing security communications and ensuring compliance. For U.S. purposes, the Port Facility Security Officer (PFSO) will be the Coast Guard Captain of the Port (COTP) who may require Facility Security Officers undertake certain responsibilities (such as signing a DoS), as outlined in the Port Security Plan (PSP). The Port Security Committees will assist the PFSO in developing the PSP and will be intimately involved in the exercises to ensure it remains effective. The Coast Guard intends to issue regulations that will lay out the Port Security Committees' and the PFSOs' responsibilities and guidance for the committee membership.

- Who do you believe should be involved in the Port Security Committees?
- Do you have a suggestion for how to ensure the involvement of the affected community listed in the section titled ''Who should attend the public meetings?'' of the notice?

9. *Port Security Assessments Requirement.* The Coast Guard is considering requirements for Port Security Assessments (PSAs), as discussed in ISPS Code part A, section 15 and part B paragraphs 15.1 through 15.16 as well as the MTSA (46 U.S.C. section 70102). The regulation also would contain a description of the role of Port Security Committees. Many assessments of this type have already been performed in ports and should be a good foundation for this requirement. Since the PSA will be integral in the development of the PSP, requirements for its update and review will also be included.

- Do you believe that your Port Security Committee, as described in the NVIC and above, is able to provide enough experience and expertise to develop PSAs? If no, why?
- Does your port currently have an assessment that you believe could be used for a PSA?

10. *Port security control of vessels, facilities, and operations.* The requirements for control of vessels are outlined in the SOLAS amendments, regulation XI–2/9, and the ISPS Code part B, paragraphs 4.29 through 4.46. The Coast Guard intends to implement control measures as detailed in the SOLAS amendments and ISPS Code requirements. The information from a vessel's advanced notice of arrival, which is being revised under a separate rulemaking, and other means of verifying compliance with the SOLAS amendments and ISPS Code, will provide our COTPs the ability to assess appropriate control measures for these vessels. In addition, the Port Security Committee will be asked during the PSA process to review areas within the port, such as fleeting areas, regulated navigation areas, anchorages, and areas near facilities, to assess whether these areas should have security zones or patrol requirements established at certain security levels. If so, the Port Security Plan then would be required to address these security zones (or other security requirements) and arrangements to permanently establish the zones. Alternatively, such measures may be promulgated through regulation. The regulation would contain specific procedures for triggering security zone implementation through a broadcast notice to mariners or security level communication to the maritime community. Thus, mariners would know precisely what to expect in their waterways during higher security levels and facilities would also know if any operations would be restricted due to waterway concerns.

- Do you believe a system of waterway and facility restrictions pre-designated in regulations or other means (such as a Coast Pilot) would assist in your compliance with security requirements?
- Do you have any suggestions of other ways to restrict or control activities within the port area at higher security levels?

11. *Port security training and exercises.* Part A, section 18 and part B, paragraphs 18.1 through 18.6 of the ISPS Code detail training, drills, and exercise requirements for port facilities. To meet these requirements, the Coast Guard would require a quarterly exercise of the Port Security Plan. In addition, training requirements for Port personnel would also have to be included in the Port Security Plan. At this time, the Coast Guard does not expect to mandate a formal training course for port security personnel. However, at a minimum, facilities will have to ensure that security personnel receive appropriate training, consistent with part B of the ISPS Code, to ensure that they can carry out their assigned responsibilities. This includes, where appropriate, guidance on firearms safety. Drill requirements mandated for port security will be met in conjunction with drills for facility plans on a quarterly basis.

- Under this scheme, would you participate in a Port Security Plan exercise?
- Do you have a suggestion on a type of Port Security Plan exercise other than those listed in Part B, paragraph 18.6?
- Do you have a port personnel security training program or suggestions on training guidance for safety and security personnel?

Vessel Security Provisions

12. *Incorporation by Reference.* The Coast Guard is considering accepting national, State, and industry security standards to meet certain security requirement(s), as appropriate, such as a vessel security plan that incorporates the use of motion detection equipment that meets an accepted national standard.

- Do you know of a national, State, or industry standard that could be used in the marine environment?
- If a national, State, or industry standard was available, would you consider implementing it? If so, why?

13. *Obligations of the company.* The obligations and specific requirements of companies are discussed in SOLAS amendments (regulation 4 and 5) and the ISPS Code (part A, section 6 and part B, paragraphs 6.1 through 6.8). The Coast Guard would require Vessel Security Plans (VSPs) to describe how the company will meet its obligations and requirements.

- Do you believe that this adequately addresses the obligations and specific requirements of a company? If no, why?
- Do you have a suggestion for how to ensure that companies meet these obligations and requirements?
- What should the obligations of towing companies be with respect to the responsibility for barges?

14. *Vessel Security Requirements.* The SOLAS amendments (regulation 4) and ISPS Code (part A, section 7) require that vessels act upon security levels set by Contracting Governments through appropriate protective measures by carrying out certain specified activities (part A, section 7.2). The MTSA requires the Coast Guard to consider the types vessels that are likely to be involved in a transportation security incident. For the purposes of this notice and the Coast Guard discussion in Appendix C, cost impact was only developed for those vessels listed in NVIC 10–02 and also listed in the section titled, ''Who should attend the public meetings?'' The Coast Guard also recognizes that many other vessels could benefit from compliance with these requirements therefore, the Coast Guard is considering extending them to all vessels, including small passenger vessels or uninspected fishing vessels.

- Do you believe that the application of the requirements in part A, section 7–13 of the ISPS Code for the vessels indicated in the section titled ''Who should attend the public meetings?'' is appropriate? If not, why?
- Do you believe these security measures should apply to other vessels, not already listed?
- Do you believe that these activities and protective measures adequately address the security of a vessel? If no, why?
- Do you have a suggestion for appropriate security measures that a vessel can take to meet these requirements that are not already listed in part B, paragraphs 9.1 through 9.49?

15. *Vessel Security Assessments (VSA) Requirement.* The ISPS Code part A, section 8, and part B, paragraphs 8.1 through 8.14, as well as the MTSA (46 U.S.C. sections 70102 and 70166), require that a vessel perform a VSA that includes an on-scene security survey and provides details of those elements that the VSA will include. The VSA is integral in developing and updating the Vessel Security Plan. The Coast Guard would require VSAs for all vessels indicated in the section titled ''Who should attend the public meetings?'' of the notice. The Coast Guard would review these assessments when Vessel Security Plans are submitted for approval.

- Do you have any suggestions on how to best conduct a VSA and review results? Is there a current practice to meet this requirement?
- For vessels on domestic voyages, are there any appropriate alternatives to a VSA that could be considered?

16. *Vessel Security Plan (VSP) Requirement.* The ISPS Code part A, section 9, and part B, paragraphs 9.1 through 9.53, as well as the MTSA (46 U.S.C. sections 70103 and 70104), require that VSPs be developed, taking into consideration the VSA, make provisions for the three MARSEC Levels, and be reviewed and updated. The Coast Guard's requirements would incorporate all of these elements and would also provide an outline that the VSP would follow or be cross-referenced using a similar approach as done in 33 CFR 155.1030.

• Do you have any suggestions on additional items the VSP should address?

• Do you have a suggestion or a best practice to meet this VSP requirement?

• Would you find an outline a valuable aid to meeting these requirements? If not, why?

17. *Submission of Vessel Security Plans for approval.* The ISPS Code (part A, section 9) requires that vessels carry on board a VSP that is approved by the Administration. The MTSA further requires VSPs to be approved by the Secretary. Therefore, for foreign vessels required to comply with SOLAS, the Coast Guard will deem Flag state approval of a VSP that meets the requirements of SOLAS and the ISPS Code to be approval of the Secretary for purposes of the MTSA. The Coast Guard would approve all other VSPs at the Marine Safety Center or at the COTP level, depending on the class of vessel. The submission format would be similar to that already required in 33 CFR 120.305. In addition, for efficiency and timeliness, the Coast Guard is considering alternative methods of Coast Guard approval for VSPs for certain vessels that operate on domestic voyages. One possible alternative includes Coast Guard approval of a unified or corporate plan that would be implemented on a similarly situated fleet of vessels in common ownership. Another alternative could include verification of implementation of a pre-approved security plan for a particular segment of industry.

• Do you have suggestions on how these approvals could be streamlined? Is there an alternative process?

• Do you believe the submission format proposed by the Coast Guard is appropriate?

18. *Existing Security Measures for Certain Vessels.* The Coast Guard is evaluating the need for retaining certain security measures in existing regulations, 33 CFR part 120, for those vessels (*e.g.*, large passenger vessels) that could be involved in a transportation security incident that results in a catastrophic loss of life. The Coast Guard considers that 33 CFR part 120 meets the requirements of the SOLAS amendments and the ISPS Code.

• Do you believe that additional security requirements are needed for certain vessel types? If so, why and what would those requirements be?

19. *Vessel Security Recordkeeping.* The ISPS Code part A, section 10, and part B, paragraphs 10.1 and 10.2, require certain security records to be kept on board the vessel and retained for a period specified by the Administration. The Coast Guard would require all vessels to keep these records for at least 2 years and make them available for review during inspections or boardings. Presently, there are no requirements for the format of these records. However, their review would have to provide an inspector with the appropriate information to ensure the vessel's security plan is properly implemented. The Coast Guard does not intend to prescribe where these records are kept nor their format.

• Do you have a suggestion or best practice related to recordkeeping you believe the Coast Guard should require?

• Do you wish the Coast Guard to prescribe a format for these records?

20. *Company Security Officer Designation.* The ISPS Code (part A, section 11) as well as the MTSA (46 U.S.C. section 70103), specify that the Company must designate a Company Security Officer (CSO) and details their duties, responsibilities, and competencies (part A, sections 13.1 and 13.5 and part B, paragraph 13.1). In addition, CSOs are required to participate in security exercises as discussed in part B, paragraph 13.7 of the ISPS Code. The Coast Guard intends to include these requirements for all vessels indicated in the section titled ''Who should attend the public meetings?'' The Coast Guard recognizes that many security programs are already in place and have personnel working in the maritime community with the experience and the competencies reflected in the ISPS Code. At this time, the Coast Guard does not intend to certify courses as meeting the standards of the ISPS Code or require any type of license for a CSO. Rather, the Coast Guard intends to accept Company certification for these officers indicating that they have the knowledge, experience and competencies as required by the ISPS Code. The Coast Guard also intends to have CSOs or Companies provide proof that CSOs have participated in annual exercises, and records of that participation would have to be retained for 2 years.

• Do you believe the Coast Guard should require CSOs to attend training?

• Do you believe Company certification is appropriate or do you have a suggestion for an alternate verification for the CSO qualifications?

• Do you believe proof of participation in annual exercises should be retained for 2 years? If not, how long? Why?

21. *Vessel Security Officer Designation.* The ISPS Code (part A, section 11) as well as the MTSA (46 U.S.C. section 70103), specify that each vessel shall designate a Vessel Security Officer (VSO) and details their duties, responsibilities, and competencies (part A, section 13.2 and part B, paragraphs 13.1 and 13.2). In addition, VSOs are required to participate, if available, in security exercises as discussed in part B, paragraph 13.7 of the ISPS Code. Since many security programs and personnel are already working in the maritime community and have the competencies reflected in the ISPS Code, at this time, the Coast Guard does not intend to certify courses as meeting the standards of the ISPS Code or require any type of license for a VSO. Rather, the Coast Guard intends to accept Company certification for these officers indicating that they have the knowledge, experience and competencies as required by the ISPS Code. The Coast Guard is also considering alternatives for some vessel classes, such as barges, to allow a Company Security Officer in lieu of a VSO with duties that encompass both. It should be noted that there is no prohibition to the master also being designated as the VSO although on large vessels, this may be impractical.

• Do you believe the Coast Guard should require VSOs to attend formal training?

• Do you believe Company certification is appropriate or do you have a suggestion for an alternate verification for the VSO qualifications?

• Do you have any suggestions for certain classes of vessels being allowed an alternative to a VSO? If so, how or who would you make responsible for the VSO duties?

22. *Security training and drill requirements for vessel personnel.* The ISPS Code (part A, sections 13.3 and 13.4, and part B, paragraph 13.3) as well as section 109 of the MTSA, specify that vessel personnel having specific security duties and responsibilities be trained in their duties and have the knowledge needed to carry them out. Part B, paragraph 13.4 also requires a basic security knowledge and competency for all personnel employed on the vessel to ensure security awareness. In addition, vessel personnel are required to participate in security drills as discussed in part A, section 13.4, and part B, paragraphs 13.5 and 13.6 of the ISPS Code. The Coast Guard intends to allow vessel masters, VSOs, or CSOs to certify that vessel personnel have received the training required to fulfill their security duties, if applicable or the general security awareness training required for all personnel. A record (such as a training record) kept on board the vessel or any other form of acknowledgment (such as a log entry) would be sufficient for this purpose. A record of drills would also be required and is discussed in paragraph number 19 of this appendix.

• Do you believe the Coast Guard should require vessel personnel to attend formal training?

• Do you believe prescribing the format for training records would assist you in meeting these requirements?

23. *Certification for vessels.* The ISPS Code, parts A and B, section 19, requires Administrations to verify and certify by issuing an International Ship Security Certificate (ISSC) that those vessels subject to SOLAS comply with the applicable requirements of SOLAS chapter XI–2 and the ISPS Code. The Coast Guard intends to amend 46 CFR 2.01–25 by adding new paragraph (a)(viii) referring to ISSC. Compliance with regulations for domestic vessels will be verified during issuance and renewal of Certification of Inspection. Issuance or endorsement of the Certificate of Inspection (COI) would be contingent upon a vessel's compliance with these regulations. Vessels that are not required to be inspected by the Coast Guard under title 46 of the U.S.C, would be required to have proof on board the vessel certifying that the vessel meets these requirements and that they are implementing their VSP.

• Do you have any other suggestions for verification and certification that vessels comply with security regulations?

Facility Security Provisions

24. *Incorporation by Reference.* The Coast Guard is considering accepting national, State, and industry security standards to meet certain security requirement(s), as appropriate, *e.g.*, a facility security plan that incorporates lighting or fencing equipment that meets an accepted national standard.

• Do you know of a national, state, and industry standard that could be used in the marine environment?

• If a national, state, and industry standard were available, would you consider implementing it? If so, why?

25. *Facility Security Requirement.* The SOLAS amendments (chapter XI–2, regulation 10) and ISPS Code parts A and B, section 14 require that facilities act upon security levels set by Contracting Governments through appropriate protective measures by carrying out certain specified activities (part A, section 14.2). The MTSA requires the Coast Guard to consider the types facilities that are likely to be involved in a transportation security incident. For the purposes of this notice and the Coast Guard discussion in Appendix C, cost impact was only developed for those facilities listed in NVIC 11–02 and also listed in the section titled, ''Who should attend the public meetings?'' The Coast Guard also recognizes that many other facilities could benefit from compliance with these requirements therefore, the Coast Guard is considering extending them to all facilities, including dry bulk or general cargo facilities or ship repair facilities.

• Do you believe that the application of the requirements in part A, section 14–18 of the ISPS Code for the facilities indicated in the section titled ''Who should attend the public meetings?'' is appropriate? If not, why?

• Do you believe these security measures should apply to other facilities, not already listed?

• Do you believe that these activities and protective measures adequately address the security of a facility? If no, why?

• Do you have a suggestion for appropriate security measures that a facility can take to meet these requirements that are not already listed in part B, paragraphs 16.1 through 16.63?

26. *Facility Security Assessments (FSA) Requirement.* The ISPS Code parts A and B, section 15, as well as the MTSA (46 U.S.C. sections 70102 and 70116), require that a facility perform a FSA that includes an on-scene security survey and provides details of those elements that the FSA will include. The FSA is integral in developing and updating the Facility Security Plan. The Coast Guard is considering requiring FSAs for all facilities indicated in the section titled ''Who should attend the public meetings?'' of the notice. The Coast Guard intends to review these assessments when Facility Security Plans are submitted for approval.

• Do you have any suggestions on how to best conduct a FSA and review the results? Is there a current practice to meet this requirement?

• Are there any appropriate alternatives to a FSA that could be considered?

27. *Facility Security Plans.* The ISPS Code parts A and B, section 16, as well as the MTSA (46 U.S.C. sections 70103 and 70104), require that FSPs be developed taking into consideration the facility security assessment, make provisions for the three MARSEC Levels, and be reviewed and updated. The Coast Guard is considering requirements that incorporate all of these requirements and also would provide an outline for the FSP. The outline would follow or be cross-referenced using a similar approach as done in 33 CFR part 155.1030.

• Do you have any suggestions on additional items the FSP should address?

• Do you have a suggestion or a best practice to meet this FSP requirement?

• Would you find an outline a valuable aid to meeting these requirements? If not, why?

28. *Submission of Facility Security Plans for approval.* The ISPS Code (part A, section 16) requires facilities to develop and maintain a facility security plan (FSP) that is approved by the Contracting Government in whose territory the facility is located. The Coast Guard intends to review and approve FSPs at the COTP level. The submission format would be similar to that already required in 33 CFR 120.305. The Coast Guard is considering the submission of a single FSP for companies that own and operate both the facility and vessels that call on that facility.

• Do you have suggestions on how these approvals could be streamlined or an alternative process?

• Do you believe the submission format proposed by the Coast Guard is appropriate?

29. *Facility Security Recordkeeping.* Although records for facilities are not specifically addressed in the ISPS Code, the Coast Guard intends to require certain security records be kept for certain security related activities and incidents and retained for a period specified by the Coast Guard. The Coast Guard would require these records to be kept for at least 2 years and will review them during inspections. Presently, there are no requirements for the format of these records. However, their review would have to provide an inspector with the appropriate information to ensure the facility's security plan is properly implemented. The Coast Guard does not intend to prescribe where these records are kept nor their format.

• Do you have a suggestion or best practice related to recordkeeping you believe the Coast Guard should require?

• Do you wish the Coast Guard to prescribe a format for these records?

30. *Facility Security Officer.* The ISPS Code, parts A and B, section 17, as well as the MTSA (46 U.S.C. section 70103), specify that the each facility shall designate a Facility Security Officer (FSO) and details their duties, responsibilities, and competencies (part A, section 17.2 and part B, paragraphs 17.1 and 17.2). In addition, FSOs are required to participate in security exercises as discussed in part B, paragraph 18.6 of the ISPS Code. Since many security programs and personnel are already working in the maritime community and have the competencies reflected in the ISPS Code, at this time, the Coast Guard does not intend to certify courses as meeting the standards of the ISPS Code or require any type of license for a FSO. Rather, the Coast Guard intends to accept Company certification for these officers indicating that they have the knowledge, experience and competencies as required by the ISPS Code. It should be noted that there is no prohibition of the FSO having a collateral duty provided the individual is able to perform the duties and responsibilities required by the ISPS Code and the approved FSP.

• Do you believe the Coast Guard should require FSOs to attend training?

• Do you believe Company certification is appropriate or do you have a suggestion for an alternate verification for the FSO qualifications?

• Would there be a case where a FSO may perform their duties for more than one facility?

• Do you believe proof of participation in annual exercises should be retained for 2 years? If not, how long? Why?

31. *Training, drills and exercises on Facility Security.* The ISPS Code, parts A and B, section 18, as well as section 109 of the MTSA, specify that facility personnel having specific security duties and responsibilities be trained in their duties and have the knowledge needed to carry them out. Part B, paragraph 18.3 also requires a basic security knowledge and competency for all personnel employed at the facility to ensure security awareness. In addition, facility personnel are required to participate in security drills as discussed in part A, section 18 and part B, paragraphs 18.4 and 18.6 of the ISPS Code. The Coast Guard intends to allow FSOs to certify that facility personnel have received the training required to fulfill their security duties, if applicable or the general security awareness training required for all personnel. A record (*e.g.*, a training record) kept or any other form of acknowledgment (*e.g.*, a log entry) would be sufficient for this purpose. A record of drills would also be required and is discussed in item number 28 of this notice.

• Do you believe the Coast Guard should require facility personnel to attend training?

• Do you believe prescribing the format for training records would assist you in meeting these requirements?

32. *Certification for facilities.* The ISPS Code does not specifically require that each facility be certified. The Coast Guard would review and approve the FSP and would require companies to certify their compliance with these requirements and that each facility has drafted and implemented an FSP. The Coast Guard would inspect facilities to verify compliance.

• Do you have any suggestions for verification and certification that facilities comply with security regulations?

• Do you believe the Coast Guard should allow companies to certify their facilities?

Other Security Provisions

33. *Permanent hull marking requirement.* The SOLAS amendments created a new regulation in chapter XI–1 (regulation 3) that requires vessels to have their identification number permanently marked on their hull and in an easily accessible place on the transverse bulkhead of the machinery space or on another suitable interior location, as specified. At this time, the Coast Guard does not intend to extend the application of this requirement to vessels limited to domestic

voyages. However, all vessels subject to SOLAS and conducting international voyages, including towing vessels and offshore supply vessels whose international tonnage is greater than 300 gross tons (gt), would be required to comply with this regulation when the SOLAS amendments enter into force.

• Do you believe the Coast Guard should extend this requirement to vessels limited to domestic voyages? If so, why?

34. *Continuous Synopsis Record requirement.* The SOLAS amendments created a new regulation in chapter XI–1 (regulation 5) that requires vessels to maintain and update a Continuous Synopsis Record, to be kept on board, that contains information such as the name of the flag Administration, the date of the vessel's registry, the vessel's identification number, *etc.* At this time, the Coast Guard does not intend to extend the application of this requirement to vessels limited to domestic voyages. However, all vessels subject to SOLAS and conducting international voyages, including towing vessels and offshore supply vessels whose international tonnage is greater than 500 gt would be required to comply with this regulation when the SOLAS amendments enter into force.

• Do you believe the Coast Guard should extend this requirement to vessels limited to domestic voyages? If so, why?

35. *Security alert system requirement.* The SOLAS amendments created a new regulation in chapter XI–2 (regulation 6) that requires vessels to have a security alert system. For the purposes of this notice and the Coast Guard discussion in Appendix C, cost impact was only developed for this requirement to those vessels required to meet SOLAS chapter XI–2. However, the Coast Guard is considering applying the requirement to vessels limited to domestic voyages that are engaged in the transport of certain dangerous cargos. The Coast Guard also recognizes that many other vessels could benefit from compliance with this requirement such as certain passenger vessels or towing vessels.

• Do you believe this requirement would benefit vessels limited to domestic voyages engaged in the transport of certain dangerous cargos?

• Do you believe the Coast Guard should extend this requirement to other vessels limited to domestic voyages? If so, why?

36. *Fixed and floating platforms requirements.* The International Maritime Organization issued a resolution titled, ''Establishment of Appropriate Measures to Enhance the Security of Ships, Port Facilities, Mobile Offshore Drilling Units on Location and Fixed and Floating Platforms Not Covered by Chapter XI–2 of the 1974 SOLAS Convention'' which was adopted by the Conference on Maritime Security as Resolution 7 on December 12, 2002. This resolution encourages Contracting Governments to consider security requirements for these maritime operators and platforms. The Coast Guard is considering including these entities in its Port Security Plan regime. We are also working with the offshore industry to develop security standards that would provide a level of security equivalent to that being established for land based facilities, yet tailored to the unique offshore operating environment. Once acceptable offshore industry security standards are determined, such standards may be incorporated into regulations as part of a separate rulemaking procedure.

• Do you believe the Coast Guard should extend security requirements to offshore platforms? If so, why?

37. *Seafarers' identification criteria requirements.* The MTSA (46 U.S.C. section 70111) requires the Secretary to establish enhanced crewmember identification. In addition, section 103 of the MTSA encourages the Secretary to negotiate an agreement for an international system of identification for seafarers. In March 2002, the Governing Body of the International Labour Organization (ILO) agreed to have the International Labour Conference consider amendments to the Seafarers' Identity Documents Convention, 1958 (No. 108) regarding seafarer identification at its 91st session in June 2003. In support of this effort, the International Maritime Organization issued a resolution titled, ''Enhancement of Security in Co-operation with the International Labour Organization'' which was adopted by the Conference on Maritime Security as Resolution 8 on December 12, 2002. The Coast Guard has been working with the Immigration and Naturalization Service, Department of State, Maritime Administration, TSA, and others to support the work of ILO. The U.S. intends to await the outcome of the June 2003 ILO conference prior to developing further seafarer identification domestic policy.

In addition to the above, the MTSA (46 U.S.C. section 70105) requires the Secretary to develop and implement a Transportation Security Card to control access to secure areas on a vessel or facility. The U.S. is moving this requirement forward through its work on a Transportation Worker Identification Credential System (TWIC). Pilot testing of the TWIC is scheduled for one east regional and one west regional port, each in communication with a TSA central control point. This pilot project allows the TSA to leverage key regional stakeholders and analyze life cycle and cost benefits, as well as the performance of various forms of identification technologies.

Recognizing that the implementation of the TWIC and the ILO efforts on seafarers identification involve substantial negotiation and development, the Coast Guard therefore intends to continue its use of the criteria it set out in its clarification of regulations notice entitled ''Maritime Identification Credentials'' published in the **Federal Register** (67 FR 51082, August 7, 2002). This document can be viewed on the DOT Document Management System at *http://dms.dot.gov* under Docket# USCG–2002–12917.

• Do you believe the Coast Guard should amend its policy notice to capture additional forms of identification? If so, why?

38. *Advanced notice of arrival (ANOA) requirements.* The Coast Guard has a notice of proposed rulemaking entitled ''Notification of Arrival in U.S. Ports'' published in the **Federal Register** (67 FR 41659, June 19, 2002). This document can be viewed on the DOT Document Management System at *http://dms.dot.gov* under Docket # USCG–2002–11865–1. The comment period for that rulemaking has closed. The Coast Guard does not intend to add any additional notification requirements to that rulemaking.

However, the SOLAS amendments and the ISPS Code contain several information-related requirements that are not currently part of the ANOA. The Coast Guard is considering expanding its advanced notice of arrival information to incorporate these new international requirements (SOLAS chapter XI–2, regulation 9). We are also considering requiring foreign flag vessels to provide advance notification on their compliance with part B of the ISPS Code. In addition, the Coast Guard is considering further expanding the notice requirements on the Mississippi River and its tributaries above mile marker 235 for certain barges carrying certain dangerous cargoes.

• Having reviewed the SOLAS amendments and the ISPS Code, what additional information do you believe should be provided by vessels prior to entering our ports?

• Do you believe further ANOA requirements are appropriate for the Mississippi River and its tributaries above mile marker 235?

39. *Foreign Port Assessments.* Section 102 of the MTSA (46 U.S.C. section 70108) requires the Secretary to assess the effectiveness of antiterrorism measures maintained at a foreign port that serves vessels departing on a voyage to the U.S. or any other port that the Secretary believes poses a security risk to international maritime commerce. In general, the Coast Guard intends to accept a foreign government's approval of the respective port facility security plans, thereby attesting to their compliance with SOLAS and the ISPS Code, to provide the initial assessment of that foreign port's antiterrorism security. However, the Coast Guard in making assessments under the MTSA will also consider any other relevant information and possibly conduct audits. No regulations are required to implement this provision of the MTSA because these assessments are an internal deliberative matter and further related to foreign relations. However, the Coast Guard would appreciate public comment on the following:

• Should the Coast Guard accept approval of foreign port facility security plans as a preliminary indication that the foreign port is maintaining effective antiterrorism measures?

• What factors do you believe the Coast Guard should consider in assessing the effectiveness of antiterrorism measures at foreign ports?

40. *Automatic Identification System (AIS) requirements.* Regulation V/19 of SOLAS sets forth the international requirements for the carriage of automatic identification systems (AIS), including an implementation schedule that was recently accelerated by the newly adopted amendments to SOLAS. Domestically, section 102 of the MTSA (46 U.S.C. section 70114) gives the Secretary additional broad discretion to require AIS on

any vessel operating on the navigable waters of the United States if necessary for the safety of navigation. In this regard, the Coast Guard considers that requiring AIS for security purposes is an essential element in ensuring the safety of navigation. At a minimum, the MTSA specifically requires the following vessels to have AIS:

(a) A self-propelled commercial vessel of at least 65 feet overall in length;

(b) A vessel carrying more than a number of passengers for hire determined by the Secretary;

(c) A towing vessel of more than 26 feet overall in length and 600 horsepower;

(d) Any other vessel for which the Secretary decides that an automatic identification system is necessary for the safe navigation of the vessel.

The Secretary may exempt or waive any such vessel from this requirement if AIS is not necessary for the safety of navigation. The implementation dates for AIS in the MTSA align with the SOLAS requirements.

As reflected in the Department of Transportation's Fall 2002 Unified Agenda (67 FR 74853, December 9, 2002), a separate AIS notice of proposed rulemaking should be published in the near future. Therefore, it is not the Coast Guard's intent to interfere with that rulemaking. However, because recent events indicate that smaller vessels may be used as weapons against maritime transportation, the Coast Guard is requesting limited public comment related to the MTSA requirements as follows:

- Should any of the vessels listed in the MTSA be exempted from carrying AIS because no security benefit would be derived from such a requirement?
- Beyond the SOLAS requirements and the vessels specifically listed in the MTSA, what other vessels should be required to carry AIS for security purposes?
- Are there any particular navigable waters of the U.S. where the AIS carriage requirement should be waived because no security benefit would be derived from the requirement?

Preliminary Cost Analysis

The Coast Guard is seeking public comment on the following assumptions used in the preliminary cost analysis:

- The loaded cost of a full-time employee designated to be the Company Security Officer or a Facility Security Officer would be $150,000 per year.
- Some vessel and facility owners would designate the Company Security Officer and Facility Security Officer duties to an existing employee, and these collateral duties would take about 25 percent of the employee's time.
- Security functions aboard vessels would not require additional manning.
- Security functions for facilities would require additional security guards with a loaded rate of $40,000 per year.
- The types of equipment vessels or facilities would install are an accurate representation of the equipment needs owners and operators can expect to face.

In addition, we are seeking public comment on the costs vessel and facility owners or operators would incur in the event MARSEC levels 2 or 3 are implemented.

Finally, we are seeking public comment on how these requirements will economically impact small businesses, Indian tribal governments, as well as comment on anticipated energy impacts.

Appendix B—SOLAS Amendments and ISPS Code

Note: The text in this appendix is excerpted from IMO documents SOLAS/CONF.5/DC/1, SOLAS/CONF.5/DC/2, and SOLAS/CONF.5/DC/2/Add.1, and has been edited to reflect the final decisions and other editorial corrections reflected in SOLAS/CONF.5/33.

Amendments to the International Convention for the Safety of Life at Sea, 1974 as Amended

Chapter V—Safety of Navigation

Regulation 19—Carriage Requirements for Shipborne Navigational Systems and Equipment

1 The existing subparagraphs .4, .5 and .6 of paragraph 2.4.2 are replaced by the following:

''.4 In the case of ships, other than passenger ships and tankers, of 300 gross tonnage and upwards but less than 50,000 gross tonnage, not later than the first safety equipment survey [1] after 1 July 2004 or by 31 December 2004, whichever occurs earlier; and''

2 The following new sentence is added at the end of the existing subparagraph .7 of paragraph 2.4:

''Ships fitted with AIS shall maintain AIS in operation at all times except where international agreements, rules or standards provide for the protection of navigational information.''

Chapter XI—Special Measures to Enhance Maritime Safety

3 The existing chapter XI is renumbered as chapter XI–1.

Regulation 3—Ship identification number 4 The following text is inserted after the title of the regulation:

''(Paragraphs 4 and 5 apply to all ships to which this regulation applies. For ships constructed before 1 July 2004, the requirements of paragraphs 4 and 5 shall be complied with not later than the first scheduled dry-docking of the ship after 1 July 2004)''

5 The existing paragraph 4 is deleted and the following new text is inserted:

''4 The ship's identification number shall be permanently marked:

.1 In a visible place either on the stern of the ship or on either side of the hull, amidships port and starboard, above the deepest assigned load line or either side of the superstructure, port and starboard or on the front of the superstructure or, in the case of passenger ships, on a horizontal surface visible from the air; and

.2 In an easily accessible place either on one of the end transverse bulkheads of the machinery spaces, as defined in regulation II–2/3.30, or on one of the hatchways or, in the case of tankers, in the pump-room or, in the case of ships with ro-ro spaces, as defined in regulation II–2/3.41, on one of the end transverse bulkheads of the ro-ro spaces.

5.1 The permanent marking shall be plainly visible, clear of any other markings on the hull and shall be painted in a contrasting colour.

5.2 The permanent marking referred to in paragraph 4.1 shall be not less than 200 mm in height. The permanent marking referred to in paragraph 4.2 shall not be less than 100 mm in height. The width of the marks shall be proportionate to the height.

5.3 The permanent marking may be made by raised lettering or by cutting it in or by centre punching it or by any other equivalent method of marking the ship identification number which ensures that the marking is not easily expunged.

5.4 On ships constructed of material other than steel or metal, the Administration shall approve the method of marking the ship identification number.''

6 The following new regulation 5 is added after the existing regulation 4:

Regulation 5—Continuous Synopsis Record

1 Every ship to which chapter I applies shall be issued with a Continuous Synopsis Record.

2.1 The Continuous Synopsis Record is intended to provide an on-board record of the history of the ship with respect to the information recorded therein.

2.2 For ships constructed before July 1, 2004, the Continuous Synopsis Record shall, at least, provide the history of the ship as from July 1, 2004.

3 The Continuous Synopsis Record shall be issued by the Administration to each ship that is entitled to fly its flag and it shall contain at least, the following information:

.1 The name of the State whose flag the ship is entitled to fly;

.2 The date on which the ship was registered with that State;

.3 The ship's identification number in accordance with regulation 3;

.4 The name of the ship;

.5 The port at which the ship is registered;

.6 The name of the registered owner(s) and their registered address(es);

.7 The name of the registered bareboat charterer(s) and their registered address(es), if applicable;

.8 The name of the Company, as defined in regulation IX/1, its registered address and the address(es) from where it carries out the safety management activities;

.9 The name of all classification society(ies) with which the ship is classed;

.10 The name of the Administration or of the Contracting Government or of the recognized organization which has issued the Document of Compliance (or the Interim Document of Compliance), specified in the ISM Code as defined in regulation IX/1, to the Company operating the ship and the name of the body which has carried out the audit on the basis of which the document

[1] The first safety equipment survey means the first annual survey, the first periodical survey or the first renewal survey for safety equipment, whichever is due first after July 1, 2004 and, in addition, in the case of ships under construction, the initial survey.

was issued, if other than that issuing the document;

.11 The name of the Administration or of the Contracting Government or of the recognized organization that has issued the Safety Management Certificate (or the Interim Safety Management Certificate), specified in the ISM Code as defined in regulation IX/1, to the ship and the name of the body which has carried out the audit on the basis of which the certificate was issued, if other than that issuing the certificate;

.12 The name of the Administration or of the Contracting Government or of the recognized security organization that has issued the International Ship Security Certificate (or an Interim International Ship Security Certificate), specified in part A of the ISPS Code as defined in regulation XI–2/1, to the ship and the name of the body which has carried out the verification on the basis of which the certificate was issued, if other than that issuing the certificate; and

.13 The date on which the ship ceased to be registered with that State.

4.1 Any changes relating to the entries referred to in paragraphs 3.4 to 3.12 shall be recorded in the Continuous Synopsis Record so as to provide updated and current information together with the history of the changes.

4.2 In case of any changes relating to the entries referred to in paragraph 4.1, the Administration shall issue, as soon as is practically possible but not later than three months from the date of the change, to the ships entitled to fly its flag either a revised and updated version of the Continuous Synopsis Record or appropriate amendments thereto.

4.3 In case of any changes relating to the entries referred to in paragraph 4.1, the Administration, pending the issue of a revised and updated version of the Continuous Synopsis Record, shall authorise and require either the Company as defined in regulation IX/1 or the master of the ship to amend the Continuous Synopsis Record to reflect the changes. In such cases, after the Continuous Synopsis Record has been amended the Company shall, without delay, inform the Administration accordingly.

5.1 The Continuous Synopsis Record shall be in English, French or Spanish language. Additionally, a translation of the Continuous Synopsis Record into the official language or languages of the Administration may be provided.

5.2 The Continuous Synopsis Record shall be in the format developed by the Organization and shall be maintained in accordance with guidelines developed by the Organization. Any previous entries in the Continuous Synopsis Record shall not be modified, deleted or, in any way, erased or defaced.

6 Whenever a ship is transferred to the flag of another State or the ship is sold to another owner (or is taken over by another bareboat charterer) or another Company assumes the responsibility for the operation of the ship, the Continuous Synopsis Record shall be left on board.

7 When a ship is to be transferred to the flag of another State, the Company shall notify the Administration of the name of the State under whose flag the ship is to be transferred so as to enable the Administration to forward to that State a copy of the Continuous Synopsis Record covering the period during which the ship was under their jurisdiction.

8 When a ship is transferred to the flag of another State the Government of which is a Contracting Government, the Contracting Government of the State whose flag the ship was flying hitherto shall transmit to the Administration as soon as possible after the transfer takes place a copy of the relevant Continuous Synopsis Record covering the period during which the ship was under their jurisdiction together with any Continuous Synopsis Records previous issued to the ship by other States.

9 When a ship is transferred to the flag of another State, the Administration shall append the previous Continuous Synopsis Records to the Continuous Synopsis Record the Administration will issue to the ship so to provide the continuous history record intended by this regulation.

10 The Continuous Synopsis Record shall be kept on board the ship and shall be available for inspection at all times.''

7 The following new chapter XI–2 is inserted after the renumbered chapter XI–1:

Chapter XI–2—Special Measures to Enhance Maritime Security

Regulation 1—Definitions

1 For the purpose of this chapter, unless expressly provided otherwise:

.1 Bulk carrier means a bulk carrier as defined in regulation IX/1.6.

.2 Chemical tanker means a chemical tanker as defined in regulation VII/8.2.

.3 Gas carrier means a gas carrier as defined in regulation VII/11.2.

.4 High-speed craft means a craft as defined in regulation X/1.2.

.5 Mobile offshore drilling unit means a mechanically propelled mobile offshore drilling unit, as defined in regulation IX/1, not on location.

.6 Oil tanker means an oil tanker as defined in regulation II–1/2.12.

.7 Company means a Company as defined in regulation IX/1.

.8 Ship/port interface means the interactions that occur when a ship is directly and immediately affected by actions involving the movement of persons, goods or the provisions of port services to or from the ship.

.9 Port facility is a location, as determined by the Contracting Government or by the Designated Authority, where the ship/port interface takes place. This includes areas such as anchorages, waiting berths and approaches from seaward, as appropriate.

.10 Ship to ship activity means any activity not related to a port facility that involves the transfer of goods or persons from one ship to another.

.11 Designated Authority means the organization(s) or the administration(s) identified, within the Contracting Government, as responsible for ensuring the implementation of the provisions of this chapter pertaining to port facility security and ship/port interface, from the point of view of the port facility.

.12 International Ship and Port Facility Security (ISPS) Code means the International Code for the Security of Ships and of Port Facilities consisting of part A (the provisions of which shall be treated as mandatory) and part B (the provisions of which shall be treated as recommendatory), as adopted, on December 12, 2002, by resolution 2 of the Conference of Contracting Governments to the International Convention for the Safety of Life at Sea, 1974 as may be amended by the Organization, provided that:

.1 Amendments to part A of the Code are adopted, brought into force and take effect in accordance with article VIII of the present Convention concerning the amendment procedures applicable to the Annex other than chapter I; and

.2 Amendments to part B of the Code are adopted by the Maritime Safety Committee in accordance with its Rules of Procedure.

.13 Security incident means any suspicious act or circumstance threatening the security of a ship, including a mobile offshore drilling unit and a high speed craft, or of a port facility or of any ship/port interface or any ship to ship activity.

.14 Security level means the qualification of the degree of risk that a security incident will be attempted or will occur.

.15 Declaration of security means an agreement reached between a ship and either a port facility or another ship with which it interfaces specifying the security measures each will implement.

.16 Recognized security organization means an organization with appropriate expertise in security matters and with appropriate knowledge of ship and port operations authorized to carry out an assessment, or a verification, or an approval or a certification activity, required by this chapter or by part A of the ISPS Code.

2 The term ''ship'', when used in regulations 3 to 13, includes mobile offshore drilling units and high-speed craft.

3 The term ''all ships'', when used in this chapter, means any ship to which this chapter applies.

4 The term ''Contracting Government'', when used in regulations 3, 4, 7, and 10 to 13, includes a reference to the ''Designated Authority''.

Regulation 2—Application

1 This chapter applies to:

.1 The following types of ships engaged on international voyages:

.1.1 Passenger ships, including high-speed passenger craft;

.1.2 Cargo ships, including high-speed craft, of 500 gross tonnage and upwards; and

.1.3 Mobile offshore drilling units; and

.2 Port facilities serving such ships engaged on international voyages.

.2 Notwithstanding the provisions of paragraph 1.2, Contracting Governments shall decide the extent of application of this chapter and of the relevant sections of part A of the ISPS Code to those port facilities within their territory which, although used primarily by ships not engaged on international voyages, are required, occasionally, to serve ships arriving or departing on an international voyage.

2.1 Contracting Governments shall base their decisions, under paragraph 2, on a port

facility security assessment carried out in accordance with the provisions of part A of the ISPS Code.

2.2 Any decision which a Contracting Government makes, under paragraph 2, shall not compromise the level of security intended to be achieved by this chapter or by part A of the ISPS Code.

3 This chapter does not apply to warships, naval auxiliaries or other ships owned or operated by a Contracting Government and used only on Government non-commercial service.

4 Nothing in this chapter shall prejudice the rights or obligations of States under international law.

Regulation 3—Obligations of Contracting Governments With Respect to Security

1 Administrations shall set security levels and ensure the provision of security level information to ships entitled to fly their flag. When changes in security level occur, security level information shall be updated as the circumstance dictates.

2 Contracting Governments shall set security levels and ensure the provision of security level information to port facilities within their territory, and to ships prior to entering a port, or whilst in a port, within their territory. When changes in security level occur, security level information shall be updated as the circumstance dictates.

Regulation 4—Requirements for Companies and Ships

1 Companies shall comply with the relevant requirements of this chapter and of part A of the ISPS Code, taking into account the guidance given in part B of the ISPS Code.

2 Ships shall comply with the relevant requirements of this chapter and of part A of the ISPS Code, taking into account the guidance given in part B of the ISPS Code, and such compliance shall be verified and certified as provided for in part A of the ISPS Code.

3 Prior to entering a port, or whilst in a port, within the territory of a Contracting Government, a ship shall comply with the requirements for the security level set by that Contracting Government, if such security level is higher than the security level set by the Administration for that ship.

4 Ships shall respond without undue delay to any change to a higher security level.

5 Where a ship is not in compliance with the requirements of this chapter or of part A of the ISPS Code, or cannot comply with the requirements of the security level set by the Administration or by another Contracting Government and applicable to that ship, then the ship shall notify the appropriate competent authority prior to conducting any ship/port interface or prior to entry into port, whichever occurs earlier.

Regulation 5—Specific Responsibility of Companies

The Company shall ensure that the master has available on board, at all times, information through which officers duly authorised by a Contracting Government can establish:

.1 Who is responsible for appointing the members of the crew or other persons currently employed or engaged on board the ship in any capacity on the business of that ship;

.2 Who is responsible for deciding the employment of the ship; and

.3 In cases where the ship is employed under the terms of charter party(ies), who are the parties to such charter party(ies).

Regulation 6—Ship Security Alert System

1 All ships shall be provided with a ship security alert system, as follows:

.1 Ships constructed on or after July 1, 2004;

.2 Passenger ships, including high-speed passenger craft, constructed before July 1, 2004, not later than the first survey of the radio installation after July 1, 2004;

.3 Oil tankers, chemical tankers, gas carriers, bulk carriers and cargo high speed craft, of 500 gross tonnage and upwards constructed before July 1, 2004, not later than the first survey of the radio installation after July 1, 2004; and

.4 Other cargo ships of 500 gross tonnage and upward and mobile offshore drilling units constructed before July 1, 2004, not later than the first survey of the radio installation after July 1, 2006.

2 The ship security alert system, when activated, shall:

.1 Initiate and transmit a ship-to-shore security alert to a competent authority designated by the Administration, which in these circumstances may include the Company, identifying the ship, its location and indicating that the security of the ship is under threat or it has been compromised;

.2 Not send the ship security alert to any other ships;

.3 Not raise any alarm on-board the ship; and

.4 Continue the ship security alert until deactivated and/or reset.

3 The ship security alert system shall:

.1 Be capable of being activated from the navigation bridge and in at least one other location; and

.2 Conform to performance standards not inferior to those adopted by the Organization.

4 The ship security alert system activation points shall be designed so as to prevent the inadvertent initiation of the ship security alert.

5 The requirement for a ship security alert system may be complied with by using the radio installation fitted for compliance with the requirements of chapter IV, provided all requirements of this regulation are complied with.

6 When an Administration receives notification of a ship security alert, that Administration shall immediately notify the State(s) in the vicinity of which the ship is presently operating.

7 When a Contracting Government receives notification of a ship security alert from a ship which is not entitled to fly its flag, that Contracting Government shall immediately notify the relevant Administration and, if appropriate, the State(s) in the vicinity of which the ship is presently operating.

Regulation 7—Threats to Ships

1 Contracting Governments shall set security levels and ensure the provision of security level information to ships operating in their territorial sea or having communicated an intention to enter their territorial sea.

2 Contracting Governments shall provide a point of contact through which such ships can request advice or assistance and to which such ships can report any security concerns about other ships, movements or communications.

3 Where a risk of attack has been identified, the Contracting Government concerned shall advise the ships concerned and their Administrations of:

.1 The current security level;

.2 Any security measures that should be put in place by the ships concerned to protect themselves from attack, in accordance with the provisions of part A of the ISPS Code; and

.3 Security measures that the coastal State has decided to put in place, as appropriate.

Regulation 8—Master's Discretion for Ship Safety and Security

1 The master shall not be constrained by the Company, the charterer or any other person from taking or executing any decision which, in the professional judgement of the master, is necessary to maintain the safety and security of the ship. This includes denial of access to persons (except those identified as duly authorized by a Contracting Government) or their effects and refusal to load cargo, including containers or other closed cargo transport units.

2 If, in the professional judgement of the master, a conflict between any safety and security requirements applicable to the ship arises during its operations, the master shall give effect to those requirements necessary to maintain the safety of the ship. In such cases, the master may implement temporary security measures and shall forthwith inform the Administration and, if appropriate, the Contracting Government in whose port the ship is operating or intends to enter. Any such temporary security measures under this regulation shall, to the highest possible degree, be commensurate with the prevailing security level. When such cases are identified, the Administration shall ensure that such conflicts are resolved and that the possibility of recurrence is minimised.

Regulation 9—Control and Compliance Measures

1 Control of Ships in Port.

1.1 For the purpose of this chapter, every ship to which this chapter applies is subject to control when in a port of another Contracting Government by officers duly authorised by that Government, who may be the same as those carrying out the functions of regulation I/19. Such control shall be limited to verifying that there is onboard a valid International Ship Security Certificate or a valid Interim International Ships Security Certificate issued under the provisions of part A of the ISPS Code (Certificate), which if valid shall be accepted, unless there are clear grounds for believing that the ship is not in compliance with the requirements of this chapter or part A of the ISPS Code.

1.2 When there are such clear grounds, or where no valid Certificate is produced when

required, the officers duly authorized by the Contracting Government shall impose any one or more control measures in relation to that ship as provided in paragraph 1.3. Any such measures imposed must be proportionate, taking into account the guidance given in part B of the ISPS Code.

1.3 Such control measures are as follows: inspection of the ship, delaying the ship, detention of the ship, restriction of operations including movement within the port, or expulsion of the ship from port. Such control measures may additionally or alternatively include other lesser administrative or corrective measures.

2 Ships Intending To Enter a Port of Another Contracting Government.

2.1 For the purpose of this chapter, a Contracting Government may require that ships intending to enter its ports provide the following information to officers duly authorized by that Government to ensure compliance with this chapter prior to entry into port with the aim of avoiding the need to impose control measures or steps:

.1 That the ship possesses a valid Certificate and the name of its issuing authority;

.2 The security level at which the ship is currently operating;

.3 The security level at which the ship operated in any previous port where it has conducted a ship/port interface within the timeframe specified in paragraph 2.3;

.4 Any special or additional security measures that were taken by the ship in any previous port where it has conducted a ship/port interface within the timeframe specified in paragraph 2.3;

.5 That the appropriate ship security procedures were maintained during any ship to ship activity within the timeframe specified in paragraph 2.3; or

.6 Other practical security related information (but not details of the ship security plan), taking into account the guidance given in part B of the ISPS Code.

If requested by the Contracting Government, the ship or the Company shall provide confirmation, acceptable to that Contracting Government, of the information required above.

2.2 Every ship to which this chapter applies intending to enter the port of another Contracting Government shall provide the information described in paragraph 2.1 on the request of the officers duly authorized by that Government. The master may decline to provide such information on the understanding that failure to do so may result in denial of entry into port.

2.3 The ship shall keep records of the information referred to in paragraph 2.1 for the last 10 calls at port facilities.

2.4 If, after receipt of the information described in paragraph 2.1, officers duly authorised by the Contracting Government of the port in which the ship intends to enter have clear grounds for believing that the ship is in non-compliance with the requirements of this chapter or part A of the ISPS Code, such officers shall attempt to establish communication with and between the ship and the Administration in order to rectify the non-compliance. If such communication does not result in rectification, or if such officers have clear grounds otherwise for believing that the ship is in non-compliance with the requirements of this chapter or part A of the ISPS Code, such officers may take steps in relation to that ship as provided in paragraph 2.5. Any such steps taken must be proportionate, taking into account the guidance given in part B of the ISPS Code.

2.5 Such steps are as follows:

.1 A requirement for the rectification of the non-compliance;

.2 A requirement that the ship proceed to a location specified in the territorial sea or internal waters of that Contracting Government;

.3 Inspection of the ship, if the ship is in the territorial sea of the Contracting Government the port of which the ship intends to enter; or

.4 Denial of entry into port.

Prior to initiating any such steps, the ship shall be informed by the Contracting Government of its intentions. Upon this information the master may withdraw the intention to enter that port. In such cases, this regulation shall not apply.

3 Additional provisions.

3.1 In the event:

.1 Of the imposition of a control measure, other than a lesser administrative or corrective measure, referred to in paragraph 1.3; or

.2 Any of the steps referred to in paragraph 2.5 are taken,

An officer duly authorized by the Contracting Government shall forthwith inform in writing the Administration specifying which control measures have been imposed or steps taken and the reasons thereof. The Contracting Government imposing the control measures or steps shall also notify the recognized security organization which issued the Certificate relating to the ship concerned and the Organization when any such control measures have been imposed or steps taken.

3.2 When entry into port is denied or the ship is expelled from port, the authorities of the port State should communicate the appropriate facts to the authorities of the State of the next appropriate ports of call, when known, and any other appropriate coastal States, taking into account guidelines to be developed by the Organization. Confidentiality and security of such notification shall be ensured.

3.3 Denial of entry into port, pursuant to paragraphs 2.4 and 2.5, or expulsion from port, pursuant to paragraphs 1.1 to 1.3, shall only be imposed where the officers duly authorized by the Contracting Government have clear grounds to believe that the ship poses an immediate threat to the security or safety of persons, or of ships or other property and there are no other appropriate means for removing that threat.

3.4 The control measures referred to in paragraph 1.3 and the steps referred to in paragraph 2.5 shall only be imposed, pursuant to this regulation, until the non-compliance giving rise to the control measures or steps has been corrected to the satisfaction of the Contracting Government, taking into account actions proposed by the ship or the Administration, if any.

3.5 When Contracting Governments exercise control under paragraph 1 or take steps under paragraph 2:

.1 All possible efforts shall be made to avoid a ship being unduly detained or delayed. If a ship is thereby unduly detained, or delayed, it shall be entitled to compensation for any loss or damage suffered; and

.2 Necessary access to the ship shall not be prevented for emergency or humanitarian reasons and for security purposes.

Regulation 10—Requirements for Port Facilities

1 Port facilities shall comply with the relevant requirements of this chapter and part A of the ISPS Code, taking into account the guidance given in part B of the ISPS Code.

2 Contracting Governments with a port facility or port facilities within their territory, to which this regulation applies, shall ensure that:

.1 Port facility security assessments are carried out, reviewed and approved in accordance with the provisions of part A of the ISPS Code; and

.2 Port facility security plans are developed, reviewed, approved and implemented in accordance with the provisions of part A of the ISPS Code.

3 Contracting Governments shall designate and communicate the measures required to be addressed in a port facility security plan for the various security levels, including when the submission of a Declaration of Security will be required.

Regulation 11—Alternative Security Agreements

1 Contracting Governments may, when implementing this chapter and part A of the ISPS Code, conclude in writing bilateral or multilateral agreements with other Contracting Governments on alternative security arrangements covering short international voyages on fixed routes between port facilities located within their territories.

2 Any such agreement shall not compromise the level of security of other ships or of port facilities not covered by the agreement.

3 No ship covered by such an agreement shall conduct any ship-to-ship activities with any ship not covered by the agreement.

4 Such agreements shall be reviewed periodically, taking into account the experience gained as well as any changes in the particular circumstances or the assessed threats to the security of the ships, the port facilities or the routes covered by the agreement.

Regulation 12—Equivalent Security Arrangements

1 An Administration may allow a particular ship or a group of ships entitled to fly its flag to implement other security measures equivalent to those prescribed in this chapter or in part A of the ISPS Code, provided such security measures are at least as effective as those prescribed in this chapter or part A of the ISPS Code. The Administration, which allows such security measures, shall communicate to the Organization particulars thereof.

2 When implementing this chapter and part A of the ISPS Code, a Contracting

Government may allow a particular port facility or a group of port facilities located within its territory, other than those covered by an agreement concluded under regulation 11, to implement security measures equivalent to those prescribed in this chapter or in part A of the ISPS Code, provided such security measures are at least as effective as those prescribed in this chapter or part A of the ISPS Code. The Contracting Government, which allows such security measures, shall communicate to the Organization particulars thereof.

Regulation 13—Communication of Information

1 Contracting Governments shall, not later than July 1, 2004, communicate to the Organization and shall make available for the information of Companies and ships:

.1 The names and contact details of their national authority or authorities responsible for ship and port facility security;

.2 The locations within their territory covered by the approved port facility security plans.

.3 The names and contact details of those who have been designated to be available at all times to receive and act upon the ship-to-shore security alerts, referred to in regulation 6.2.1;

.4 The names and contact details of those who have been designated to be available at all times to receive and act upon any communications from Contracting Governments exercising control and compliance measures, referred to in regulation 9.3.1; and

.5 The names and contact details of those who have been designated to be available at all times to provide advice or assistance to ships and to whom ships can report any security concerns, referred to in regulation 7.2;

And thereafter update such information as and when changes relating thereto occur. The Organisation shall circulate such particulars to other Contracting Governments for the information of their officers.

2 Contracting Governments shall, not later than July 1, 2004, communicate to the Organization the names and contact details of any recognized security organizations authorized to act on their behalf together with details of the specific responsibility and conditions of authority delegated to such organizations. Such information shall be updated as and when changes relating thereto occur. The Organisation shall circulate such particulars to other Contracting Governments for the information of their officers.

3 Contracting Governments shall, not later than July 1, 2004 communicate to the Organization a list showing the approved port facility security plans for the port facilities located within their territory together with the location or locations covered by each approved port facility security plan and the corresponding date of approval and thereafter shall further communicate when any of the following changes take place:

.1 Changes in the location or locations covered by an approved port facility security plan are to be introduced or have been introduced. In such cases the information to be communicated shall indicate the changes in the location or locations covered by the plan and the date as of which such changes are to be introduced or were implemented;

.2 An approved port facility security plan, previously included in the list submitted to the Organization, is to be withdrawn or has been withdrawn. In such cases, the information to be communicated shall indicate the date on which the withdrawal will take effect or was implemented. In these cases, the communication shall be made to the Organization as soon as is practically possible; and

.3 Additions are to be made to the list of approved port facility security plans. In such cases, the information to be communicated shall indicate the location or locations covered by the plan and the date of approval.

4 Contracting Governments shall, at five year intervals after July 1, 2004, communicate to the Organization a revised and updated list showing all the approved port facility security plans for the port facilities located within their territory together with the location or locations covered by each approved port facility security plan and the corresponding date of approval (and the date of approval of any amendments thereto) which will supersede and replace all information communicated to the Organization, pursuant to paragraph 3, during the preceding five years.

5 Contracting Governments shall communicate to the Organization information that an agreement under regulation 11 has been concluded. The information communicated shall include:

.1 The names of the Contracting Governments which have concluded the agreement;

.2 The port facilities and the fixed routes covered by the agreement;

.3 The periodicity of review of the agreement;

.4 The date of entry into force of the agreement; and

.5 Information on any consultations which have taken place with other Contracting Governments;

And thereafter shall communicate, as soon as practically possible, to the Organization information when the agreement has been amended or has ended.

6 Any Contracting Government which allows, under the provisions of regulation 12, any equivalent security arrangements with respect to a ship entitled to fly its flag or with respect to a port facility located within its territory, shall communicate to the Organization particulars thereof.

7 The Organization shall make available the information communicated under paragraph 3 to other Contracting Governments upon request.

International Code for the Security of Ships and of Port Facilities

Preamble

1 The Diplomatic Conference on Maritime Security held in London in December 2002 adopted new provisions in the International Convention for the Safety of Life at Sea, 1974 and this Code to enhance maritime security. These new requirements form the international framework through which ships and port facilities can co-operate to detect and deter acts which threaten security in the maritime transport sector.

2 Following the tragic events of September 11, 2001, the twenty-second session of the Assembly of the International Maritime Organization (the Organization), in November 2001, unanimously agreed to the development of new measures relating to the security of ships and of port facilities for adoption by a Conference of Contracting Governments to the International Convention for the Safety of Life at Sea, 1974 (known as the Diplomatic Conference on Maritime Security) in December 2002. Preparation for the Diplomatic Conference was entrusted to the Organization's Maritime Safety Committee (MSC) on the basis of submissions made by Member States, intergovernmental organizations and non-governmental organizations in consultative status with the Organization.

3 The MSC, at its first extraordinary session, held also in November 2001, in order to accelerate the development and the adoption of the appropriate security measures established an MSC Intersessional Working Group on Maritime Security. The first meeting of the MSC Intersessional Working Group on Maritime Security was held in February 2002 and the outcome of its discussions was reported to, and considered by, the seventy-fifth session of the MSC in March 2002, when an ad hoc Working Group was established to further develop the proposals made. The seventy-fifth session of the MSC considered the report of that Working Group and recommended that work should be taken forward through a further MSC Intersessional Working Group, which was held in September 2002. The seventy-sixth session of the MSC considered the outcome of the September 2002 session of the MSC Intersessional Working Group and the further work undertaken by the MSC Working Group held in conjunction with the Committee's seventy-sixth session in December 2002, immediately prior to the Diplomatic Conference and agreed the final version of the proposed texts to be considered by the Diplomatic Conference.

4 The Diplomatic Conference (December 9 to 13, 2002) also adopted amendments to the existing provisions of the International Convention for the Safety of Life at Sea, 1974 (SOLAS 74) accelerating the implementation of the requirement to fit Automatic Identification Systems and adopted new regulations in chapter XI–1 of SOLAS 74 covering marking of the Ship's Identification Number and the carriage of a Continuous Synopsis Record. The Diplomatic Conference also adopted a number of Conference Resolutions including those covering implementation and revision of this Code, Technical Co-operation, and co-operative work with the International Labour Organization and World Customs Organization. It was recognised that review and amendment of certain of the new provisions regarding maritime security may be required on completion of the work of these two Organizations.

5 The provision of chapter XI–2 of SOLAS 74 and this Code apply to ships and

to port facilities. The extension of SOLAS 74 to cover port facilities was agreed on the basis that SOLAS 74 offered the speediest means of ensuring the necessary security measures entered into force and given effect quickly. However, it was further agreed that the provisions relating to port facilities should relate solely to the ship/port interface. The wider issue of the security of port areas will be the subject of further joint work between the International Maritime Organization and the International Labour Organization. It was also agreed that the provisions should not extend to the actual response to attacks or to any necessary clear-up activities after such an attack.

6 In drafting the provision care has been taken to ensure compatibility with the provisions of the International Convention on Standards of Training, Certification and Watch-keeping and Certification for Seafarers, 1978, as amended, the International Safety Management (ISM) Code and the harmonised system of survey and certification.

7 The provisions represent a significant change in the approach of the international maritime industries to the issue of security in the maritime transport sector. It is recognised that they may place a significant additional burden on certain Contracting Governments. The importance of Technical Co-operation to assist Contracting Governments implement the provisions is fully recognised.

8 Implementation of the provisions will require continuing effective co-operation and understanding between all those involved with, or using, ships and port facilities including ship's personnel, port personnel, passengers, cargo interests, ship and port management and those in National and Local Authorities with security responsibilities. Existing practices and procedures will have to be reviewed and changed if they do not provide an adequate level of security. In the interests of enhanced maritime security additional responsibilities will have to be carried by the shipping and port industries and by National and Local Authorities.

9 The guidance given in part B of this Code should be taken into account when implementing the security provisions set out in chapter XI–2 of SOLAS 74 and in part A of this Code. However, it is recognised that the extent to which the guidance applies may vary depending on the nature of the port facility and of the ship, its trade and/or cargo.

10 Nothing in this Code shall be interpreted or applied in a manner inconsistent with the proper respect of fundamental rights and freedoms as set out in international instruments, particularly those relating to maritime workers and refugees including the International Labour Organisation Declaration of Fundamental Principles and Rights at Work as well as international standards concerning maritime and port workers.

11 Recognizing that the Convention on the Facilitation of Maritime Traffic, 1965, as amended, provides that foreign crew members shall be allowed ashore by the public authorities while the ship on which they arrive is in port, provided that the formalities on arrival of the ship have been fulfilled and the public authorities have no reason to refuse permission to come ashore for reasons of public health, public safety or public order, Contracting Governments when approving ship and port facility security plans should pay due cognisance to the fact that ship's personnel live and work on the vessel and need shore leave and access to shore based seafarer welfare facilities, including medical care.

Part A—The Safety of Life at Sea, 1974 as Amended

Mandatory Requirements Regarding the Provisions of Chapter XI–2 of the International Convention for the Safety of Life At Sea, 1974, As Amended

1 General

1.1 Introduction.

This part of the International Code for the Security of Ships and Port Facilities contains mandatory provisions to which reference is made in chapter XI–2 of the International Convention for the Safety of Life at Sea, 1974 as amended.

1.2 Objectives.

The objectives of this Code are:

.1 To establish an international framework involving co-operation between Contracting Governments, Government agencies, local administrations and the shipping and port industries to detect security threats and take preventive measures against security incidents affecting ships or port facilities used in international trade;

.2 To establish the respective roles and responsibilities of the Contracting Governments, Government agencies, local administrations and the shipping and port industries, at the national and international level for ensuring maritime security;

.3 To ensure the early and efficient collection and exchange of security-related information;

.4 To provide a methodology for security assessments so as to have in place plans and procedures to react to changing security levels; and

.5 To ensure confidence that adequate and proportionate maritime security measures are in place.

1.3 Functional requirements.

In order to achieve its objectives, this Code embodies a number of functional requirements. These include, but are not limited to:

.1 Gathering and assessing information with respect to security threats and exchanging such information with appropriate Contracting Governments;

.2 Requiring the maintenance of communication protocols for ships and port facilities;

.3 Preventing unauthorized access to ships, port facilities and their restricted areas;

.4 Preventing the introduction of unauthorized weapons, incendiary devices or explosives to ships or port facilities;

.5 Providing means for raising the alarm in reaction to security threats or security incidents;

.6 Requiring ship and port facility security plans based upon security assessments; and

.7 Requiring training, drills and exercises to ensure familiarity with security plans and procedures.

2 Definitions

2.1 For the purpose of this part, unless expressly provided otherwise:

.1 Convention means the International Convention for the Safety of Life at Sea, 1974 as amended.

.2 Regulation means a regulation of the Convention.

.3 Chapter means a chapter of the Convention.

.4 Ship security plan means a plan developed to ensure the application of measures on board the ship designed to protect persons on board, cargo, cargo transport units, ship's stores or the ship from the risks of a security incident.

.5 Port facility security plan means a plan developed to ensure the application of measures designed to protect the port facility and ships, persons, cargo, cargo transport units and ship's stores within the port facility from the risks of a security incident.

.6 Ship security officer means the person on board the ship, accountable to the master, designated by the Company as responsible for the security of the ship, including implementation and maintenance of the ship security plan and for liaison with the company security officer and port facility security officers.

.7 Company security officer means the person designated by the Company for ensuring that a ship security assessment is carried out; that a ship security plan is developed, submitted for approval, and thereafter implemented and maintained and for liaison with port facility security officers and the ship security officer.

.8 Port facility security officer means the person designated as responsible for the development, implementation, revision and maintenance of the port facility security plan and for liaison with the ship security officers and company security officers.

.9 Security level 1 means the level for which minimum appropriate protective security measures shall be maintained at all times.

.10 Security level 2 means the level for which appropriate additional protective security measures shall be maintained for a period of time as a result of heightened risk of a security incident.

.11 Security level 3 means the level for which further specific protective security measures shall be maintained for a limited period of time when a security incident is probable or imminent, although it may not be possible to identify the specific target.

2.2 The term ''ship'', when used in this Code, includes mobile offshore drilling units and high-speed craft as defined in regulation XI–2/1.

2.3 The term ''Contracting Government'' in connection with any reference to a port facility, when used in sections 14 to 18, includes a reference to the ''Designated Authority'.

2.4 Terms not otherwise defined in this part shall have the same meaning as the meaning attributed to them in chapters I and XI–2.

3 Application

3.1 This Code applies to:

.1 The following types of ships engaged on international voyages:

.1 Passenger ships, including high-speed passenger craft;

.2 Cargo ships, including high-speed craft, of 500 gross tonnage and upwards; and

.3 Mobile offshore drilling units; and

.2 Port facilities serving such ships engaged on international voyages.

3.2 Notwithstanding the provisions of section 3.1.2, Contracting Governments shall decide the extent of application of this part of the Code to those port facilities within their territory which, although used primarily by ships not engaged on international voyages, are required, occasionally, to serve ships arriving or departing on an international voyage.

3.2.1 Contracting Governments shall base their decisions, under section 3.2, on a port facility security assessment carried out in accordance with this part of the Code.

3.2.2 Any decision which a Contracting Government makes, under section 3.2, shall not compromise the level of security intended to be achieved by chapter XI–2 or by this part of the Code.

3.3 This Code does not apply to warships, naval auxiliaries or other ships owned or operated by a Contracting Government and used only on Government non-commercial service.

3.4 Sections 5 to 13 and 19 of this part apply to Companies and ships as specified in regulation XI–2/4.

3.5 Sections 5 and 14 to 18 of this part apply to port facilities as specified in regulation XI–2/10.

3.6 Nothing in this Code shall prejudice the rights or obligations of States under international law.

4 Responsibilities of Contracting Governments

4.1 Subject to the provisions of regulation XI–2/3 and XI–2/7, Contracting Governments shall set security levels and provide guidance for protection from security incidents. Higher security levels indicate greater likelihood of occurrence of a security incident. Factors to be considered in setting the appropriate security level include:

.1 The degree that the threat information is credible;

.2 The degree that the threat information is corroborated;

.3 The degree that the threat information is specific or imminent; and

.4 The potential consequences of such a security incident.

4.2 Contracting Governments, when they set security level 3, shall issue, as necessary, appropriate instructions and shall provide security related information to the ships and port facilities that may be affected.

4.3 Contracting Governments may delegate to a recognized security organization certain of their security related duties under chapter XI–2 and this part of the Code with the exception of:

.1 Setting of the applicable security level;

.2 Approving a Port Facility Security Assessment and subsequent amendments to an approved assessment;

.3 Determining the port facilities which will be required to designate a Port Facility Security Officer;

.4 Approving a Port Facility Security Plan and subsequent amendments to an approved plan;

.5 Exercising control and compliance measures pursuant to regulation XI–2/9; and

.6 Establishing the requirements for a Declaration of Security.

4.4 Contracting Governments shall, to the extent they consider appropriate, test the effectiveness of the Ship or the Port Facility Security Plans, or of amendments to such plans, they have approved, or, in the case of ships, of plans which have been approved on their behalf.

5 Declaration of Security

5.1 Contracting Governments shall determine when a Declaration of Security is required by assessing the risk the ship/port interface or ship to ship activity poses to people, property or the environment.

5.2 A ship can request completion of a Declaration of Security when:

.1 The ship is operating at a higher security level than the port facility or another ship it is interfacing with;

.2 There is an agreement on Declarations of Security between Contracting Governments covering certain international voyages or specific ships on those voyages;

.3 There has been a security threat or a security incident involving the ship or involving the port facility, as applicable;

.4 The ship is at a port which is not required to have and implement an approved port facility security plan; or

.5 The ship is conducting ship to ship activities with another ship not required to have and implement an approved ship security plan.

5.3 Requests for the completion of a Declaration of Security, under this section, shall be acknowledged by the applicable port facility or ship.

5.4 The Declaration of Security shall be completed by:

.1 The master or the ship security officer on behalf of the ship(s); and, if appropriate,

.2 The port facility security officer or, if the Contracting Government determines otherwise, by any other body responsible for shore-side security, on behalf of the port facility.

5.5 The Declaration of Security shall address the security requirements that could be shared between a port facility and a ship (or between ships) and shall state the responsibility for each.

5.6 Contracting Governments shall specify, bearing in mind the provisions of regulation XI–2/9.2.3, the minimum period for which Declarations of Security shall be kept by the port facilities located within their territory.

5.7 Administrations shall specify, bearing in mind the provisions of regulation XI–2/9.2.3, the minimum period for which Declarations of Security shall be kept by ships entitled to fly their flag.

6 Obligations of the Company

6.1 The Company shall ensure that the ship security plan contains a clear statement emphasizing the master's authority. The Company shall establish in the ship security plan that the master has the overriding authority and responsibility to make decisions with respect to the security of the ship and to request the assistance of the Company or of any Contracting Government as may be necessary.

6.2 The Company shall ensure that the company security officer, the master and the ship security officer are given the necessary support to fulfil their duties and responsibilities in accordance with chapter XI–2 and this part of the Code.

7 Ship Security

7.1 A ship is required to act upon the security levels set by Contracting Governments as set out below.

7.2 At security level 1, the following activities shall be carried out, through appropriate measures, on all ships, taking into account the guidance given in part B of this Code, in order to identify and take preventive measures against security incidents:

.1 Ensuring the performance of all ship security duties;

.2 Controlling access to the ship;

.3 Controlling the embarkation of persons and their effects;

.4 Monitoring restricted areas to ensure that only authorized persons have access;

.5 Monitoring of deck areas and areas surrounding the ship;

.6 Supervising the handling of cargo and ship's stores; and

.7 Ensuring that security communication is readily available.

7.3 At security level 2, the additional protective measures, specified in the ship security plan, shall be implemented for each activity detailed in section 7.2, taking into account the guidance given in part B of this Code.

7.4 At security level 3, further specific protective measures, specified in the ship security plan, shall be implemented for each activity detailed in section 7.2, taking into account the guidance given in part B of this Code.

7.5 Whenever security level 2 or 3 is set by the Administration, the ship shall acknowledge receipt of the instructions on change of the security level.

7.6 Prior to entering a port, or whilst in a port within the territory of a Contracting Government that has set security level 2 or 3, the ship shall acknowledge receipt of this instruction and shall confirm to the port facility security officer the initiation of the implementation of the appropriate measures and procedures as detailed in the ship security plan, and in the case of security level 3 in instructions issued by the Contracting Government which has set security level 3. The ship shall report any difficulties in implementation. In such cases, the port facility security officer and ship security officer shall liase and co-ordinate the appropriate actions.

7.7 If a ship is required by the Administration to set, or is already at, a higher security level than that set for the port it intends to enter or in which it is already located, then the ship shall advise, without delay, the competent authority of the Contracting Government within whose

territory the port facility is located and the port facility security officer of the situation.

7.7.1 In such cases, the ship security officer shall liase with the port facility security officer and co-ordinate appropriate actions, if necessary.

7.8 An Administration requiring ships entitled to fly its flag to set security level 2 or 3 in a port of another Contracting Government shall inform that Contracting Government without delay.

7.9 When Contracting Governments set security levels and ensure the provision of security level information to ships operating in their territorial sea, or having communicated an intention to enter their territorial sea, such ships shall be advised to maintain vigilance and report immediately to their Administration and any nearby coastal States any information that comes to their attention that might affect maritime security in the area.

7.9.1 When advising such ships of the applicable security level, a Contracting Government shall, taking into account the guidance given in the part B of this Code, also advise those ships of any security measure that they should take and, if appropriate, of measures that have been taken by the Contracting Government to provide protection against the threat.

8 Ship Security Assessment

8.1 The ship security assessment is an essential and integral part of the process of developing and updating the ship security plan.

8.2 The company security officer shall ensure that the ship security assessment is carried out by persons with appropriate skills to evaluate the security of a ship, in accordance with this section, taking into account the guidance given in part B of this Code.

8.3 Subject to the provisions of section 9.2.1, a recognised security organisation may carry out the ship security assessment of a specific ship.

8.4 The ship security assessment shall include an on-scene security survey and, at least, the following elements:

.1 Identification of existing security measures, procedures and operations;

.2 Identification and evaluation of key ship board operations that it is important to protect;

.3 Identification of possible threats to the key ship board operations and the likelihood of their occurrence, in order to establish and prioritise security measures; and

.4 Identification of weaknesses, including human factors in the infrastructure, policies and procedures.

8.5 The ship security assessment shall be documented, reviewed, accepted and retained by the Company.

9 Ship Security Plan

9.1 Each ship shall carry on board a ship security plan approved by the Administration. The plan shall make provisions for the three security levels as defined in this part of the Code.

9.1.1 Subject to the provisions of section 9.2.1, a recognised security organisation may prepare the ship security plan for a specific ship.

9.2 The Administration may entrust the review and approval of ship security plans, or of amendments to a previously approved plan, to recognised security organisations.

9.2.1 In such cases the recognised security organisation, undertaking the review and approval of a ship security plan, or its amendments, for a specific ship shall not have been involved in either the preparation of the ship security assessment or of the ship security plan, or of the amendments, under review.

9.3 The submission of a ship security plan, or of amendments to a previously approved plan, for approval shall be accompanied by the security assessment on the basis of which the plan, or the amendments, have been developed.

9.4 Such a plan shall be developed, taking into account the guidance given in part B of this Code and shall be written in the working language or languages of the ship. If the language or languages used is not English, French or Spanish, a translation into one of these languages shall be included. The plan shall address, at least, the following:

.1 Measures designed to prevent weapons, dangerous substances and devices intended for use against people, ships or ports and the carriage of which is not authorized from being taken on board the ship;

.2 Identification of the restricted areas and measures for the prevention of unauthorized access to them;

.3 Measures for the prevention of unauthorized access to the ship;

.4 Procedures for responding to security threats or breaches of security, including provisions for maintaining critical operations of the ship or ship/port interface;

.5 Procedures for responding to any security instructions Contracting Governments may give at security level 3;

.6 Procedures for evacuation in case of security threats or breaches of security;

.7 Duties of shipboard personnel assigned security responsibilities and of other shipboard personnel on security aspects;

.8 Procedures for auditing the security activities;

.9 Procedures for training, drills and exercises associated with the plan;

.10 Procedures for interfacing with port facility security activities;

.11 Procedures for the periodic review of the plan and for updating;

.12 Procedures for reporting security incidents;

.13 Identification of the ship security officer;

.14 Identification of the company security officer including with 24-hour contact details;

.15 Procedures to ensure the inspection, testing, calibration, and maintenance of any security equipment provided on board, if any;

.16 Frequency for testing or calibration any security equipment provided on board, if any;

.17 Identification of the locations where the ship security alert system activation points are provided; [1] and

.18 Procedures, instructions and guidance on the use of the ship security alert system, including the testing, activation, deactivation and resetting and to limit false alerts.[1]

9.4.1 Personnel conducting internal audits of the security activities specified in the plan or evaluating its implementation shall be independent of the activities being audited unless this is impracticable due to the size and the nature of the Company or of the ship.

9.5 The Administration shall determine which changes to an approved ship security plan or to any security equipment specified in an approved plan shall not be implemented unless the relevant amendments to the plan are approved by the Administration. Any such changes shall be at least as effective as those measures prescribed in chapter XI–2 and this part of the Code.

9.5.1 The nature of the changes to the ship security plan or the security equipment that have been specifically approved by the Administration, pursuant to section 9.5, shall be documented in a manner that clearly indicates such approval. This approval shall be available on board and shall be presented together with the International Ship Security Certificate (or the Interim International Ship Security Certificate). If these changes are temporary, once the original approved measures or equipment are reinstated, this documentation no longer needs to be retained by the ship.

9.6 The plan may be kept in an electronic format. In such a case, it shall be protected by procedures aimed at preventing its unauthorised deletion, destruction or amendment.

9.7 The plan shall be protected from unauthorized access or disclosure.

9.9 Ship security plans are not subject to inspection by officers duly authorised by a Contracting Government to carry out control and compliance measures in accordance with regulation XI–2/9, save in circumstances specified in section 9.9.1.

9.9.1 If the officers duly authorised by a Contracting Government have clear grounds to believe that the ship is not in compliance with the requirements of chapter XI–2 or part A of this Code, and the only means to verify or rectify the non-compliance is to review the relevant requirements of the ship security plan, limited access to the specific sections of the plan relating to the non-compliance is exceptionally allowed, but only with the consent of the Contracting Government of, or the master of, the ship concerned. Nevertheless, the provisions in the plan relating to section 9.4 subsections .2, .4, .5, .7, .15, .17 and .18 of this part of the Code are considered as confidential information, and cannot be subject to inspection unless otherwise agreed by the Contracting Governments concerned.

10 Records

10.1 Records of the following activities addressed in the ship security plan shall be kept on board for at least the minimum

[1] Administrations may allow, in order to avoid any compromising of the objective of providing on board the ship security alert system, this information to be kept elsewhere on board in a document known to the master, the ship security officer and other senior shipboard personnel as may be decided by the Company.

period specified by the Administration, bearing in mind the provisions of regulation XI–2/9.2.3:

.1 Training, drills and exercises;

.2 Security threats and security incidents;

.3 Breaches of security;

.4 Changes in security level;

.5 Communications relating to the direct security of the ship such as specific threats to the ship or to port facilities the ship is, or has been;

.6 Internal audits and reviews of security activities;

.7 Periodic review of the ship security assessment;

.8 Periodic review of the ship security plan;

.9 Implementation of any amendments to the plan; and

.10 Maintenance, calibration and testing of security equipment, if any including testing of the ship security alert system.

10.2 The records shall be kept in the working language or languages of the ship. If the language or languages used are not English, French or Spanish, a translation into one of these languages shall be included.

10.3 The records may be kept in an electronic format. In such a case, they shall be protected by procedures aimed at preventing their unauthorised deletion, destruction or amendment.

10.4 The records shall be protected from unauthorized access or disclosure.

11 Company Security Officer

11.1 The Company shall designate a company security officer. A person designated as the company security officer may act as the company security officer for one or more ships, depending on the number or types of ships the Company operates provided it is clearly identified for which ships this person is responsible. A Company may, depending on the number or types of ships they operate designate several persons as company security officers provided it is clearly identified for which ships each person is responsible.

11.2 In addition to those specified elsewhere in this part of the Code, the duties and responsibilities of the company security officer shall include, but are not limited to:

.1 Advising the level of threats likely to be encountered by the ship, using appropriate security assessments and other relevant information;

.2 Ensuring that ship security assessments are carried out;

.3 Ensuring the development, the submission for approval, and thereafter the implementation and maintenance of the ship security plan;

.4 Ensuring that the ship security plan is modified, as appropriate, to correct deficiencies and satisfy the security requirements of the individual ship;

.5 Arranging for internal audits and reviews of security activities;

.6 Arranging for the initial and subsequent verifications of the ship by the Administration or the recognised security organisation;

.7 Ensuring that deficiencies and non-conformities identified during internal audits, periodic reviews, security inspections and verifications of compliance are promptly addressed and dealt with;

.8 Enhancing security awareness and vigilance;

.9 Ensuring adequate training for personnel responsible for the security of the ship;

.10 Ensuring effective communication and co-operation between the ship security officer and the relevant port facility security officers;

.11 Ensuring consistency between security requirements and safety requirement;

.12 Ensuring that, if sister-ship or fleet security plans are used, the plan for each ship reflects the ship-specific information accurately; and

.13 Ensuring that any alternative or equivalent arrangements approved for a particular ship or group of ships are implemented and maintained.

12 Ship Security Officer

12.1 A ship security officer shall be designated on each ship.

12.2 In addition to those specified elsewhere in this part of the Code, the duties and responsibilities of the ship security officer shall include, but are not limited to:

.1 Undertaking regular security inspections of the ship to ensure that appropriate security measures are maintained;

.2 Maintaining and supervising the implementation of the ship security plan, including any amendments to the plan;

.3 Co-ordinating the security aspects of the handling of cargo and ship's stores with other shipboard personnel and with the relevant port facility security officers;

.4 Proposing modifications to the ship security plan;

.5 Reporting to the Company Security Officer any deficiencies and non-conformities identified during internal audits, periodic reviews, security inspections and verifications of compliance and implementing any corrective actions;

.6 Enhancing security awareness and vigilance on board;

.7 Ensuring that adequate training has been provided to shipboard personnel, as appropriate;

.8 Reporting all security incidents;

.9 Co-ordinating implementation of the ship security plan with the company security officer and the relevant port facility security officer; and

.10 Ensuring that security equipment is properly operated, tested, calibrated and maintained, if any.

13 Training, Drills and Exercises on Ship Security

13.1 The company security officer and appropriate shore-based personnel shall have knowledge and have received training, taking into account the guidance given in part B of this Code.

13.2 The ship security officer shall have knowledge and have received training, taking into account the guidance given in part B of this Code.

13.3 Shipboard personnel having specific security duties and responsibilities shall understand their responsibilities for ship security as described in the ship security plan and shall have sufficient knowledge and ability to perform their assigned duties, taking into account the guidance given in Part B of this Code.

13.4 To ensure the effective implementation of the ship security plan, drills shall be carried out at appropriate intervals taking into account the ship type, ship personnel changes, port facilities to be visited and other relevant circumstances, taking into account guidance given in part B of this Code.

13.5 The company security officer shall ensure the effective coordination and implementation of ship security plans by participating in exercises at appropriate intervals, taking into account the guidance given in part B of this Code.

14 Port Facility Security

14.1 A port facility is required to act upon the security levels set by the Contracting Government within whose territory it is located. Security measures and procedures shall be applied at the port facility in such a manner as to cause a minimum of interference with, or delay to, passengers, ship, ship's personnel and visitors, goods and services.

14.2 At security level 1, the following activities shall be carried out through appropriate measures in all port facilities, taking into account the guidance given in part B of this Code, in order to identify and take preventive measures against security incidents:

.1 Ensuring the performance of all port facility security duties;

.2 Controlling access to the port facility;

.3 Monitoring of the port facility, including anchoring and berthing area(s);

.4 Monitoring restricted areas to ensure that only authorized persons have access;

.5 Supervising the handling of cargo;

.6 Supervising the handling of ship's stores; and

.7 Ensuring that security communication is readily available.

14.3 At security level 2, the additional protective measures, specified in the port facility security plan, shall be implemented for each activity detailed in section 14.2, taking into account the guidance given in part B of this Code.

14.4 At security level 3, further specific protective measures, specified in the port facility security plan, shall be implemented for each activity detailed in section 14.2, taking into account the guidance given in part B of this Code.

14.4.1 In addition, at security level 3, port facilities are required to respond to and implement any security instructions given by the Contracting Government within whose territory the port facility is located.

14.5 When a port facility security officer is advised that a ship encounters difficulties in complying with the requirements of chapter XI–2 or this part or in implementing the appropriate measures and procedures as detailed in the ship security plan, and in the case of security level 3 following any security instructions given by the Contracting Government within whose territory the port facility is located, the port facility security

officer and ship security officer shall liase and co-ordinate appropriate actions.

14.6 When a port facility security officer is advised that a ship is at a security level, which is higher than that of the port facility, shall report the matter to the competent authority and shall liase with the ship security officer and co-ordinate appropriate actions, if necessary.

15 Port Facility Security Assessment

15.1 The port facility security assessment is an essential and integral part of the process of developing and updating the port facility security plan.

15.2 The port facility security assessment shall be carried out by the Contracting Government within whose territory the port facility is located. A Contracting Government may authorise a recognised security organisation to carry out the port facility security assessment of a specific port facility located within its territory.

15.2.1 When the port facility security assessment has been carried out by a recognised security organisation, the security assessment shall be reviewed and approved for compliance with this section by the Contracting Government within whose territory the port facility is located.

15.3 The persons carrying out the assessment shall have appropriate skills to evaluate the security of the port facility in accordance with this section, taking into account the guidance given in part B of this Code.

15.4 The port facility security assessments shall periodically be reviewed and updated, taking account of changing threats and/or minor changes in the port facility and shall always be reviewed and updated when major changes to the port facility take place.

15.5 The port facility security assessment shall include, at least, the following elements:

.1 Identification and evaluation of important assets and infrastructure it is important to protect;

.2 Identification of possible threats to the assets and infrastructure and the likelihood of their occurrence, in order to establish and prioritize security measures;

.3 Identification, selection and prioritization of counter measures and procedural changes and their level of effectiveness in reducing vulnerability; and

.4 Identification of weaknesses, including human factors in the infrastructure, policies and procedures.

15.6 The Contracting Government may allow a port facility security assessment to cover more than one port facility if the operator, location, operation, equipment, and design of these port facilities are similar. Any Contracting Government, which allows such an arrangement shall communicate to the Organization particulars thereof.

15.7 Upon completion of the port facility security assessment, a report shall be prepared, consisting of a summary of how the assessment was conducted, a description of each vulnerability found during the assessment and a description of counter measures that could be used to address each vulnerability. The report shall be protected from unauthorized access or disclosure.

16 Port Facility Security Plan

16.1 A port facility security plan shall be developed and maintained, on the basis of a port facility security assessment, for each port facility, adequate for the ship/port interface. The plan shall make provisions for the three security levels, as defined in this part of the Code.

16.1.1 Subject to the provisions of section 16.2, a recognized security organization may prepare the port facility security plan of a specific port facility.

16.2 The port facility security plan shall be approved by the Contracting Government in whose territory the port facility is located.

16.3 Such a plan shall be developed taking into account the guidance given in part B of this Code and shall be in the working language of the port facility. The plan shall address, at least, the following:

.1 Measures designed to prevent weapons or any other dangerous substances and devices intended for use against people, ships or ports and the carriage of which is not authorized, from being introduced into the port facility or on board a ship;

.2 Measures designed to prevent unauthorized access to the port facility, to ships moored at the facility, and to restricted areas of the facility;

.3 Procedures for responding to security threats or breaches of security, including provisions for maintaining critical operations of the port facility or ship/port interface;

.4 Procedures for responding to any security instructions the Contracting Government, in whose territory the port facility is located, may give at security level 3;

.5 Procedures for evacuation in case of security threats or breaches of security;

.6 Duties of port facility personnel assigned security responsibilities and of other facility personnel on security aspects;

.7 Procedures for interfacing with ship security activities;

.8 Procedures for the periodic review of the plan and updating;

.9 Procedures for reporting security incidents;

.10 Identification of the port facility security officer including 24-hour contact details;

.11 Measures to ensure the security of the information contained in the plan;

.12 Measures designed to ensure effective security of cargo and the cargo handling equipment at the port facility;

.13 Procedures for auditing the port facility security plan;

.14 Procedures for responding in case the ship security alert system of a ship at the port facility has been activated; and

.15 Procedures for facilitating shore leave for ship's personnel or personnel changes, as well as access of visitors to the ship including representatives of seafarers' welfare and labour organizations.

16.3.1 Personnel conducting internal audits of the security activities specified in the plan or evaluating its implementation shall be independent of the activities being audited unless this is impracticable due to the size and the nature of the port facility.

16.4 The port facility security plan may be combined with, or be part of, the port security plan or any other port emergency plan or plans.

16.5 The Contracting Government in whose territory the port facility is located shall determine which changes to the port facility security plan shall not be implemented unless the relevant amendments to the plan are approved by them.

16.6 The plan may be kept in an electronic format. In such a case, it shall be protected by procedures aimed at preventing its unauthorised deletion, destruction or amendment.

16.7 The plan shall be protected from unauthorized access or disclosure.

16.8 Contracting Governments may allow a port facility security plan to cover more than one port facility if the operator, location, operation, equipment, and design of these port facilities are similar. Any Contracting Government, which allows such an alternative arrangement, shall communicate to the Organization particulars thereof.

17 Port Facility Security Officer

17.1 A port facility security officer shall be designated for each port facility. A person may be designated as the port facility security officer for one or more port facilities.

17.2 In addition to those specified elsewhere in this part of the Code, the duties and responsibilities of the port facility security officer shall include, but are not limited to:

.1 Conducting an initial comprehensive security survey of the port facility taking into account the relevant port facility security assessment;

.2 Ensuring the development and maintenance of the port facility security plan;

.3 Implementing and exercising the port facility security plan;

.4 Undertaking regular security inspections of the port facility to ensure the continuation of appropriate security measures;

.5 Recommending and incorporating, as appropriate, modifications to the port facility security plan in order to correct deficiencies and to update the plan to take into account of relevant changes to the port facility;

.6 Enhancing security awareness and vigilance of the port facility personnel;

.7 Ensuring adequate training has been provided to personnel responsible for the security of the port facility;

.8 Reporting to the relevant authorities and maintaining records of occurrences which threaten the security of the port facility;

.9 Co-ordinating implementation of the port facility security plan with the appropriate Company and ship security officer(s);

.10 Co-ordinating with security services, as appropriate;

.11 Ensuring that standards for personnel responsible for security of the port facility are met;

.12 Ensuring that security equipment is properly operated, tested, calibrated and maintained, if any; and

.13 Assisting ship security officers in confirming the identity of those seeking to board the ship when requested.

17.3 The port facility security officer shall be given the necessary support to fulfil the duties and responsibilities imposed by chapter XI–2 and this part of this Code.

18 Training, Drills and Exercises on Port Facility Security

18.1 The port facility security officer and appropriate port facility security personnel shall have knowledge and have received training, taking into account the guidance given in part B of this Code.

18.2 Port facility personnel having specific security duties shall understand their duties and responsibilities for port facility security, as described in the port facility security plan and shall have sufficient knowledge and ability to perform their assigned duties, taking into account the guidance given in part B of this Code.

18.3 To ensure the effective implementation of the port facility security plan, drills shall be carried out at appropriate intervals taking into account the types of operations of the port facility, port facility personnel changes, the type of ship the port facility is serving and other relevant circumstances, taking into account guidance given in part B of this Code.

18.4 The port facility security officer shall ensure the effective coordination and implementation of the port facility security plan by participating in exercises at appropriate intervals, taking into account the guidance given in part B of this Code.

19 Verification and Certification for Ships

19.1 Verifications.

19.1.1 Each ship to which this part of the Code applies shall be subject to the verifications specified below:

.1 An initial verification before the ship is put in service or before the certificate required under section 19.2 is issued for the first time, which shall include a complete verification of its security system and any associated security equipment covered by the relevant provisions of chapter XI–2, this part of the Code and the approved ship security plan. This verification shall ensure that the security system and any associated security equipment of the ship fully complies with the applicable requirements of chapter XI–2 and this part of the Code, is in satisfactory condition and fit for the service for which the ship is intended;

.2 A renewal verification at intervals specified by the Administration, but not exceeding five years, except where section 19.3.1 or 19.3.4 is applicable. This verification shall ensure that the security system and any associated security equipment of the ship fully complies with the applicable requirements of chapter XI–2, this part of the Code and the approved Ship Security Plan, is in satisfactory condition and fit for the service for which the ship is intended;

.3 At least one intermediate verification. If only one intermediate verification is carried out it shall take place between the second and third anniversary date of the certificate as defined in regulation I/2(n). The intermediate verification shall include inspection of the security system and any associated security equipment of the ship to ensure that it remains satisfactory for the service for which the ship is intended. Such intermediate verification shall be endorsed on the certificate;

.4 Any additional verifications as determined by the Administration.

19.1.2 The verifications of ships shall be carried out by officers of the Administration. The Administration may, however, entrust the verifications to a recognized security organization referred to in regulation XI–2/1.

19.1.3 In every case, the Administration concerned shall fully guarantee the completeness and efficiency of the verification and shall undertake to ensure the necessary arrangements to satisfy this obligation.

19.1.4 The security system and any associated security equipment of the ship after verification shall be maintained to conform with the provisions of regulations XI–2/4.2 and XI–2/6, this part of the Code and the approved ship security plan. After any verification under section 19.1.1 has been completed, no changes shall be made in security system and in any associated security equipment or the approved ship security plan without the sanction of the Administration.

19.2 Issue or endorsement of certificate.

19.2.1 An International Ship Security Certificate shall be issued after the initial or renewal verification in accordance with the provisions of section 19.1.

19.2.2 Such certificate shall be issued or endorsed either by the Administration or by the a recognized security organization acting on behalf of the Administration.

19.2.3 Another Contracting Government may, at the request of the Administration, cause the ship to be verified and, if satisfied that the provisions of section 19.1.1 are complied with, shall issue or authorize the issue of an International Ship Security Certificate to the ship and, where appropriate, endorse or authorize the endorsement of that certificate on the ship, in accordance with this Code.

19.2.3.1 A copy of the certificate and a copy of the verification report shall be transmitted as soon as possible to the requesting Administration.

19.2.3.2 A certificate so issued shall contain a statement to the effect that it has been issued at the request of the Administration and it shall have the same force and receive the same recognition as the certificate issued under section 19.2.2.

19.2.4 The International Ship Security Certificate shall be drawn up in a form corresponding to the model given in the appendix to this Code. If the language used is not English, French or Spanish, the text shall include a translation into one of these languages.

19.3 Duration and validity of certificate.

19.3.1 An International Ship Security Certificate shall be issued for a period specified by the Administration which shall not exceed five years.

19.3.2 When the renewal verification is completed within three months before the expiry date of the existing certificate, the new certificate shall be valid from the date of completion of the renewal verification to a date not exceeding five years from the date of expiry of the existing certificate.

19.3.2.1 When the renewal verification is completed after the expiry date of the existing certificate, the new certificate shall be valid from the date of completion of the renewal verification to a date not exceeding five years from the date of expiry of the existing certificate.

19.3.2.2 When the renewal verification is completed more than three months before the expiry date of the existing certificate, the new certificate shall be valid from the date of completion of the renewal verification to a date not exceeding five years from the date of completion of the renewal verification.

19.3.3 If a certificate is issued for a period of less than five years, the Administration may extend the validity of the certificate beyond the expiry date to the maximum period specified in section 19.3.1, provided that the verifications referred to in section 19.1.1 applicable when a certificate is issued for a period of five years are carried out as appropriate.

19.3.4 If a renewal verification has been completed and a new certificate cannot be issued or placed on board the ship before the expiry date of the existing certificate, the Administration or recognized security organization acting on behalf of the Administration may endorse the existing certificate and such a certificate shall be accepted as valid for a further period which shall not exceed five months from the expiry date.

19.3.5 If a ship at the time when a certificate expires is not in a port in which it is to be verified, the Administration may extend the period of validity of the certificate but this extension shall be granted only for the purpose of allowing the ship to complete its voyage to the port in which it is verified, and then only in cases where it appears proper and reasonable to do so. No certificate shall be extended for a period longer than three months, and the ship to which an extension is granted shall not, on its arrival in the port in which it is to be verified, be entitled by virtue of such extension to leave that port without having a new certificate. When the renewal verification is completed, the new certificate shall be valid to a date not exceeding five years from the expiry date of the existing certificate before the extension was granted.

19.3.6 A certificate issued to a ship engaged on short voyages which has not been extended under the foregoing provisions of this section may be extended by the Administration for a period of grace of up to one month from the date of expiry stated on it. When the renewal verification is completed, the new certificate shall be valid to a date not exceeding five years from the date of expiry of the existing certificate before the extension was granted.

19.3.7 If an intermediate verification is completed before the period specified in section 19.1.1, then:

.1 The expiry date shown on the certificate shall be amended by endorsement to a date which shall not be more than three years later than the date on which the intermediate verification was completed;

.2 The expiry date may remain unchanged provided one or more additional verifications are carried out so that the

maximum intervals between the verifications prescribed by section 19.1.1 are not exceeded.

19.3.8 A certificate issued under section 19.2 shall cease to be valid in any of the following cases:

.1 If the relevant verifications are not completed within the periods specified under section 19.1.1;

.2 If the certificate is not endorsed in accordance with section 19.1.1.3 and 19.3.7.2 if applicable;

.3 When a Company assumes the responsibility for the operation of a ship not previously operated by that Company; and

.4 Upon transfer of the ship to the flag of another State.

19.3.9 In the case of:

.1 A transfer of a ship to the flag of another Contracting Government, the Contracting Government whose flag the ship was formerly entitled to fly shall, as soon as possible, transmit to the receiving Administration copies of, or all information relating to, the International Ship Security Certificate carried by the ship before the transfer and copies of available verification reports, or

.2 A Company that assumes responsibility for the operation of a ship not previously operated by that Company, the previous Company shall as soon as possible, transmit to the receiving Company copies of any information related to the International Ship Security Certificate or to facilitate the verifications described in section 19.4.2.

19.4 Interim certification.

19.4.1 The certificates specified in section 19.2 shall be issued only when the Administration issuing the certificate is fully satisfied that the ship complies with the requirements of section 19.1. However, after 1 July 2004, for the purposes of:

.1 A ship without a certificate, on delivery or prior to its entry or re-entry into service;

.2 Transfer of a ship from the flag of a Contracting Government to the flag of another Contracting Government;

.3 Transfer of a ship to the flag of a Contracting Government from a State which is not a Contracting Government; or

.4 When a Company assumes the responsibility for the operation of a ship not previously operated by that Company;

until the certificate referred to in section 19.2 is issued, the Administration may cause an Interim International Ship Security Certificate to be issued, in a form corresponding to the model given in the Appendix to this part of the Code.

19.4.2 An Interim International Ship Security Certificate shall only be issued when the Administration or recognized security organization, on behalf of the Administration, has verified that:

.1 The ship security assessment required by this part of the Code has been completed,

.2 A copy of the ship security plan meeting the requirements of chapter XI–2 and part A of this Code is provided on board, has been submitted for review and approval, and is being implemented on the ship;

.3 The ship is provided with a ship security alert system meeting the requirements of regulation XI–2/6, if required,

.4 The Company Security Officer:

.1 Has ensured:

.1 The review of the ship security plan for compliance with this part of the Code,

.2 That the plan has been submitted for approval, and

.3 That the plan is being implemented on the ship, and

.2 Has established the necessary arrangements, including arrangements for drills, exercises and internal audits, through which the Company Security Officer is satisfied that the ship will successfully complete the required verification in accordance with section 19.1.1.1, within 6 months;

.5 Arrangements have been made for carrying out the required verifications under section 19.1.1.1;

.6 The master, the ship's security officer and other ship's personnel with specific security duties are familiar with their duties and responsibilities as specified in this part of the Code; and with the relevant provisions of the ship security plan placed on board; and have been provided such information in the working language of the ship's personnel or languages understood by them; and

.7 The ship security officer meets the requirements of this part of the Code.

19.4.3 An Interim International Ship Security Certificate may be issued by the Administration or by a recognized security organization authorized to act on its behalf.

19.4.4 An Interim International Ship Security Certificate shall be valid for 6 months, or until the certificate required by section 19.2 is issued, whichever comes first, and may not be extended.

19.4.5 No Contracting Government shall cause a subsequent, consecutive Interim International Ship Security Certificate to be issued to a ship if, in the judgment of the Administration or the recognized security organization, one of the purposes of the ship or a Company in requesting such certificate is to avoid full compliance with chapter XI–2 and this part of the Code beyond the period of the initial interim certificate as specified in section 19.4.4.

19.4.6 For the purposes of regulation XI–2/9, Contracting Governments may, prior to accepting an Interim International Ship Security Certificate as a valid certificate, ensure that the requirements of sections 19.4.2.4 to 19.4.2.6 have been met.

Appendix to Part A

Appendix 1—Form of the International Ship Security Certificate

International Ship Security Certificate

(official seal)
(State)
Certificate No.

Issued under the provisions of the International Code for the Security of Ships and of Port Facilities (ISPS Code).

Under the authority of the Government of _____ (name of State) by _____ (persons or organization authorized)

Name of ship _____
Distinctive number or letters _____
Port of registry _____
Type of ship _____
Gross tonnage _____
IMO Number _____
Name and address of the Company _____

This is to certify:

1 That the security system and any associated security equipment of the ship has been verified in accordance with section 19.1 of part A of the ISPS Code;

2 That the verification showed that the security system and any associated security equipment of the ship is in all respects satisfactory and that the ship complies with the applicable requirements of chapter XI–2 of the Convention and part A of the ISPS Code;

3 That the ship is provided with an approved Ship Security Plan.

Date of initial / renewal verification on which this certificate is based_____

This Certificate is valid until_____ subject to verifications in accordance with section 19.1.1 of part A of the ISPS Code.

Issued at_____ (place of issue of the Certificate)

Date of issue_____

_____
(signature of the duly authorized official issuing the Certificate)

(Seal or stamp of issuing authority, as appropriate)

Endorsement for Intermediate Verification

This is to certify that at an intermediate verification required by section 19.1.1 of part A of the ISPS Code the ship was found to comply with the relevant provisions of chapter XI–2 of the Convention and part A of the ISPS Code.

Intermediate Verification

Signed _____
(Signature of authorized official)
Place _____
Date _____

(Seal or stamp of the authority, as appropriate)

*Endorsement for Additional Verifications **

Additional Verification

Signed _____
(Signature of authorized official)
Place _____
Date _____

(Seal or stamp of the authority, as appropriate)

Additional Verification

Signed _____
(Signature of authorized official)
Place _____
Date _____

(Seal or stamp of the authority, as appropriate)

Additional Verification

Signed _____
(Signature of authorized official)
Place _____
Date _____

(Seal or stamp of the authority, as appropriate)

*This part of the certificate shall be adapted by the Administration to indicate

whether it has established additional verifications as provided for in section 19.1.1.4.

Additional Verification in Accordance With Section A/19.3.7.2 of the ISPS Code

This is to certify that at an additional verification required by section 19.3.7.2 of part A of the ISPS Code the ship was found to comply with the relevant provisions of chapter XI–2 of the Convention and part A of the ISPS Code.

Signed _____
(Signature of authorized official)
Place _____
Date _____
(Seal or stamp of the authority, as appropriate)

Endorsement to Extend the Certificate if Valid for Less Than 5 Years Where Section A/19.3.3 of the ISPS Code Applies

The ship complies with the relevant provisions of part A of the ISPS Code, and the Certificate shall, in accordance with section 19.3.3 of part A of the ISPS Code, be accepted as valid until_____.

Signed _____
(Signature of authorized official)
Place _____
Date _____
(Seal or stamp of the authority, as appropriate)

Endorsement Where the Renewal Verification Has Been Completed and Section A/19.3.4 of the ISPS Code Applies

The ship complies with the relevant provisions of part A of the ISPS Code, and the Certificate shall, in accordance with section 19.3.4 of part A of the ISPS Code, be accepted as valid until_____.

Signed _____
(Signature of authorized official)
Place _____
Date _____
(Seal or stamp of the authority, as appropriate)

Endorsement to Extend the Validity of the Certificate Until Reaching the Port of Verification Where Section A/19.3.5 of the ISPS Code Applies or for a Period of Grace Where Section A/19.3.6 of the ISPS Code Applies

This Certificate shall, in accordance with section 19.3.5/19.3.6 * of part A of the ISPS Code, be accepted as valid until_____.

Signed _____
(Signature of authorized official)
Place _____
Date _____
(Seal or stamp of the authority, as appropriate)

Endorsement for Advancement of Expiry Date Where Section A/19.3.7.1 of the ISPS Code Applies

In accordance with section 19.3.7.1 of part A of the ISPS Code, the new expiry date ** is_____.

Signed _____
(Signature of authorized official)
Place _____
Date _____
(Seal or stamp of the authority, as appropriate)

_____

* Delete as appropriate.

**In case of completion of this part of the certificate the expiry date shown on the front of the certificate shall also be amended accordingly.

Appendix 2—Form of the Interim International Ship Security Certificate

Interim International Ship Security Certificate

(Official seal)
(State)
Certificate No.

Issued under the provisions of the International Code for the Security of Ships and of Port Facilities (ISPS Code)

Under the authority of the Government of _____ (name of State)
by_____ (persons or organization authorized)

Name of ship: _____
Distinctive number or letters: _____
Port of registry: _____
Type of ship: _____
Gross tonnage: _____
IMO Number: _____
Name and address of company: _____
Is this a subsequent, consecutive interim certificate? Yes/No *
If Yes, date of issue of initial interim certificate _____

This is to certify that the requirements of section A/19.4.2 of the ISPS Code have been complied with.

This Certificate is issued pursuant to section A/19.4 * of the ISPS Code.

This Certificate is valid until_____.

Issued at_____ (place of issue of the certificate).
Date of issue_____

_____
(signature of the duly authorized official issuing the Certificate)
(Seal or stamp of issuing authority, as appropriate)

_____

*Delete as appropriate.

Part B

Guidance Regarding the Provisions of Chapter XI–2 of the Annex to the International Convention for the Safety of Life at Sea, 1974 as Amended and Part A of This Code

1 Introduction

General

1.1 The preamble of this Code indicates that chapter XI–2 and part A of this Code establish the new international framework of measures to enhance maritime security and through which ships and port facilities can co-operate to detect and deter acts which threaten security in the maritime transport sector.

1.2 This introduction outlines, in a concise manner, the processes envisaged in establishing and implementing the measures and arrangements needed to achieve and maintain compliance with the provisions of chapter XI–2 and of part A of this Code and identifies the main elements on which guidance is offered. The guidance is provided in paragraphs 2 through to 19. It also sets down essential considerations, which should be taken into account when considering the application of the guidance relating to ships and port facilities.

1.3 If the reader's interest relates to ships alone, it is strongly recommended that this part of the Code is still read as a whole, particularly the sections relating to port facilities. The same applies to those whose primary interest are port facilities; they should also read the sections relating to ships.

1.4 The guidance provided in the following sections relates primarily to protection of the ship when it is at a port facility. There could, however, be situations when a ship may pose a threat to the port facility, *e.g.* because, once within the port facility, it could be used as a base from which to launch an attack. When considering the appropriate security measures to respond to ship-based security threats, those completing the Port Facility Security Assessment or preparing the Port Facility Security Plan should consider making appropriate adaptations to the guidance offered in the following sections.

1.5 The reader is advised that nothing in this Part of the Code should be read or interpreted in conflict with any of the provisions of either chapter XI–2 or part A of this Code and that the aforesaid provisions always prevail and override any unintended inconsistency which may have been inadvertently expressed in this Part of the Code. The guidance provided in this Part of the Code should always be read, interpreted and applied in a manner which is consistent with the aims, objectives and principles established in chapter XI–2 and part A of this Code.

Responsibilities of Contracting Governments

1.6 Contracting Governments have, under the provisions of chapter XI–2 and part A of this Code, various responsibilities, which, amongst others, include:

—Setting the applicable security level;
—Approving the Ship Security Plan and relevant amendments to a previously approved plan;
—Verifying the compliance of ships with the provisions of chapter XI–2 and part A of this Code and issuing to ships the International Ship Security Certificate;
—Determining which of the port facilities located within their territory are required to designate a Port Facility Security Officer who will be responsible for the preparation of the Port Facility Security Plan;
—Ensuring completion and approval of the Port Facility Security Assessment and of any subsequent amendments to a previously approved assessment;
—Approving the Port Facility Security Plan and any subsequent amendments to a previously approved plan; and
—Exercising control and compliance measures;
—Testing approved plans; and

—Communicating information to the International Maritime Organization and to the shipping and port industries.

1.7 Contracting Governments can designate, or establish, Designated Authorities within Government to undertake, with respect to port facilities, their security duties under chapter XI–2 and part A of this Code and allow Recognised Security Organisations to carry out certain work with respect to port facilities but the final decision on the acceptance and approval of this work should be given by the Contracting Government or the Designated Authority. Administrations may also delegate the undertaking of certain security duties, relating to ships, to Recognised Security Organizations. The following duties or activities cannot delegated to a Recognized Security Organization:

—Setting of the applicable security level;
—Determining which of the port facilities located within the territory of a Contracting Government are required to designate a Port Facility Security Officer and to prepare a Port Facility Security Plan;
—Approving a Port Facility Security Assessment or any subsequent amendments to a previously approved assessment;
—Approving a Port Facility Security Plan or any subsequent amendments to a previously approved plan;
—Exercising control and compliance measures; and
—Establishing the requirements for a Declaration of Security.

Setting the Security Level

1.8 The setting of the security level applying at any particular time is the responsibility of Contracting Governments and can apply to ships and port facilities. Part A of this Code defines three security levels for international use. These are:

—Security Level 1, normal; the level at which ships and port facilities normally operate;
—Security Level 2, heightened; the level applying for as long as there is a heightened risk of a security incident; and
—Security Level 3, exceptional, the level applying for the period of time when there is the probable or imminent risk of a security incident.

The Company and the Ship

1.9 Any Company operating ships to which chapter XI–2 and part A of this Code apply has to designate a Company Security Officer for the Company and a Ship Security Officer for each of its ships. The duties, responsibilities and training requirements of these officers and requirements for drills, and exercises are defined in part A of this Code.

1.10 The Company Security Officer's responsibilities include, in brief amongst others, ensuring that a Ship Security Assessment is properly carried out, that a Ship Security Plan is prepared and submitted for approval by, or on behalf of, the Administration and thereafter is placed on board each ship to which part A of this Code applies and in respect of which that person has been appointed as the Company Security Officer.

1.11 The Ship Security Plan should indicate the operational and physical security measures the ship itself should take to ensure it always operates at security level 1.

The plan should also indicate the additional, or intensified, security measures the ship itself can take to move to and operate at security level 2 when instructed to do so.

Furthermore, the plan should indicate the possible preparatory actions the ship could take to allow prompt response to the instructions that may be issued to the ship by those responding at security level 3 to a security incident or threat thereof.

1.12 The ships to which the requirements of chapter XI–2 and part A of this Code apply are required to have, and operated in accordance with, a Ship Security Plan approved by, or on behalf of, the Administration. The Company and Ship Security Officer should monitor the continuing relevance and effectiveness of the plan, including the undertaking of internal audits. Amendments to any of the elements of an approved plan, for which the Administration has determined that approval is required, have to be submitted for review and approval before their incorporation in the approved plan and their implementation by the ship.

1.13 The ship has to carry an International Ship Security Certificate indicating that it complies with the requirements of chapter XI–2 and part A of this Code. Part A of this Code includes provisions relating to the verification and certification of the ship's compliance with the requirements on an initial, renewal and intermediate verification basis.

1.14 When a ship is at a port or is proceeding to a port of a Contracting Government, the Contracting Government has the right, under the provisions of regulation XI–2/9, to exercise various control and compliance measures with respect to that ship.

The ship is subject to port State control inspections but such inspections will not normally extend to examination of the Ship Security Plan itself except in specific circumstances.

The ship may, also, be subject to additional control measures if the Contracting Government exercising the control and compliance measures has reason to believe that the security of the ship has, or the port facilities it has served have, been compromised.

1.15 The ship is also required to have onboard information, to be made available to Contracting Governments upon request, indicating who is responsible for deciding the employment of the ship's personnel and for deciding various aspects relating to the employment of the ship.

The Port Facility

1.16 Each Contracting Government has to ensure completion of a Port Facility Security Assessment for each of the port facilities, located within its territory, serving ships engaged on international voyages. The Contracting Government, a Designated Authority or a Recognized Security Organization may carry out this assessment. The completed Port Facility Security Assessment has to be approved by the Contracting Government or the Designated Authority concerned. This approval cannot be delegated. Port Facility Security Assessments should be periodically reviewed.

1.17 The Port Facility Security Assessment is fundamentally a risk analysis of all aspects of a port facility's operation in order to determine which part(s) of it are more susceptible, and/or more likely, to be the subject of attack. Security risk is a function of the threat of an attack coupled with the vulnerability of the target and the consequences of an attack.

The assessment must include the following components:

—The perceived threat to port installations and infrastructure must be determined;
—The potential vulnerabilities identified; and
—The consequences of incidents calculated.

On completion of the analysis, it will be possible to produce an overall assessment of the level of risk. The Port Facility Security Assessment will help determine which port facilities are required to appoint a Port Facility Security Officer and prepare a Port Facility Security Plan.

1.18 The port facilities which have to comply with the requirements of chapter XI–2 and part A of this Code are required to designate a Port Facility Security Officer. The duties, responsibilities and training requirements of these officers and requirements for drills and exercises are defined in part A of this Code.

1.19 The Port Facility Security Plan should indicate the operational and physical security measures the port facility should take to ensure that it always operates at security level 1. The plan should also indicate the additional, or intensified, security measures the port facility can take to move to and operate at security level 2 when instructed to do so.

Furthermore, the plan should indicate the possible preparatory actions the port facility could take to allow prompt response to the instructions that may be issued by those responding at security level 3 to a security incident or threat thereof.

1.20 The port facilities which have to comply with the requirements of chapter XI–2 and part A of this Code are required to have, and operate in accordance with, a Port Facility Security Plan approved by the Contracting Government or by the Designated Authority concerned.

The Port Facility Security Officer should implement its provisions and monitor the continuing effectiveness and relevance of the plan, including commissioning internal audits of the application of the plan.

Amendments to any of the elements of an approved plan, for which the Contracting Government or the Designated Authority concerned has determined that approval is required, have to be submitted for review and approval before their incorporation in the approved plan and their implementation at the port facility.

The Contracting Government or the Designated Authority concerned may test the effectiveness of the plan. The Port Facility

Security Assessment covering the port facility or on which the development of the plan has been based should be regularly reviewed. All these activities may lead to amendment of the approved plan. Any amendments to specified elements of an approved plan will have to be submitted for approval by the Contracting Government or by the Designated Authority concerned.

1.21 Ships using port facilities may be subject to the port State control inspections and additional control measures outlined in regulation XI–2/9.

The relevant authorities may request the provision of information regarding the ship, its cargo, passengers and ship's personnel prior to the ship's entry into port.

There may be circumstances in which entry into port could be denied.

Information and Communication

1.22 Chapter XI–2 and part A of this Code require Contracting Governments to provide certain information to the International Maritime Organization and for information to be made available to allow effective communication between Contracting Governments and between Company/Ship Security Officers and the Port Facility Security Officers responsible for the port facility their ships visit.

2 Definitions

2.1 No guidance is provided with respect to the definitions set out in chapter XI–2 or part A of this Code.

2.2 For the purpose of this part of the Code:

.1 ''Section'' means a section of part A of the Code and is indicated as ''section A/<followed by the number of the section>'';

.2 ''Paragraph'' means a paragraph of this part of the Code and is indicated as ''paragraph <followed by the number of the paragraph>''; and

.3 ''*Contracting Government*'', when used in paragraphs 14 to 18, means the ''Contracting Government within whose territory the port facility is located'' and includes a reference to the ''Designated Authority''.

3 Application

General

3.1 The guidance given in this part of the Code should be taken into account when implementing the requirements of chapter XI–2 and part A of this Code.

3.2 However, it should be recognized that the extent to which the guidance on ships applies will depend on the type of ship, its cargoes and/or passengers, its trading pattern and the characteristics of the port facilities visited by the ship.

3.3 Similarly, in relation to the guidance on port facilities, the extent to which this guidance applies will depend on the port facilities, the types of ships using the port facility, the types of cargo and/or passengers and the trading patterns of visiting ships.

3.4 The provisions of chapter XI–2 and part A of this Code are not intended to apply to port facilities designed and used primarily for military purposes.

4 Responsibility of Contracting Governments

Security of Assessments and Plans

4.1 Contracting Governments should ensure that appropriate measures are in place to avoid unauthorized disclosure of, or access to, security sensitive material relating to Ship Security Assessments, Ship Security Plans, Port Facility Security Assessments and Port Facility Security Plans, and to individual assessments or plans.

Designated Authorities

4.2 Contracting Governments may identify a Designated Authority within Government to undertake their security duties relating to port facilities as set out in chapter XI–2 or part A of this Code.

Recognized Security Organizations

4.3 Contracting Governments may authorize a Recognized Security Organization (RSO) to undertake certain security related activities, including:

.1 Approval of Ship Security Plans, or amendments thereto, on behalf of the Administration;

.2 Verification and certification of compliance of ships with the requirements of chapter XI–2 and part A of this Code on behalf of the Administration; and

.3 Conducting Port Facility Security Assessments required by the Contracting Government.

4.4 An RSO may also advise or provide assistance to Companies or port facilities on security matters, including Ship Security Assessments, Ship Security Plans, Port Facility Security Assessments and Port Facility Security Plans. This can include completion of a Ship Security Assessment or Plan or Port Facility Security Assessment or Plan.

If an RSO has done so in respect of a ship security assessment or plan that RSO should not be authorised to approve that ship security plan.

4.5 When authorizing an RSO, Contracting Governments should give consideration to the competency of such an organization. An RSO should be able to demonstrate:

.1 Expertise in relevant aspects of security;

.2 Appropriate knowledge of ship and port operations, including knowledge of ship design and construction if providing services in respect of ships and port design and construction if providing services in respect of port facilities;

.3 Their capability to assess the likely security risks that could occur during ship and port facility operations including the ship/port interface and how to minimise such risks;

.4 Their ability to maintain and improve the expertise of their personnel;

.5 Their ability to monitor the continuing trustworthiness of their personnel;

.6 Their ability to maintain appropriate measures to avoid unauthorised disclosure of, or access to, security sensitive material;

.7 Their knowledge of the requirements chapter XI–2 and part A of this Code and relevant national and international legislation and security requirements; and

.8 Their knowledge of current security threats and patterns;

.9 Their knowledge on recognition and detection of weapons, dangerous substances and devices;

.10 Their knowledge on recognition, on a non-discriminatory basis, of characteristics and behavioural patterns of persons who are likely to threaten security;

.11 Their knowledge on techniques used to circumvent security measures; and

.12 Their knowledge of security and surveillance equipment and systems and their operational limitations.

When delegating specific duties to an RSO, Contracting Governments, including Administrations, should ensure that the RSO has the competencies needed to undertake the task.

4.6 A Recognized Organization, as defined in regulation I/6 and fulfilling the requirements of regulation XI–1/1, may be appointed as a RSO provided it has the appropriate security related expertise listed in paragraph 4.5.

4.7 A Port or Harbour Authority or Port Facility operator may be appointed as an RSO provided it has the appropriate security related expertise listed in paragraph 4.5.

Setting the Security Level

4.8 In setting the security level Contracting Governments should take account of general and specific threat information. Contracting Governments should set the security level applying to ships or port facilities at one of three levels:

—Security level 1: normal, the level at which the ship or port facility normally operates;

—Security level 2: heightened, the level applying for as long as there is a heightened risk of a security incident; and

—Security level 3: exceptional, the level applying for the period of time when there is the probable or imminent risk of a security incident.

4.9 Setting security level 3 should be an exceptional measure applying only when there is credible information that a security incident is probable or imminent.

Security level 3 should only be set for the duration of the identified security threat or actual security incident.

While the security levels may change from security level 1, through security level 2 to security level 3, it is also possible that the security levels will change directly from security level 1 to security level 3.

4.10 At all times the Master of a ship has the ultimate responsibility for the safety of the ship. Even at security level 3 a Master may seek clarification or amendment of instructions issued by those responding to a security incident, or threat thereof, if there are reasons to believe that compliance with any instruction may imperil the safety of the ship.

4.11 The Company Security Officer (CSO) or the Ship Security Officer (SSO) should liase at the earliest opportunity with the Port Facility Security Officer (PFSO) of the port facility the ship is intended to visit to establish the security level applying for that ship at the port facility. Having established contact with a ship, the PFSO should advise the ship of any subsequent change in the port

facility's security level and should provide the ship with any relevant security information.

4.12 While there may be circumstances when an individual ship may be operating at a higher security level than the port facility it is visiting, there will be no circumstances when a ship can have a lower security level than the port facility it is visiting. If a ship has a higher security level than the port facility it intends to use, the CSO or SSO should advise the PFSO without delay. The PFSO should undertake an assessment of the particular situation in consultation with the CSO or SSO and agree on appropriate security measures with the ship, which may include completion and signing of a Declaration of Security.

4.13 Contracting Governments should consider how information on changes in security levels should be promulgated rapidly. Administrations may wish to use NAVTEX messages or Notices to Mariners as the method for notifying such changes in security levels to ship and CSO and SSO. Or, they may wish to consider other methods of communication that provide equivalent or better speed and coverage. Contracting Governments should establish means of notifying PFSOs of changes in security levels.

Contracting Governments should compile and maintain the contact details for a list of those who need to be informed of changes in security levels. Whereas the security level need not be regarded as being particularly sensitive, the underlying threat information may be highly sensitive. Contracting Governments should give careful consideration to the type and detail of the information conveyed and the method by which it is conveyed, to SSOs, CSOs and PFSOs.

Contact Points and Information on Port Facility Security Plans

4.14 Where a port facility has a PFSP that fact has to be communicated to the Organization and that information must also be made available to Company and Ship Security Officers. No further details of the PFSP have to be published other than that it is in place. Contracting Governments should consider establishing either central or regional points of contact, or other means of providing up to date information on the locations where PFSPs are in place, together with contact details for the relevant PFSO. The existence of such contact points should be publicised. They could also provide information on the recognized security organizations appointed to act on behalf of the Contracting Government, together with details of the specific responsibility and conditions of authority delegated to such recognised security organizations.

4.15 In the case of a port that does not have a PFSP (and therefore does not have a PFSO) the central or regional point of contact should be able to identify a suitably qualified person ashore who can arrange for appropriate security measures to be in place, if needed, for the duration of the ship's visit.

4.16 Contracting Governments should also provide the contact details of Government officers to whom an SSO, a CSO and a PFSO can report security concerns.

These Government officers should assess such reports before taking appropriate action. Such reported concerns may have a bearing on the security measures falling under the jurisdiction of another Contracting Government. In that case, the Contracting Governments should consider contacting their counterpart in the other Contracting Government to discuss whether remedial action is appropriate. For this purpose, the contact details of the Government officers should be communicated to the International Maritime Organization.

4.17 Contracting Governments should also make the information indicated in paragraphs 4.14 to 4.16, available to other Contracting Governments on request.

Identification Documents

4.18 Contracting Governments are encouraged to issue appropriate identification documents to Government officials entitled to board ships or enter port facilities when performing their official duties and to establish procedures whereby the authenticity of such documents might be verified.

Fixed and Floating Platforms and Mobile Drilling Units on Location

4.19 Contracting Governments should consider establishing appropriate security measures for fixed and floating platforms and mobile offshore drilling units on location to allow interaction with ships which are required to comply with the provisions of chapter XI–2 and part A of this Code [1].

Ships Which Are Not Required To Comply With Part A of This Code

4.20 Contracting Governments should consider establishing appropriate security measures to enhance the security of ships to which this chapter XI–2 and part A of this Code does not apply and to ensure that any security provisions applying to such ships allow interaction with ships to which part A of this Code applies.

Threats to Ships and Other Incidents at Sea

4.21 Contracting Governments should provide general guidance on the measures considered appropriate to reduce the security risk to ships flying their flag when at sea. They should provide specific advice on the action to be taken in accordance with security levels 1 to 3, if:

.1 There is a change in the security level applying to the ship while it is at sea, e.g. because of the geographical area in which it is operating or relating to the ship itself; and

.2 There is a security incident or threat thereof involving the ship while at sea.

Contracting Governments should establish the best methods and procedures for these purposes. In the case of an imminent attack the ship should seek to establish direct communication with those responsible in the flag State for responding to security incidents.

4.22 Contracting Governments should also establish a point of contact for advice on security for any ship:

.1 Entitled to fly their flag; or

.2 Operating in their territorial sea or having communicated an intention to enter their territorial sea.

4.23 Contracting Governments should offer advice to ships operating in their territorial sea or having communicated an intention to enter their territorial sea, which could include advice:

.1 To alter or delay their intended passage;

.2 To navigate on a particular course or proceed to a specific location;

.3 On the availability of any personnel or equipment that could be placed on the ship;

.4 To co-ordinate the passage, arrival into port or departure from port, to allow escort by patrol craft or aircraft (fixed-wing or helicopter).

Contracting Governments should remind ships operating in their territorial sea, or having communicated an intention to enter their territorial sea, of any temporary restricted areas that they have published.

4.24 Contracting Governments should recommend that ships operating in their territorial sea, or having communicated an intention to enter their territorial sea, implement expeditiously, for the ship's protection and for the protection of other ships in the vicinity, any security measure the Contracting Government may have advised.

4.25 The plans prepared by the Contracting Governments for the purposes given in paragraph 4.22 should include information on an appropriate point of contact, available on a 24-hour basis, within the Contracting Government including the Administration. These plans should also include information on the circumstances in which the Administration considers assistance should be sought from nearby coastal States, and a procedure for liaison between port facility security officers and ship security officers.

Alternative Security Agreements

4.26 Contracting Governments, in considering how to implement chapter XI–2 and part A of this Code, may conclude one or more agreements with one or more Contracting Governments. The scope of an agreement is limited to short international voyages on fixed routes between port facilities in the territory of the parties to the agreement.

When concluding an agreement, and thereafter, the Contracting Governments should consult other Contracting Governments and Administrations with an interest in the effects of the agreement. Ships flying the flag of a State that is not party to the agreement should only be allowed to operate on the fixed routes covered by the agreement if their Administration agrees that the ship should comply with the provisions of the agreement and requires the ship to do so.

In no case can such an agreement compromise the level of security of other ships and port facilities not covered by it, and specifically, all ships covered by such an agreement may not conduct ship-to-ship

[1] Refer to Establishment of Appropriate Measures to Enhance the Security of Ships, Port Facilities, Mobile Offshore Drilling Units on location and Fixed and Floating Platforms Not Covered by chapter XI–2 of 1974 SOLAS Convention, adopted by the Conference on Maritime Security by resolution 7.

activities with ships not so covered. Any operational interface undertaken by ships covered by the agreement should be covered by it.

The operation of each agreement must be continually monitored and amended when the need arises and in any event should be reviewed every 5 years.

Equivalent Arrangements for Port Facilities

4.27 For certain specific port facilities with limited or special operations but with more than occasional traffic, it may be appropriate to ensure compliance by security measures equivalent to those prescribed in chapter XI–2 and in part A of this Code. This can, in particular, be the case for terminals such as those attached to factories, or quaysides with no frequent operations.''

Manning Level

4.28 In establishing the minimum safe manning of a ship the Administration should take into account [2] that the minimum safe manning provisions established by regulation V/14 [3] only address the safe navigation of the ship. The Administration should also take into account any additional workload which may result from the implementation of the ship's security plan and ensure that the ship is sufficiently and effectively manned. In doing so the Administration should verify that ships are able to implement the hours of rest and other measures to address fatigue which have been promulgated by national law, in the context of all shipboard duties assigned to the various shipboard personnel.

Control and Compliance Measures [4]

General

4.29 Regulation XI–2/9 describes the control and compliance measures applicable to ships under chapter XI–2. It is divided into three distinct sections; control of ships already in a port, control of ships intending to enter a port of another Contracting Government, and additional provisions applicable to both situations.

4.30 Regulation XI–2/9.1, control of ships in port, implements a system for the control of ships while in the port of a foreign country where duly authorised officers of the Contracting Government (duly authorized officers) have the right to go on board the ship to verify that the required certificates are in proper order. Then if there are clear grounds to believe the ship does not comply, control measures such as additional inspections or detention may be taken. This reflects current control systems.[5]

Regulation XI–2/9.1 builds on such systems and allows for additional measures (including expulsion of a ship from a port to be taken as a control measure) when duly authorized officers have clear grounds for believing that a ship is in non-compliance with the requirements of chapter XI–2 or part A of this Code. Regulation XI–2/9.3 describes the safeguards that promote fair and proportionate implementation of these additional measures.

4.31 Regulation XI–2/9.2 applies control measures to ensure compliance to ships intending to enter a port of another Contracting Government and introduces an entirely different concept of control within chapter XI–2, applying to security only. Under this regulation measures may be implemented prior to the ship entering port, to better ensure security. Just as in regulation XI–2/9.1, this additional control system is based on the concept of clear grounds for believing the ship does not comply with chapter XI–2 or part A of this Code, and includes significant safeguards in regulations XI–2/9.2.2 and XI–2/9.2.5 as well as in regulation XI–2/9.3.

4.32 Clear grounds that the ship is not in compliance means evidence or reliable information that the ship does not correspond with the requirements of chapter XI–2 or part A of this Code, taking into account the guidance given in this part of the Code. Such evidence or reliable information may arise from the duly authorized officer's professional judgement or observations gained while verifying the ship's International Ship Security Certificate or Interim International Ship Security Certificate issued in accordance with part A of this Code (certificate) or from other sources. Even if a valid certificate is on board the ship, the duly authorized officers may still have clear grounds for believing that the ship is not in compliance based on their professional judgment.

4.33 Examples of possible clear grounds under regulations XI–2/9.1 and XI–2/9.2 may include, when relevant:

.1 Evidence from a review of the certificate that it is not valid or it has expired;

.2 Evidence or reliable information that serious deficiencies exist in the security equipment, documentation or arrangements required by chapter XI–2 and part A of this Code;

.3 Receipt of a report or complaint which, in the professional judgment of the duly authorized officer, contains reliable information clearly indicating that the ship does not comply with the requirements of chapter XI–2 or part A of this Code;

.4 Evidence or observation gained by a duly authorized officer using professional judgment that the master or ship's personnel is not familiar with essential shipboard security procedures or cannot carry out drills related to the security of the ship or that such procedures or drills have not been carried out;

.5 Evidence or observation gained by a duly authorized officer using professional judgment that key members ship's personnel are not able to establish proper communication with any other key members of ship's personnel with security responsibilities on board the ship;

.6 Evidence or reliable information that the ship has embarked persons, or loaded stores or goods at a port facility or from another ship where either the port facility or the other ship is in violation of chapter XI–2 or part A of this Code, and the ship in question has not completed a Declaration of Security, nor taken appropriate, special or additional security measures or has not maintained appropriate ship security procedures;

.7 Evidence or reliable information that the ship has embarked persons, or loaded stores or goods at a port facility or from another source (*e.g.*, another ship or helicopter transfer) where either the port facility or the other source is not required to comply with chapter XI–2 or part A of this Code, and the ship has not taken appropriate, special or additional security measures or has not maintained appropriate security procedures; and

.8 If the ship holds a subsequent, consecutively issued Interim International Ship Security Certificate as described in section A/19.4, and if, in the professional judgment of an officer duly authorized, one of the purposes of the ship or a Company in requesting such certificate is to avoid full compliance with chapter XI–2 and part A of this Code beyond the period of the initial interim certificate as described in section A/19.4.4.

4.34 The international law implications of regulation XI–2/9 are particularly relevant, and the regulation should be implemented with regulation XI–2/2.4 in mind, as the potential exists for situations where either measures will be taken which fall outside the scope of chapter XI–2, or where rights of affected ships, outside chapter XI–2, should be considered. Thus, regulation XI–2/9 does not prejudice the Contracting Government from taking measures having a basis in, and consistent with, international law, to ensure the safety or security of people, ships, port facilities and other property in cases where the ship, although in compliance with chapter XI–2 and part A of this Code, is still considered to present a security risk.

4.35 When a Contracting Government imposes control measures on a ship, the Administration should, without delay, be contacted with sufficient information to enable the Administration to fully liaise with the Contracting Government.

Control of Ships in Port

4.36 Where the non-compliance is either a defective item of equipment or faulty documentation leading to the ship's detention and the non-compliance cannot be remedied in the port of inspection, the Contracting Government may allow the ship to sail to another port provided that any conditions agreed between the port States and the Administration or master are met.

[2] Refer to Further Work by the International Maritime Organisation pertaining to Enhancement of Maritime Security, adopted by the Conference on Maritime Security by resolution 3, inviting, amongst others, the Organisation to review Assembly Resolution A.890(21) on Principles of Safe Manning. This review may also lead to amendments of regulation V/14.

[3] As was in force on the date of adoption of this Code.

[4] Refer to Further Work by the International Maritime Organisation pertaining to Enhancement of Maritime Security, adopted by the Conference on Maritime Security by resolution 3, inviting, amongst others, the Organisation to review Assembly Resolutions A.787(19) and A.822(21).

[5] See regulation I/19 and regulation IX/6.2 of SOLAS 74 as amended, article 21 of LOADLINE 66 as modified by the 1988 LOADLINE Protocol, articles 5 and 6, regulation 8A of Annex I, regulation 15 of Annex II of MARPOL 73/78 as amended, article X of STCW 78 as amended and IMO Assembly Resolutions A.787(19) and A.882(21).

Ships Intending To Enter the Port of Another Contracting Government

4.37 Regulation XI–2/9.2.1 lists the information Contracting Governments may require from a ship as a condition of entry into port. One item of information listed is confirmation of any special or additional measures taken by the ship during its last ten calls at a port facility. Examples could include:

.1 Records of the measures taken while visiting a port facility located in the territory of a State which is not a Contracting Government especially those measures that would normally have been provided by port facilities located in the territories of Contracting Governments; and

.2 Any Declarations of Security that were entered into with port facilities or other ships.

4.38 Another item of information listed, that may be required as a condition of entry into port, is confirmation that appropriate ship security procedures were maintained during ship-to-ship activity conducted within the period of the last 10 calls at a port facility. It would not normally be required to include records of transfers of pilots, customs, immigration, security officials nor bunkering, lightering, loading of supplies and unloading of waste by ship within port facilities as these would normally fall within the auspices of the Port Facility Security Plan. Examples of information that might be given include:

.1 Records of the measures taken while engaged in a ship to ship activity with a ship flying the flag of a State which is not a Contracting Government especially those measures that would normally have been provided by ships flying the flag of Contracting Governments;

.2 Records of the measures taken while engaged in a ship to ship activity with a ship that is flying the flag of a Contracting Government but is not required to comply with the provisions of chapter XI–2 and part A of this Code such as a copy of any security certificate issued to that ship under other provisions; and

.3 In the event that persons or goods rescued at sea are on board, all known information about such persons or goods, including their identities when known and the results of any checks run on behalf of the ship to establish the security status of those rescued. It is not the intention of chapter XI–2 or part A of this Code to delay or prevent the delivery of those in distress at sea to a place of safety. It is the sole intention of chapter XI–2 and part A of this Code to provide States with enough appropriate information to maintain their security integrity.

4.39 Examples of other practical security related information that may be required as a condition of entry into port in order to assist with ensuring the safety and security of persons, port facilities, ships and other property include:

.1 Information contained in the Continuous Synopsis Record;

.2 Location of the ship at the time the report is made;

.3 Expected time of arrival of the ship in port;

.4 Crew list;

.5 General description of cargo aboard the ship;

.6 Passenger list; and

.7 Information required to be carried under regulation XI–2/10.

4.40 Regulation XI–2/9.2.5 allows the master of a ship, upon being informed that the coastal or port State will implement control measures under regulation XI–2/9.2, to withdraw the intention for the ship to enter port. If the master withdraws that intention, regulation XI–2/9 no longer applies, and any other steps that are taken must be based on, and consistent with, international law.

Additional Provisions

4.41 In all cases where a ship is denied entry or expelled from a port, all known facts should be communicated to the authorities of relevant States. This communication should consist of the following when known:

.1 Name of ship, its flag, the ship's identification number, call sign, ship type and cargo;

.2 Reason for denying entry or expulsion from port or port areas;

.3 If relevant, the nature of any security non-compliance;

.4 If relevant, details of any attempts made to rectify any non-compliance, including any conditions imposed on the ship for the voyage;

.5 Past port(s) of call and next declared port of call;

.6 Time of departure and likely estimated time of arrival at those ports;

.7 Any instructions given to ship, e.g., reporting on route;

.8 Available information on the security level at which the ship is currently operating;

.9 Information regarding any communications the port State has had with the Administration;

.10 Contact point within the port State making the report for the purpose of obtaining further information;

.11 Crew list; and

.12 Any other relevant information.

4.42 Relevant States to contact should include those along the ship's intended passage to its next port, particularly if the ship intends to enter the territorial sea of that coastal State. Other relevant States could include previous ports of call, so that further information might be obtained and security issues relating to the previous ports resolved.

4.43 In exercising control and compliance measures, the duly authorized officers should ensure that any measures or steps imposed are proportionate. Such measures or steps should be reasonable and of the minimum severity and duration necessary to rectify or mitigate the non-compliance.

4.44 The word ''delay'' in regulation XI–2/9.3.3.1 also refers to situations where, pursuant to actions taken under this regulation, the ship is unduly denied entry into port or the ship is unduly expelled from port.

Non-Party Ships and Ships Below Convention Size

4.45 With respect to ships flying the flag of a State which is not a Contracting Government to the Convention and not a Party to the 1988 SOLAS Protocol [6], Contracting Governments should not give more favourable treatment to such ships. Accordingly, the requirements of regulation XI–2/9 and the guidance provided in this Part of the Code should be applied to those ships.

4.46 Ships below Convention size are subject to measures by which States maintain security. Such measures should be taken with due regard to the requirements in chapter XI–2 and the guidance provided in this Part of the Code.

5 Declaration of Security

General

5.1 A Declaration of Security (DoS) should be completed when the Contracting Government of the port facility deems it to be necessary or when a ship deems it necessary.

5.1.1 The need for a DoS may be indicated by the results of the Port Facility Security Assessment (PFSA) and the reasons and circumstances in which a DoS is required should be set out in the Port Facility Security Plan (PFSP).

5.1.2 The need for a DoS may be indicated by an Administration for ships entitled to fly its flag or as a result of a ship security assessment and should be set out in the ship security plan.

5.2 It is likely that a DoS will be requested at higher security levels, when a ship has a higher security level than the port facility, or another ship with which it interfaces, and for ship/port interface or ship to ship activities that pose a higher risk to persons, property or the environment for reasons specific to that ship, including its cargo or passengers or the circumstances at the port facility or a combination of these factors.

5.2.1 In the case that a ship or an Administration, on behalf of ships entitled to fly its flag, requests completion of a DoS, the Port Facility Security Officer (PFSO) or Ship Security Officer (SSO) should acknowledge the request and discuss appropriate security measures.

5.3 A PFSO may also initiate a DoS prior to ship/port interfaces that are identified in the approved PFSA as being of particular concern. Examples may include the embarking or disembarking passengers, and the transfer, loading or unloading of dangerous goods or hazardous substances.

The PFSA may also identify facilities at or near highly populated areas or economically significant operations that warrant a DoS.

5.4 The main purpose of a DoS is to ensure agreement is reached between the ship and the port facility or with other ships with which it interfaces as to the respective security measures each will undertake in accordance with the provisions of their respective approved security plans.

5.4.1 The agreed DoS should be signed and dated by both the port facility and the ship(s), as applicable, to indicate compliance with chapter XI–2 and part A of this Code and should include its duration, the relevant security level, or levels and the contact points.

[6] Protocol of 1988 relating to the International Convention for the Safety of Life at Sea, 1974.

5.4.2 A change in the security level may require that a new or revised DoS be completed.

5.5 The DoS should be completed in English, French or Spanish or in a language common to both the port facility and the ship or the ships, as applicable.

5.6 A model DoS is included in Appendix 1 to this part of the Code.

6 Obligations of the Company

6.1 Regulation XI–2/5 requires the company to provide the master of the ship with information to meet the requirements of the Company under the provisions of this regulation. This information should include items such as:

.1 Parties responsible for appointing shipboard personnel, such as ship management companies, manning agents, contractors, concessionaries, for example, retail sales outlets, casinos etc;

.2 Parties responsible for deciding the employment of the ship including, time or bareboat charterer(s) or any other entity acting in such capacity; and

.3 In cases when the ship is employed under the terms of a charter party, the contact details of those parties including time or voyage charterers

6.2 In accordance with regulation XI–2/5 the Company is obliged to update and keep this information current as and when changes occur.

6.3 This information should be in English, French or Spanish language.

6.4 With respect to ships constructed before July 1, 2004, this information should reflect the actual condition on that date.

6.5 With respect to ships constructed on or after July 1, 2004, and for ships constructed before July 1, 2004, which were out of service on July 1, 2004, the information should be provided as from the date of entry of the ship into service and should reflect the actual condition on that date.

6.6 After July 1, 2004, when a ship is withdrawn from service the information should be provided as from the date of re-entry of the ship into service and should reflect the actual condition on that date.

6.7 Previously provided information that does not relate to the actual condition on that date need not be retained on board.

6.8 When the responsibility for the operation of the ship is assumed by another Company, the information relating to the Company, which operated the ship, are not required to be left on board.

In addition other relevant guidance is provided under sections 8, 9 and 13.

7 Ship Security

Relevant guidance is provided under sections 8, 9 and 13.

8 Ship Security Assessment

Security Assessment

8.1 The Company Security Officer (CSO) is responsible for ensuring that a Ship Security Assessment (SSA) is carried out for each of the ships in the Company's fleet which is required to comply with the provisions of chapter XI–2 and part A of this Code for which the CSO is responsible. While the CSO need not necessarily personally undertake all the duties associated with the post, the ultimate responsibility for ensuring that they are properly performed remains with the individual CSO.

8.2 Prior to commencing the SSA, the CSO should ensure that advantage is taken of information available on the assessment of threat for the ports at which the ship will call or at which passengers embark or disembark and about the port facilities and their protective measures. The CSO should study previous reports on similar security needs.

Where feasible, the CSO should meet with appropriate persons on the ship and in the port facilities to discuss the purpose and methodology of the assessment.

The CSO should follow any specific guidance offered by the Contracting Governments.

8.3 A SSA should address the following elements on board or within the ship:

.1 Physical security;

.2 Structural integrity;

.3 Personnel protection systems;

.4 Procedural policies;

.5 Radio and telecommunication systems, including computer systems and networks;

.6 Other areas that may, if damaged or used for illicit observation, pose a risk to people, property, or operations on board the ship or within a port facility.

8.4 Those involved in a SSA should be able to draw upon expert assistance in relation to:

.1 Knowledge of current security threats and patterns;

.2 Recognition and detection of weapons, dangerous substances and devices;

.3 Recognition, on a non-discriminatory basis, of characteristics and behavioural patterns of persons who are likely to threaten security;

.4 Techniques used to circumvent security measures;

.5 Methods used to cause a security incident;

.6 Effects of explosives on ship's structures and equipment;

.7 Ship security;

.8 Ship/port interface business practices;

.9 Contingency planning, emergency preparedness and response;

.10 Physical security;

.11 Radio and telecommunications systems, including computer systems and networks;

.12 Marine engineering; and

.13 Ship and port operations.

8.5 The CSO should obtain and record the information required to conduct an assessment, including:

.1 The general layout of the ship;

.2 The location of areas which should have restricted access, such as navigation bridge, machinery spaces of category A and other control stations as defined in chapter II–2, etc.;

.3 The location and function of each actual or potential access point to the ship;

.4 Changes in the tide which may have an impact on the vulnerability or security of the ship;

.5 The cargo spaces and stowage arrangements;

.6 The locations where the ship's stores and essential maintenance equipment is stored;

.7 The locations where unaccompanied baggage is stored;

.8 The emergency and stand-by equipment available to maintain essential services;

.9 The number of ship's personnel, any existing security duties and any existing training requirement practises of the Company;

.10 Existing security and safety equipment for the protection of passengers and ship's personnel;

.11 Escape and evacuation routes and assembly stations which have to be maintained to ensure the orderly and safe emergency evacuation of the ship;

.12 Existing agreements with private security companies providing ship/waterside security services; and

.13 Existing security measures and procedures in effect, including inspection and, control procedures, identification systems, surveillance and monitoring equipment, personnel identification documents and communication, alarms, lighting, access control and other appropriate systems.

8.6 The SSA should examine each identified point of access, including open weather decks, and evaluate its potential for use by individuals who might seek to breach security. This includes points of access available to individuals having legitimate access as well as those who seek to obtain unauthorized entry.

8.7 The SSA should consider the continuing relevance of the existing security measures and guidance, procedures and operations, under both routine and emergency conditions and should determine security guidance including:

.1 The restricted areas;

.2 The response procedures to fire or other emergency conditions;

.3 The level of supervision of the ship's personnel, passengers, visitors, vendors, repair technicians, dock workers, etc.;

.4 The frequency and effectiveness of security patrols;

.5 The access control systems, including identification systems;

.6 The security communications systems and procedures;

.7 The security doors, barriers and lighting; and

.8 The security and surveillance equipment and systems, if any.

8.8 The SSA should consider the persons, activities, services and operations that it is important to protect. This includes:

.1 The ship's personnel;

.2 Passengers, visitors, vendors, repair technicians, port facility personnel, etc;

.3 The capacity to maintain safe navigation and emergency response;

.4 The cargo, particularly dangerous goods or hazardous substances;

.5 The ship's stores;

.6 The ship security communication equipment and systems, if any; and

.7 The ship's security surveillance equipment and systems, if any.

8.9 The SSA should consider all possible threats, which may include the following types of security incidents:

.1 Damage to, or destruction of, the ship or of a port facility, *e.g.* by explosive devices, arson, sabotage or vandalism;

.2 Hijacking or seizure of the ship or of persons on board;

.3 Tampering with cargo, essential ship equipment or systems or ship's stores;

.4 Unauthorized access or use, including presence of stowaways;

.5 Smuggling weapons or equipment, including weapons of mass destruction;

.6 Use of the ship to carry those intending to cause a security incident and/or their equipment;

.7 Use of the ship itself as a weapon or as a means to cause damage or destruction;

.8 Attacks from seaward whilst at berth or at anchor; and

.9 Attacks whilst at sea.

8.10 The SSA should take into account all possible vulnerabilities, which may include:

.1 Conflicts between safety and security measures;

.2 Conflicts between shipboard duties and security assignments;

.3 Watch-keeping duties, number of ship's personnel, particularly with implications on crew fatigue, alertness and performance;

.4 Any identified security training deficiencies; and

.5 Any security equipment and systems, including communication systems.

8.11 The CSO and SSO should always have regard to the effect that security measures may have on ship's personnel who will remain on the ship for long periods. When developing security measures, particular consideration should be given to the convenience, comfort and personal privacy of the ship's personnel and their ability to maintain their effectiveness over long periods.

8.12 Upon completion of the SSA, a report shall be prepared, consisting of a summary of how the assessment was conducted, a description of each vulnerability found during the assessment and a description of counter measures that could be used to address each vulnerability. The report shall be protected from unauthorized access or disclosure.

8.13 If the SSA has not been carried out by the Company the report of the SSA should be reviewed and accepted by the CSO.

On-scene Security Survey

8.14 The on-scene security survey is an integral part of any SSA. The on-scene security survey should examine and evaluate existing shipboard protective measures, procedures and operations for:

.1 Ensuring the performance of all ship security duties;

.2 Monitoring restricted areas to ensure that only authorized persons have access;

.3 Controlling access to the ship, including any identification systems;

.4 Monitoring of deck areas and areas surrounding the ship;

.5 Controlling the embarkation of persons and their effects (accompanied and unaccompanied baggage and ship's personnel personal effects);

.6 Supervising the handling of cargo and the delivery of ship's stores; and

.7 Ensuring that ship security communication, information, and equipment are readily available.

9 Ship Security Plan

General

9.1 The Company Security Officer (CSO) has the responsibility of ensuring that a Ship Security Plan (SSP) is prepared and submitted for approval. The content of each individual SSP should vary depending on the particular ship it covers. The Ship Security Assessment (SSA) will have identified the particular features of the ship and the potential threats and vulnerabilities. The preparation of the SSP will require these features to be addressed in detail. Administrations may prepare advice on the preparation and content of a SSP.

9.2 All SSPs should:

.1 Detail the organizational structure of security for the ship;

.2 Detail the ship's relationships with the Company, port facilities, other ships and relevant authorities with security responsibility;

.3 Detail the communication systems to allow effective continuous communication within the ship and between the ship and others, including port facilities;

.4 Detail the basic security measures for security level 1, both operational and physical, that will always be in place;

.5 Detail the additional security measures that will allow the ship to progress without delay to security level 2 and, when necessary, to security level 3;

.6 Provide for regular review, or audit, of the SSP and for its amendment in response to experience or changing circumstances; and

.7 Reporting procedures to the appropriate Contracting Governments contact points.

9.3 Preparation of an effective SSP should rest on a thorough assessment of all issues that relate to the security of the ship, including, in particular, a thorough appreciation of the physical and operational characteristics, including the voyage pattern, of the individual ship.

9.4 All SSPs should be approved by, or on behalf of, the Administration. If an Administration uses a Recognised Security Organisation (RSO) to review or approve the SSP the RSO should not be associated with any other RSO that prepared, or assisted in the preparation of, the plan.

9.5 CSOs and Ship Security Officers (SSOs) should develop procedures to:

.1 Assess the continuing effectiveness of the SSP; and

.2 Prepare amendments of the plan subsequent to its approval.

9.6 The security measures included in the SSP should be in place when the initial verification for compliance with the requirements of chapter XI–2 and Part A of this Code will be carried out. Otherwise the process of issue to the ship of the required International Ship Security Certificate cannot be carried out.

If there is any subsequent failure of security equipment or systems, or suspension of a security measure for whatever reason, equivalent temporary security measures should be adopted, notified to, and agreed by, the Administration.

Organization and Performance of Ship Security Duties

9.7 In addition to the guidance given in section 9.2, the SSP should establish the following which relate to all security levels:

.1 The duties and responsibilities of all shipboard personnel with a security role;

.2 The procedures or safeguards necessary to allow such continuous communications to be maintained at all times;

.3 The procedures needed to assess the continuing effectiveness of security procedures and any security and surveillance equipment and systems, including procedures for identifying and responding to equipment or systems failure or malfunction;

.4 The procedures and practices to protect security sensitive information held in paper or electronic format;

.5 The type and maintenance requirements, of security and surveillance equipment and systems, if any;

.6 The procedures to ensure the timely submission, and assessment, of reports relating to possible breaches of security or security concerns; and

.7 Procedures to establish, maintain and up-date an inventory of any dangerous goods or hazardous substances carried on board, including their location.

9.8 The remainder of this section addresses specifically the security measures that could be taken at each security level covering:

.1 Access to the Ship by ship's personnel, passengers, visitors, etc;

.2 Restricted Areas on the Ship;

.3 Handling of Cargo;

.4 Delivery of Ship's Stores;

.5 Handling Unaccompanied Baggage; and

.6 Monitoring the Security of the Ship.

Access to the Ship

9.9 The SSP should establish the security measures covering all means of access to the ship identified in the SSA. This should include any:

.1 Access ladders;

.2 Access gangways;

.3 Access ramps;

.4 Access doors, side scuttles, windows and ports;

.5 Mooring lines and anchor chains; and

.6 Cranes and hoisting gear.

9.10 For each of these the SSP should identify the appropriate locations where access restrictions or prohibitions should be applied for each of the security levels. For each security level the SSP should establish the type of restriction or prohibition to be applied and the means of enforcing them.

9.11 The SSP should establish for each security level the means of identification required to allow access to the ship and for individuals to remain on the ship without challenge, this may involve developing an appropriate identification system allowing for permanent and temporary identifications, for ship's personnel and visitors respectively.

Any ship identification system should, when it is practicable to do so, be co-ordinated with that applying to the port facility.

Passengers should be able to prove their identity by boarding passes, tickets, etc., but

should not be permitted access to restricted areas unless supervised.

The SSP should establish provisions to ensure that the identification systems are regularly updated, and that abuse of procedures should be subject to disciplinary action.

9.12 Those unwilling or unable to establish their identity and/or to confirm the purpose of their visit when requested to do so should be denied access to the ship and their attempt to obtain access should be reported, as appropriate, to the SSOs, the CSOs, the Port Facility Security Officer (PFSO) and to the national or local authorities with security responsibilities.

9.13 The SSP should establish the frequency of application of any access controls particularly if they are to be applied on a random, or occasional, basis.

Security Level 1

9.14 At security level 1, the SSP should establish the security measures to control access to the ship, where the following may be applied:

.1 Checking the identity of all persons seeking to board the ship and confirming their reasons for doing so by checking, for example, joining instructions, passenger tickets, boarding passes, work orders etc;

.2 In liaison with the port facility the ship should ensure that designated secure areas are established in which inspections and searching of people, baggage (including carry on items), personal effects, vehicles and their contents can take place;

.3 In liaison with the port facility the ship should ensure that vehicles destined to be loaded on board car carriers, ro-ro and other passenger ships are subjected to search prior to loading, in accordance with the frequency required in the SSP;

.4 Segregating checked persons and their personal effects from unchecked persons and their personal effects;

.5 Segregating embarking from disembarking passengers;

.6 Identification of access points that should be secured or attended to prevent unauthorized access;

.7 Securing, by locking or other means, access to unattended spaces adjoining areas to which passengers and visitors have access; and

.8 Providing security briefings to all ship personnel on possible threats, the procedures for reporting suspicious persons, objects or activities and the need for vigilance.

9.15 At security level 1, all those seeking to board a ship should be liable to search. The frequency of such searches, including random searches, should be specified in the approved SSP and should be specifically approved by the Administration. Such searches may best be undertaken by the port facility in close co-operation with the ship and in close proximity to it.

Unless there are clear security grounds for doing so, members of the ship's personnel should not be required to search their colleagues or their personal effects.

Any such search shall be undertaken in a manner which fully takes into account the human rights of the individual and preserves their basic human dignity.

Security Level 2

9.16 At security level 2, the SSP should establish the security measures to be applied to protect against a heightened risk of a security incident to ensure higher vigilance and tighter control, which may include:

.1 Assigning additional personnel to patrol deck areas during silent hours to deter unauthorised access;

.2 Limiting the number of access points to the ship, identifying those to be closed and the means of adequately securing them;

.3 Deterring waterside access to the ship, including, for example, in liaison with the port facility, provision of boat patrols;

.4 Establishing a restricted area on the shore-side of the ship, in close co-operation with the port facility;

.5 Increasing the frequency and detail of searches of people, personal effects, and vehicles being embarked or loaded onto the ship;

.6 Escorting visitors on the ship;

.7 Providing additional specific security briefings to all ship personnel on any identified threats, re-emphasising the procedures for reporting suspicious persons, objects, or activities and the stressing the need for increased vigilance; and

.8 Carrying out a full or partial search of the ship.

Security Level 3

9.17 At security level 3, the ship should comply with the instructions issued by those responding to the security incident or threat thereof. The SSP should detail the security measures which could be taken by the ship, in close co-operation with those responding and the port facility, which may include:

.1 Limiting access to a single, controlled, access point;

.2 Granting access only to those responding to the security incident or threat thereof;

.3 Directions of persons on board;

.4 Suspension of embarkation or disembarkation;

.5 Suspension of cargo handling operations, deliveries etc;

.6 Evacuation of the ship;

.7 Movement of the ship; and

.8 Preparing for a full or partial search of the ship.

Restricted Areas on the Ship

9.18 The SSP should identify the restricted areas to be established on the ship, specify their extent, times of application, the security measures to be taken to control access to them and those to be taken to control activities within them. The purpose of restricted areas are to:

.1 Prevent unauthorised access;

.2 Protect passengers, ship's personnel, and personnel from port facilities or other agencies authorised to be on board the ship;

.3 Protect sensitive security areas within the ship; and

.4 Protect cargo and ship's stores from tampering.

9.19 The SSP should ensure that there are clearly established policies and practices to control access to all restricted areas them.

9.20 The SSP should provide that all restricted areas should be clearly marked indicating that access to the area is restricted and that unauthorised presence within the area constitutes a breach of security.

9.21 Restricted areas may include:

.1 Navigation bridge, machinery spaces of category A and other control stations as defined in chapter II–2;

.2 Spaces containing security and surveillance equipment and systems and their controls and lighting system controls;

.3 Ventilation and air-conditioning systems and other similar spaces;

.4 Spaces with access to potable water tanks, pumps, or manifolds;

.5 Spaces containing dangerous goods or hazardous substances;

.6 Spaces containing cargo pumps and their controls;

.7 Cargo spaces and spaces containing ship's stores;

.8 Crew accommodation; and

.9 Any other areas as determined by the CSO, through the SSA to which access must be restricted to maintain the security of the ship.

Security Level 1

9.22 At security level 1, the SSP should establish the security measures to be applied to restricted areas, which may include:

.1 Locking or securing access points;

.2 Using surveillance equipment to monitor the areas;

.3 Using guards or patrols; and

.4 Using automatic intrusion detection devices to alert the ship's personnel of unauthorized access.

Security Level 2

9.23 At security level 2, the frequency and intensity of the monitoring of, and control of access to restricted areas should be increased to ensure that only authorized persons have access. The SSP should establish the additional security measures to be applied, which may include:

.1 Establishing restricted areas adjacent to access points;

.2 Continuously monitoring surveillance equipment; and

.3 Dedicating additional personnel to guard and patrol restricted areas.

Security Level 3

9.24 At security level 3, the ship should comply with the instructions issued by those responding to the security incident or threat thereof. The SSP should detail the security measures which could be taken by the ship, in close co-operations with those responding and the port facility, which may include:

.1 Setting up of additional restricted areas on the ship in proximity to the security incident, or the believed location of the security threat, to which access is denied; and

.2 Searching of restricted areas as part of a search of the ship.

Handling of Cargo

9.25 The security measures relating to cargo handling should:

.1 Prevent tampering, and

.2 Prevent cargo that is not meant for carriage from being accepted and stored on board the ship.

9.26 The security measures, some of which may have to be applied in liaison with the port facility, should include inventory

control procedures at access points to the ship. Once on board the ship, cargo should be capable of being identified as having been approved for loading onto the ship. In addition, security measures should be developed to ensure that cargo, once on board, is not tampered with.

Security Level 1

9.27 At security level 1, the SSP should establish the security measures to be applied during cargo handling, which may include:

.1 Routine checking of cargo, cargo transport units and cargo spaces prior to, and during, cargo handling operations;

.2 Checks to ensure that cargo being loaded matches the cargo documentation;

.3 Ensuring, in liaison with the port facility, that vehicles to be loaded on board car-carriers, ro-ro and passenger ships are subjected to search prior to loading, in accordance with the frequency required in the SSP; and

.4 Checking of seals or other methods used to prevent tampering.

9.28 Checking of cargo may be accomplished by the following means:

.1 Visual and physical examination; and

.2 Using scanning/detection equipment, mechanical devices, or dogs.

9.29 When there are regular, or repeated, cargo movement the CSO or SSO may, in consultation with the port facility, agree arrangements with shippers or others responsible for such cargo covering off-site checking, sealing, scheduling, supporting documentation, etc. Such arrangements should be communicated to and agreed with the PFSO concerned.

Security Level 2

9.30 At security level 2, the SSP should establish the additional security measures to be applied during cargo handling, which may include:

.1 Detailed checking of cargo, cargo transport units and cargo spaces;

.2 Intensified checks to ensure that only the intended cargo is loaded;

.3 Intensified searching of vehicles to be loaded on car-carriers, ro-ro and passenger ships; and

.4 Increased frequency and detail in checking of seals or other methods used to prevent tampering.

9.31 Detailed checking of cargo may be accomplished by the following means:

.1 Increasing the frequency and detail of visual and physical examination;

.2 Increasing the frequency of the use of scanning/detection equipment, mechanical devices, or dogs; and

.3 Co-ordinating enhanced security measures with the shipper or other responsible party in accordance with an established agreement and procedures.

Security Level 3

9.32 At security level 3, the ship should comply with the instructions issued by those responding to the security incident or threat thereof. The SSP should detail the security measures which could be taken by the ship, in close co-operation with those responding and the port facility, which may include:

.1 Suspension of the loading or unloading of cargo; and

.2 Verify the inventory of dangerous goods and hazardous substances carried on board, if any, and their location.

Delivery of Ship's Stores

9.33 The security measures relating to the delivery of ship's stores should:

.1 Ensure checking of ship's stores and package integrity;

.2 Prevent ship's stores from being accepted without inspection;

.3 Prevent tampering; and

.4 Prevent ship's stores from being accepted unless ordered.

9.34 For ships regularly using the port facility it may be appropriate to establish procedures involving the ship, its suppliers and the port facility covering notification and timing of deliveries and their documentation. There should always be some way of confirming that stores presented for delivery are accompanied by evidence that they have been ordered by the ship.

Security Level 1

9.35 At security level 1, the SSP should establish the security measures to be applied during delivery of ship's stores, which may include:

.1 Checking to ensure stores match the order prior to being loaded on board; and

.2 Ensuring immediate secure stowage of ship's stores.

Security Level 2

9.36 At security level 2, the SSP should establish the additional security measures to be applied during delivery of ship's stores by exercising checks prior to receiving stores on board and intensifying inspections.

Security Level 3

9.37 At security level 3, the ship should comply with the instructions issued by those responding to the security incident or threat thereof. The SSP should detail the security measures which could be taken by the ship, in close co-operation with those responding and the port facility, which may include:

.1 Subjecting ship's stores to more extensive checking;

.2 Preparation for restriction or suspension of handling of ship's stores; and

.3 Refusal to accept ship's stores on board the ship.

Handling Unaccompanied Baggage

9.38 The SSP should establish the security measures to be applied to ensure that unaccompanied baggage (*i.e.* any baggage, including personal effects, which is not with the passenger or member of ship's personnel at the point of inspection or search) is identified and subjected to appropriate screening, including searching, before it is accepted on board the ship.

It is not envisaged that such baggage will be subjected to screening by both the ship and the port facility, and in cases where both are suitably equipped, the responsibility for screening should rest with the port facility.

Close co-operation with the port facility is essential and steps should be taken to ensure that unaccompanied baggage is handled securely after screening.

Security Level 1

9.39 At security level 1, the SSP should establish the security measures to be applied when handling unaccompanied baggage to ensure that unaccompanied baggage is screened or searched up to and including 100 percent, which may include use of x-ray screening.

Security Level 2

9.40 At security level 2, the SSP should establish the additional security measures to be applied when handling unaccompanied baggage which should include 100 percent x-ray screening of all unaccompanied baggage.

Security Level 3

9.41 At security level 3, the ship should comply with the instructions issued by those responding to the security incident or threat thereof. The SSP should detail the security measures which could be taken by the ship, in close co-operation with those responding and the port facility, which may include:

.1 Subjecting such baggage to more extensive screening, for example x-raying it from at least two different angles;

.2 Preparation for restriction or suspension of handling of unaccompanied baggage; and

.3 Refusal to accept unaccompanied baggage on board the ship.

Monitoring the Security of the Ship

9.42 The ship should have the capability to monitor the ship, the restricted areas on board and areas surrounding the ship. Such monitoring capabilities may include use of:

.1 Lighting;

.2 Watch-keepers, security guards and deck watches including patrols, and

.3 Automatic intrusion detection devices and surveillance equipment.

9.43 When used, automatic intrusion detection devices should activate an audible and/or visual alarm at a location that is continuously attended or monitored.

9.44 The SSP should establish the procedures and equipment needed at each security level and the means of ensuring that monitoring equipment will be able to perform continually, including consideration of the possible effects of weather conditions or of power disruptions.

Security Level 1

9.45 At security level 1, the SSP should establish the security measures to be applied which may be a combination of lighting, watch keepers, security guards or use of security and surveillance equipment to allow ship's security personnel to observe the ship in general, and barriers and restricted areas in particular.

9.46 The ship's deck and access points to the ship should be illuminated during hours of darkness and periods of low visibility while conducting ship/port interface activities or at a port facility or anchorage when necessary.

While underway, when necessary, ships should use the maximum lighting available consistent with safe navigation, having regard to the provisions of the International Regulation for the Prevention of Collisions at Sea in force.

The following should be considered when establishing the appropriate level and location of lighting:

.1 The ship's personnel should be able to detect activities beyond the ship, on both the shore side and the waterside;

.2 Coverage should include the area on and around the ship;

.3 Coverage should facilitate personnel identification at access points; and

.4 Coverage may be provided through coordination with the port facility.

Security Level 2

9.47 At security level 2, the SSP should establish the additional security measures to be applied to enhance the monitoring and surveillance capabilities, which may include:

.1 Increasing the frequency and detail of security patrols;

.2 Increasing the coverage and intensity of lighting or the use of security and surveillance and equipment;

.3 Assigning additional personnel as security lookouts; and

.4 Ensuring coordination with waterside boat patrols, and foot or vehicle patrols on the shore-side, when provided.

9.48 Additional lighting may be necessary to protect against a heightened risk of a security incidents. When necessary, the additional lighting requirements may be accomplished by coordinating with the port facility to provide additional shore side lighting.

Security Level 3

9.49 At security level 3, the ship should comply with the instructions issued by those responding to the security incident or threat thereof. The SSP should detail the security measures which could be taken by the ship, in close co-operation with those responding and the port facility, which may include:

.1 Switching on of all lighting on, or illuminating the vicinity of, the ship;

.2 Switching on of all on board surveillance equipment capable of recording activities on, or in the vicinity of, the ship;

.3 Maximising the length of time such surveillance equipment can continue to record;

.4 Preparation for underwater inspection of the hull of the ship; and

.5 Initiation of measures, including the slow revolution of the ship's propellers, if practicable, to deter underwater access to the hull of the ship.

Differing Security Levels

9.50 The SSP should establish details of the procedures and security measures the ship could adopt if the ship is at a higher security level than that applying to a port facility.

Activities Not Covered by the Code

9.51 The SSP should establish details of the procedures and security measures the ship should apply when:

.1 It is at a port of a State which is not a Contracting Government;

.2 It is interfacing with a ship to which this Code does not apply[7];

.3 It is interfacing with fixed or floating platforms or a mobile drilling unit on location; or

.4 It is interfacing with a port or port facility which is not required to comply with chapter XI–2 and part A of this Code.

Declarations of Security

9.52 The SSP should detail how requests for DoS from a port facility will be handled and the circumstances under which the ship itself should request a DoS.

Audit and Review

9.53 The SSP should establish how the CSO and the SSO intend to audit the continued effectiveness of the SSP and the procedure to be followed to review, update or amend the SSP.

10 Records

10.1 Records should be available to duly authorized officers of Contracting Governments to verify that the provisions of ship security plans are being implemented.

10.2 Records may be kept in any format but should be protected from unauthorized access or disclosure.

11 Company Security Officer

Relevant guidance is provided under sections 8, 9 and 13.

12 Ship Security Officer

Relevant guidance is provided under sections 8, 9 and 13.

13 Training, Drills and Exercises on Ship Security

13.1 The Company Security Officer (CSO) and appropriate shore based Company personnel, and the Ship Security Officer (SSO), should have knowledge of, and receive training, in some or all of the following, as appropriate:

.1 Security administration;

.2 Relevant international conventions, codes and recommendations;

.3 Relevant Government legislation and regulations;

.4 Responsibilities and functions of other security organisations;

.5 Methodology of ship security assessment;

.6 Methods of ship security surveys and inspections;

.7 Ship and port operations and conditions;

.8 Ship and port facility security measures;

.9 Emergency preparedness and response and contingency planning;

.10 Instruction techniques for security training and education, including security measures and procedures;

.11 Handling sensitive security related information and security related communications;

.12 Knowledge of current security threats and patterns;

.13 Recognition and detection of weapons, dangerous substances and devices;

.14 Recognition, on a non discriminatory basis, of characteristics and behavioural patterns of persons who are likely to threaten security;

.15 Techniques used to circumvent security measures;

.16 Security equipment and systems and their operational limitations;

.17 Methods of conducting audits, inspection, control and monitoring;

.18 Methods of physical searches and non-intrusive inspections;

.19 Security drills and exercises, including drills and exercises with port facilities; and

.20 Assessment of security drills and exercises.

13.2 In addition the SSO should have adequate knowledge of, and receive training, in some or all of the following, as appropriate:

.1 The layout of the ship;

.2 The ship security plan and related procedures (including scenario-based training on how to respond);

.3 Crowd management and control techniques;

.4 Operations of security equipment and systems; and

.5 Testing, calibration and whilst at sea maintenance of security equipment and systems.

13.3 Shipboard personnel having specific security duties should have sufficient knowledge and ability to perform their assigned duties, including, as appropriate:

.1 Knowledge of current security threats and patterns;

.2 Recognition and detection of weapons, dangerous substances and devices;

.3 Recognition of characteristics and behavioural patterns of persons who are likely to threaten security;

.4 Techniques used to circumvent security measures;

.5 Crowd management and control techniques;

.6 Security related communications;

.7 Knowledge of the emergency procedures and contingency plans;

.8 Operations of security equipment and systems;

.9 Testing, calibration and whilst at sea maintenance of security equipment and systems,

.10 Inspection, control, and monitoring techniques; and

.11 Methods of physical searches of persons, personal effects, baggage, cargo, and ship's stores.

13.4 All other shipboard personnel should have sufficient knowledge of and be familiar with relevant provisions of the SSP, including:

.1 The meaning and the consequential requirements of the different security levels;

.2 Knowledge of the emergency procedures and contingency plans;

.3 Recognition and detection of weapons, dangerous substances and devices;

.4 Recognition, on a non discriminatory basis, of characteristics and behavioural patterns of persons who are likely to threaten security; and

.5 Techniques used to circumvent security measures.

13.5 The objective of drills and exercises is to ensure that shipboard personnel are proficient in all assigned security duties at all security levels and the identification of any security related deficiencies, which need to be addressed.

[7] Refer to Further Work by the International Maritime Organization pertaining to Enhancement of Maritime Security, adopted by the Conference on Maritime Security by resolution 3.

13.6 To ensure the effective implementation of the provisions of the ship security plan, drills should be conducted at least once every three months. In addition, in cases where more than 25 percent of the ship's personnel has been changed, at any one time, with personnel that has not previously participated in any drill on that ship, within the last 3 months, a drill should be conducted within one week of the change. These drills should test individual elements of the plan such as those security threats listed in paragraph 8.9.

13.7 Various types of exercises which may include participation of company security officers, port facility security officers, relevant authorities of Contracting Governments as well as ship security officers, if available, should be carried out at least once each calendar year with no more than 18 months between the exercises. These exercises should test communications, coordination, resource availability, and response. These exercises may be:

.1 Full scale or live;

.2 Tabletop simulation or seminar; or

.3 Combined with other exercises held such as search and rescue or emergency response exercises.

13.8 Company participation in an exercise with another Contracting Government should be recognised by the Administration.

14 Port Facility Security

Relevant guidance is provided under section 15, 16 and 18.

15 Port Facility Security Assessment

General

15.1 The Port Facility Security Assessment (PFSA) may be conducted by a Recognized Security Organization (RSO).

However, approval of a completed PFSA should only be given by the relevant Contracting Government.

15.2 If a Contracting Government uses a RSO, to review or verify compliance of the PFSA, the RSO should not be associated with any other RSO that prepared or assisted in the preparation of that assessment.

15.3 A PFSA should address the following elements within a port facility:

.1 Physical security;

.2 Structural integrity;

.3 Personnel protection systems;

.4 Procedural policies;

.5 Radio and telecommunication systems, including computer systems and networks;

.6 Relevant transportation infrastructure;

.7 Utilities; and

.8 Other areas that may, if damaged or used for illicit observation, pose a risk to people, property, or operations within the port facility.

15.4 Those involved in a PFSA should be able to draw upon expert assistance in relation to:

.1 Knowledge of current security threats and patterns;

.2 Recognition and detection of weapons, dangerous substances and devices;

.3 Recognition, on a non-discriminatory basis, of characteristics and behavioural patterns of persons who are likely to threaten security;

.4 Techniques used to circumvent security measures;

.5 Methods used to cause a security incident;

.6 Effects of explosives on structures and port facility services;

.7 Port facility security;

.8 Port business practices;

.9 Contingency planning, emergency preparedness and response;

.10 Physical security measures *e.g.* fences;

.11 Radio and telecommunications systems, including computer systems and networks;

.12 Transport and civil engineering; and

.13 Ship and port operations.

Identification and evaluation of important assets and infrastructure it is important to protect.

15.5 The identification and evaluation of important assets and infrastructure is a process through which the relative importance of structures and installations to the functioning of the port facility can be established.

This identification and evaluation process is important because it provides a basis for focusing mitigation strategies on those assets and structures which it is more important to protect from a security incident.

This process should take into account potential loss of life, the economic significance of the port, symbolic value, and the presence of Government installations.

15.6 Identification and evaluation of assets and infrastructure should be used to prioritise their relative importance for protection.

The primary concern should be avoidance of death or injury. It is also important to consider whether the port facility, structure or installation can continue to function without the asset, and the extent to which rapid re-establishment of normal functioning is possible.

15.7 Assets and infrastructure that should be considered important to protect may include:

.1 Accesses, entrances, approaches, and anchorages, manoeuvring and berthing areas;

.2 Cargo facilities, terminals, storage areas, and cargo handling equipment;

.3 Systems such as electrical distribution systems, radio and telecommunication systems and computer systems and networks;

.4 Port vessel traffic management systems and aids to navigation;

.5 Power plants, cargo transfer piping, and water supplies;

.6 Bridges, railways, roads;

.7 Port service vessels, including pilot boats, tugs, lighters etc;

.8 Security and surveillance equipment and systems; and

.9 The waters adjacent to the port facility.

15.8 The clear identification of assets and infrastructure is essential to the evaluation of the port facility's security requirements, the prioritisation of protective measures, and decisions concerning the allocation of resources to better protect the port facility.

The process may involve consultation with the relevant authorities relating to structures adjacent to the port facility which could cause damage within the facility or be used for the purpose of causing damage to the facility or for illicit observation of the facility or for diverting attention.

Identification of the possible threats to the assets and infrastructure and the likelihood of their occurrence, in order to establish and prioritise security measures.

15.9 Possible acts that could threaten the security of assets and infrastructure, and the methods of carrying out those acts, should be identified to evaluate the vulnerability of a given asset or location to a security incident, and to establish and prioritise security requirements to enable planning and resource allocations.

Identification and evaluation of each potential act and its method should be based on various factors, including threat assessments by Government agencies.

By identifying and assessing threats those conducting the assessment do not have to rely on worst-case scenarios to guide planning and resource allocations.

15.10 The PFSA should include an assessment undertaken in consultation with the relevant national security organizations to determine:

.1 Any particular aspects of the port facility, including the vessel traffic using the facility, which make it likely to be the target of an attack;

.2 The likely consequences in terms of loss of life, damage to property, economic disruption, including disruption to transport systems, of an attack on, or at, the port facility;

.3 The capability and intent of those likely to mount such an attack; and

.4 The possible type, or types, of attack.

Producing an overall assessment of the level of risk against which security measures have to be developed.

15.11 The PFSA should consider all possible threats, which may include the following types of security incidents:

.1 Damage to, or destruction of, the port facility or of the ship, *e.g.* by explosive devices, arson, sabotage or vandalism;

.2 Hijacking or seizure of the ship or of persons on board;

.3 Tampering with cargo, essential ship equipment or systems or ship's stores;

.4 Unauthorised access or use including presence of stowaways;

.5 Smuggling weapons or equipment, including weapons of mass destruction;

.6 Use of the ship to carry those intending to cause a security incident and their equipment;

.7 Use of the ship itself as a weapon or as a means to cause damage or destruction;

.8 Blockage; of port entrances, locks, approaches etc; and

.9 Nuclear, biological and chemical attack.

15.12 The process should involve consultation with the relevant authorities relating to structures adjacent to the port facility which could cause damage within the facility or be used for the purpose of causing damage to the facility or for illicit observation of the facility or for diverting attention.

Identification, selection, and prioritisation of countermeasures and procedural changes and their level of effectiveness in reducing vulnerability.

15.13 The identification and prioritisation of countermeasures is designed to ensure that the most effective security measures are employed to reduce the vulnerability of a port facility or ship/port interface to the possible threats.

15.14 Security measures should be selected on the basis of factors such as whether they reduce the probability of an attack and should be evaluated using information that includes:

.1 Security surveys, inspections and audits;

.2 Consultation with port facility owners and operators, and owners/operators of adjacent structures if appropriate;

.3 Historical information on security incidents; and

.4 Operations within the port facility.

Identification of Vulnerabilities

15.15 Identification of vulnerabilities in physical structures, personnel protection systems, processes, or other areas that may lead to a security incident can be used to establish options to eliminate or mitigate those vulnerabilities. For example, an analysis might reveal vulnerabilities in a port facility's security systems or unprotected infrastructure such as water supplies, bridges etc. that could be resolved through physical measures, *e.g.* permanent barriers, alarms, surveillance equipment etc.

15.16 Identification of vulnerabilities should include consideration of:

.1 Waterside and shore-side access to the port facility and ships berthing at the facility;

.2 Structural integrity of the piers, facilities, and associated structures;

.3 Existing security measures and procedures, including identification systems;

.4 Existing security measures and procedures relating to port services and utilities;

.5 Measures to protect radio and telecommunication equipment, port services and utilities, including computer systems and networks;

.6 Adjacent areas that may be exploited during, or for, an attack;

.7 Existing agreements with private security companies providing waterside/shore-side security services;

.8 Any conflicting policies between safety and security measures and procedures;

.9 Any conflicting port facility and security duty assignments;

.10 Any enforcement and personnel constraints;

.11 Any deficiencies identified during training and drills; and

.12 Any deficiencies identified during daily operation, following incidents or alerts, the report of security concerns, the exercise of control measures, audits etc.

16 Port Facility Security Plan

General

16.1 Preparation of the Port Facility Security Plan (PFSP) is the responsibility of the Port Facility Security Officer (PFSO).

While the PFSO need not necessarily personally undertake all the duties associated with the post the ultimate responsibility for ensuring that they are properly performed remains with the individual PFSO.

16.2 The content of each individual PFSP should vary depending on the particular circumstances of the port facility, or facilities, it covers.

The Port Facility Security (PFSA) will have identified the particular features of the port facility, and of the potential security risks, that have led to the need to appoint a PFSO and to prepare a PFSP.

The preparation of the PFSP will require these features, and other local or national security considerations, to be addressed in the PFSP and for appropriate security measures to be established so as to minimise the likelihood of a breach of security and the consequences of potential risks.

Contracting Governments may prepare advice on the preparation and content of a PFSP.

16.3 All PFSPs should:

.1 Detail the security organisation of the port facility,

.2 The organisation's links with other relevant authorities and the necessary communication systems to allow the effective continuous operation of the organisation and its links with others, including ships in port;

.3 Detail the basic security level 1 measures, both operational and physical, that will be in place;

.4 Detail the additional security measures that will allow the port facility to progress without delay to security level 2 and, when necessary, to security level 3;

.5 Provide for regular review, or audit, of the PFSP and for its amendments in response to experience or changing circumstances; and

.6 Reporting procedures to the appropriate Contracting Governments contact points.

16.4 Preparation of an effective PFSP will rest on a thorough assessment of all issues that relate to the security of the port facility, including, in particular, a thorough appreciation of the physical and operational characteristics of the individual port facility.

16.5 Contracting Government should approve the PFSPs of the port facilities under their jurisdiction.

Contracting Governments should develop procedures to assess the continuing effectiveness of each PFSP and may require amendment of the PFSP prior to its initial approval or subsequent to its approval.

The PFSP should make provision for the retention of records of security incidents and threats, reviews, audits, training, drills and exercises as evidence of compliance with those requirements.

16.6 The security measures included in the PFSP should be in place within a reasonable period of the PFSP's approval and the PFSP should establish when each measure will be in place.

If there is likely to be any delay in their provision this should be discussed with the Contracting Government responsible for approval of the PFSP and satisfactory alternative temporary security measures that provide an equivalent level of security should be agreed to cover any interim period.

16.7 The use of firearms on or near ships and in port facilities may pose particular and significant safety risks, in particular in connection with certain dangerous or hazardous substances and should be considered very carefully.

In the event that a Contracting Government decides that it is necessary to use armed personnel in these areas, that Contracting Government should ensure that these personnel are duly authorised and trained in the use of their weapons and that they are aware of the specific risks to safety that are present in these areas.

If a Contracting Government authorizes the use of firearms they should issue specific safety guidelines on their use.

The PFSP should contain specific guidance on this matter in particular with regard its application to ships carrying dangerous goods or hazardous substances.

Organization and Performance of Port Facility Security Duties

16.8 In addition to the guidance given under section 16.3, the PFSP should establish the following which relate to all security levels:

.1 The role and structure of the port facility security organisation;

.2 The duties, responsibilities and training requirements of all port facility personnel with a security role and the performance measures needed to allow their individual effectiveness to be assessed;

.3 The port facility security organisation's links with other national or local authorities with security responsibilities;

.4 The communication systems provided to allow effective and continuous communication between port facility security personnel, ships in port and, when appropriate, with national or local authorities with security responsibilities;

.5 The procedures or safeguards necessary to allow such continuous communications to be maintained at all times;

.6 The procedures and practices to protect security sensitive information held in paper or electronic format;

.7 The procedures to assess the continuing effectiveness of security measures, procedures and equipment, including identification of, and response to, equipment failure or malfunction;

.8 The procedures to allow the submission, and assessment, of reports relating to possible breaches of security or security concerns;

.9 Procedures relating to cargo handling;

.10 Procedures covering the delivery of ship's stores;

.11 The procedures to maintain, and update, records of dangerous goods and hazardous substances and their location within the port facility;

.12 The means of alerting and obtaining the services of waterside patrols and specialist search teams, including bomb searches and underwater searches;

.13 The procedures for assisting ship security officers in confirming the identity of those seeking to board the ship when requested; and

.14 The procedures for facilitating shore leave for ship's personnel or personnel changes, as well as access of visitors to the ship including representatives of seafarers' welfare and labour organisations.

16.9 The remainder of this section addresses specifically the security measures

that could be taken at each security level covering:

.1 Access to the Port Facility;

.2 Restricted Areas within the Port Facility;

.3 Handling of Cargo;

.4 Delivery of Ship's Stores;

.5 Handling Unaccompanied Baggage; and

.6 Monitoring the Security of the Port Facility.

Access to the Port Facility

16.10 The PFSP should establish the security measures covering all means of access to the port facility identified in the PFSA.

16.11 For each of these the PFSP should identify the appropriate locations where access restrictions or prohibitions should be applied for each of the security levels. For each security level the PFSP should specify the type of restriction or prohibition to be applied and the means of enforcing them.

16.12 The PFSP should establish for each security level the means of identification required to allow access to the port facility and for individuals to remain within the port facility without challenge, this may involve developing an appropriate identification system allowing for permanent and temporary identifications, for port facility personnel and for visitors respectively.

Any port facility identification system should, when it is practicable to do so, be co-ordinated with that applying to ships that regularly use the port facility.

Passengers should be able to prove their identity by boarding passes, tickets, etc., but should not be permitted access to restricted areas unless supervised.

The PFSP should establish provisions to ensure that the identification systems are regularly updated, and that abuse of procedures should be subject to disciplinary action.

16.13 Those unwilling or unable to establish their identity and/or to confirm the purpose of their visit when requested to do so should be denied access to the port facility and their attempt to obtain access should be reported to the PFSO and to the national or local authorities with security responsibilities.

16.14 The PFSP should identify the locations where people, personal effects, and vehicle searches are to be undertaken. Such locations should be covered to facilitate continuous operation regardless of prevailing weather conditions, in accordance with the frequency laid down in the PFSP. Once subjected to search people, personal effects and vehicles should proceed directly to the restricted holding, embarkation or car loading areas.

16.15 The PFSP should establish separate locations for checked and unchecked persons and their effects and if possible separate areas for embarking/disembarking passengers, ship's personnel and their effects to ensure that unchecked persons are not able to come in contact with checked persons.

16.16 The PFSP should establish the frequency of application of any access controls particularly if they are to be applied on a random, or occasional, basis.

Security Level 1

16.17 At security level 1, the PFSP should establish the control points where the following security measures may be applied:

.1 Restricted areas which should be bound by fencing or other barriers to a standard which should be approved by the Contracting Government;

.2 Checking identity of all persons seeking entry to the port facility in connection with a ship, including passengers, ship's personnel and visitors and confirming their reasons for doing so by checking, for example, joining instructions, passenger tickets, boarding passes, work orders, etc;

.3 Checking vehicles used by those seeking entry to the port facility in connection with a ship;

.4 Verification of the identity of port facility personnel and those employed within the port facility and their vehicles;

.5 Restricting access to exclude those not employed by the port facility or working within it, if they are unable to establish their identity;

.6 Undertaking searches of people, personal effects, vehicles and their contents; and

.7 Identification of any access points not in regular use which should be permanently closed and locked.

16.18 At security level 1, all those seeking access to the port facility should be liable to search. The frequency of such searches, including random searches, should be specified in the approved PFSP and should be specifically approved by the Contracting Government.

Unless there are clear security grounds for doing so, members of the ship's personnel should not be required to search their colleagues or their personal effects.

Any such search shall be undertaken in a manner which fully takes into account the human rights of the individual and preserves their basic human dignity.

Security Level 2

16.19 At security level 2, the PFSP should establish the additional security measures to be applied, which may include:

.1 Assigning additional personnel to guard access points and patrol perimeter barriers;

.2 Limiting the number of access points to the port facility, and identify those to be closed and the means of adequately securing them;

.3 Providing for means of impeding movement through the remaining access points, *e.g.* security barriers;

.4 Increasing the frequency of searches of persons, personal effects, and vehicle;

.5 Deny access to visitors who are unable to provide a verifiable justification for seeking access to the port facility; and

.6 Using of patrol vessels to enhance waterside security;

Security Level 3

16.20 At security level 3, the port facility should comply with instructions issued by those responding to the security incident or threat thereof. The PFSP should detail the security measures which could be taken by the port facility, in close co-operation with those responding and the ships at the port facility, which may include:

.1 Suspension of access to all, or part of, the port facility;

.2 Granting access only to those responding to the security incident or threat thereof;

.3 Suspension of pedestrian or vehicular movement within all, or part, of the port facility;

.4 Increased security patrols within the port facility, if appropriate;

.5 Suspension of port operations within all, or part, of the port facility;

.6 Direction of vessel movements relating to all, or part, of the port facility; and

.7 Evacuation of all, or part of, the port facility.

Restricted Areas Within the Port Facility

16.21 The PFSP should identify the restricted areas to be established within the port facility, specify their extent, times of application, the security measures to be taken to control access to them and those to be taken to control activities within them. This should also include, in appropriate circumstances, measures to ensure that temporary restricted areas are security swept both before and after that area is established.

The purpose of restricted areas is to:

.1 Protect passengers, ship's personnel, port facility personnel and visitors, including those visiting in connection with a ship;

.2 Protect the port facility;

.3 Protect ships using, and serving, the port facility;

.4 Protect sensitive security locations and areas within the port facility,

.5 To protect security and surveillance equipment and systems; and

.6 Protect cargo and ship's stores from tampering.

16.22 The PFSP should ensure that all restricted areas have clearly established security measures to control:

.1 Access by individuals;

.2 The entry, parking, loading and unloading of vehicles;

.3 Movement and storage of cargo and ship's stores, and

.4 Unaccompanied baggage or personal effects.

16.23 The PFSP should provide that all restricted areas should be clearly marked indicating that access to the area is restricted and that unauthorised presence within the area constitutes a breach of security.

16.24 When automatic intrusion detection devices are installed they should alert a control centre which can respond to the triggering of an alarm.

16.25 Restricted areas may include:

.1 Shore and waterside areas immediately adjacent to the ship;

.2 Embarkation and disembarkation areas, passenger and ship's personnel holding and processing areas including search points;

.3 Areas where loading, unloading or storage of cargo and stores is undertaken;

.4 Locations where security sensitive information, including cargo documentation, is held;

.5 Areas where dangerous goods and hazardous substances are held;

.6 Vessel traffic management system control rooms, aids to navigation and port

control buildings, including security and surveillance control rooms;

.7 Areas where security and surveillance equipment are stored or located;

.8 Essential electrical, radio and telecommunication, water and other utility installations; and

.9 Other locations in the port facility where access by vessels, vehicles and individuals should be restricted.

16.26 The security measures may extend, with the agreement of the relevant authorities, to restrictions on unauthorised access to structures from which the port facility can be observed.

Security Level 1

16.27 At security level 1, the PFSP should establish the security measures to be applied to restricted areas, which may include:

.1 Provision of permanent or temporary barriers to surround the restricted area whose standard should be accepted by the Contracting Government;

.2 Provision of access points where access can be controlled by security guards when in operation and which can be effectively locked or barred when not in use;

.3 Providing passes which must be displayed to identify individuals entitlement to be within the restricted area;

.4 Clearly marking vehicles allowed access to restricted areas;

.5 Providing guards and patrols;

.6 Providing automatic intrusion detection devices, or surveillance equipment or systems to detect unauthorised access into, or movement within restricted areas; and

.7 Control of the movement of vessels in the vicinity of ships using the port facility.

Security Level 2

16.28 At security level 2, the PFSP should establish the enhancement of the frequency and intensity of the monitoring of, and control of access to, restricted areas. The PFSP should establish the additional security measures, which may include:

.1 Enhancing the effectiveness of the barriers or fencing surrounding restricted areas, including the use of patrols or automatic intrusion detection devices;

.2 Reducing the number of access points to restricted areas and enhancing the controls applied at the remaining accesses;

.3 Restrictions on parking adjacent to berthed ships;

.4 Further restricting access to the restricted areas and movements and storage within them;

.5 Use of continuously monitored and recording surveillance equipment;

.6 Enhancing the number and frequency of patrols including waterside patrols undertaken on the boundaries of the restricted areas and within the areas;

.7 Establishing and restricting access to areas adjacent to the restricted reas; and

.8 Enforcing restrictions on access by unauthorised craft to the waters adjacent to ships using the port facility.

Security Level 3

16.29 At security level 3, the port facility should comply with the instructions issued by those responding to the security incident or threat thereof. The PFSP should detail the security measures which could be taken by the port facility, in close co-operation with those responding and the ships at the port facility, which may include:

.1 Setting up of additional restricted areas within the port facility in proximity to the security incident, or the believed location of the security threat, to which access is denied; and

.2 Preparing for the searching of restricted areas as part of a search of all, or part, of the port facility.

Handling of Cargo

16.30 The security measures relating to cargo handling should:

.1 Prevent tampering, and

.2 Prevent cargo that is not meant for carriage from being accepted and stored within the port facility.

16.31 The security measures should include inventory control procedures at access points to the port facility. Once within the port facility cargo should be capable of being identified as having been checked and accepted for loading onto a ship or for temporary storage in a restricted area while awaiting loading. It may be appropriate to restrict the entry of cargo to the port facility that does not have a confirmed date for loading.

Security Level 1

16.32 At security level 1, the PFSP should establish the security measures to be applied during cargo handling, which may include:

.1 Routine checking of cargo, cargo transport units and cargo storage areas within the port facility prior to, and during, cargo handling operations;

.2 Checks to ensure that cargo entering the port facility matches the delivery note or equivalent cargo documentation;

.3 Searches of vehicles; and

.4 Checking of seals and other methods used to prevent tampering upon entering the port facility and upon storage within the port facility.

16.33 Checking of cargo may be accomplished by some or all of the following means:

.1 Visual and physical examination; and

.2 Using scanning/detection equipment, mechanical devices, or dogs.

16.34 When there are regular, or repeated, cargo movement the Company Security Officer (CSO) or the Ship Security Officer (SSO) may, in consultation with the port facility, agree arrangements with shippers or others responsible for such cargo covering off-site checking, sealing, scheduling, supporting documentation, etc. Such arrangements should be communicated to and agreed with the PFSO concern.

Security Level 2

16.35 At security level 2, the PFSP should establish the additional security measures to be applied during cargo handling to enhance control, which may include:

.1 Detailed checking of cargo, cargo transport units and cargo storage areas within the port facility;

.2 Intensified checks, as appropriate, to ensure that only the documented cargo enters the port facility, is temporarily stored there and then loaded onto the ship;

.3 Intensified searches of vehicles; and

.4 Increased frequency and detail in checking of seals and other methods used to prevent tampering.

16.36 Detailed checking of cargo may be accomplished by some or all of the following means:

.1 Increasing the frequency and detail of checking of cargo, cargo transport units and cargo storage areas within the port facility (visual and physical examination);

.2 Increasing the frequency of the use of scanning/detection equipment, mechanical devices, or dogs; and

.3 Co-ordinating enhanced security measures with the shipper or other responsible party in addition to an established agreement and procedures.

Security Level 3

16.37 At security level 3, the port facility should comply with the instructions issued by those responding to the security incident or threat thereof. The PFSP should detail the security measures which could be taken by the port facility, in close co-operation with those responding and the ships at the port facility, which may include:

.1 Restriction or suspension of cargo movements or operations within all, or part, of the port facility or specific ships; and

.2 Verifying the inventory of dangerous goods and hazardous substances held within the port facility and their location.

Delivery of Ship's Stores

16.38 The security measures relating to the delivery of ship's stores should:

.1 Ensure checking of ship's stores and package integrity;

.2 Prevent ship's stores from being accepted without inspection;

.3 Prevent tampering;

.4 Prevent ship's stores from being accepted unless ordered;

.5 Ensure searching the delivery vehicle; and

.6 Ensure escorting delivery vehicles within the port facility.

16.39 For ships regularly using the port facility it may be appropriate to establish procedures involving the ship, its suppliers and the port facility covering notification and timing of deliveries and their documentation. There should always be some way of confirming that stores presented for delivery are accompanied by evidence that they have been ordered by the ship.

Security Level 1

16.40 At security level 1, the PFSP should establish the security measures to be applied to control the delivery of ship's stores, which may include:

.1 Checking of ship's stores;

.2 Advance notification as to composition of load, driver details and vehicle registration; and

.3 Searching the delivery vehicle.

16.41 Checking of ship's stores may be accomplished by some or all of the following means:

.1 Visual and physical examination; and

.2 Using scanning/detection equipment, mechanical devices or dogs.

Security Level 2

16.42 At security level 2, the PFSP should establish the additional security measures to be applied to enhance the control of the delivery of ship's stores, which may include:

.1 Detailed checking of ship's stores;

.2 Detailed searches of the delivery vehicles;

.3 Co-ordination with ship personnel to check the order against the delivery note prior to entry to the port facility; and

.4 Escorting the delivery vehicle within the port facility.

16.43 Detailed checking of ship's stores may be accomplished by some or all of the following means:

.1 Increasing the frequency and detail of searches of delivery vehicles;

.2 Increasing the use of scanning/detection equipment, mechanical devices, or dogs; and

.3 Restricting, or prohibiting, entry of stores that will not leave the port facility within a specified period.

Security Level 3

16.44 At security level 3, the port facility should comply with the instructions issued by those responding to the security incident or threat thereof. The PFSP should detail the security measures which could be taken by the port facility, in close co-operation with those responding and the ships at the port facility which may include preparation for restriction, or suspension, of the delivery of ship's stores within all, or part, of the port facility.

Handling Unaccompanied Baggage

16.45 The PFSP should establish the security measures to be applied to ensure that unaccompanied baggage (*i.e.,* any baggage, including personal effects, which is not with the passenger or member of ship's personnel at the point of inspection or search) is identified and subjected to appropriate screening, including searching, before is allowed in the port facility and, depending on the storage arrangements, before it is transferred between the port facility and the ship.

It is not envisaged that such baggage will be subjected to screening by both the port facility and the ship, and in cases where both are suitably equipped, the responsibility for screening should rest with the port facility.

Close co-operation with the ship is essential and steps should be taken to ensure that unaccompanied baggage is handled securely after screening.

Security Level 1

16.46 At security level 1, the PFSP should establish the security measures to be applied when handling unaccompanied baggage to ensure that unaccompanied baggage is screened or searched up to and including 100 percent, which may include use of x-ray screening.

Security Level 2

16.47 At security level 2, the PFSP should establish the additional security measures to be applied when handling unaccompanied baggage which should include 100 percent x-ray screening of all unaccompanied baggage.

Security Level 3

16.48 At security level 3, the port facility should comply with the instructions issued by those responding to the security incident or threat thereof. The PFSP should detail the security measures which could be taken by the port facility, in close co-operation with those responding and the ships at the port facility, which may include:

.1 Subjecting such baggage to more extensive screening, for example x-raying it from at least two different angles;

.2 Preparations for restriction or suspension of handling or unaccompanied baggage; and

.3 Refusal to accept unaccompanied baggage into the port facility.

Monitoring the Security of the Port Facility

16.49 The port facility security organization should have the capability to monitor the port facility and its nearby approaches, on land and water, at all times, including the night hours and periods of limited visibility, the restricted areas within the port facility, the ships at the port facility and areas surrounding ships. Such monitoring can include use of:

.1 Lighting;

.2 Security guards, including foot, vehicle and waterborne patrols, and

.3 Automatic intrusion detection devices and surveillance equipment.

16.50 When used, automatic intrusion detection devices should activate an audible and/or visual alarm at a location that is continuously attended or monitored.

16.51 The PFSP should establish the procedures and equipment needed at each security level and the means of ensuring that monitoring equipment will be able to perform continually, including consideration of the possible effects of weather or of power disruptions.

Security Level 1

16.52 At security level 1, the PFSP should establish the security measures to be applied which may be a combination of lighting, security guards or use of security and surveillance equipment to allow port facility security personnel to:

.1 Observe the general port facility area, including shore and water-side accesses to it;

.2 Observe access points, barriers and restricted areas, and

.3 Allow port facility security personnel to monitor areas and movements adjacent to ships using the port facility, including augmentation of lighting provided by the ship itself.

Security Level 2

16.53 At security level 2, the PFSP should establish the additional security measures to be applied to enhance the monitoring and surveillance capability, which may include:

.1 Increasing the coverage and intensity of lighting and surveillance equipment, including the provision of additional lighting and surveillance coverage;

.2 Increasing the frequency of foot, vehicle or waterborne patrols, and

.3 Assigning additional security personnel to monitor and patrol.

Security Level 3

16.54 At security level 3, the port facility should comply with the instructions issued by those responding to the security incident or threat thereof. The PFSP should detail the security measures which could be taken by the port facility, in close co-operation with those responding and the ships at the port facility, which may include:

.1 Switching on all lighting within, or illuminating the vicinity of, the port facility;

.2 Switching on all surveillance equipment capable of recording activities within, or adjacent to, the port facility; and

.3 Maximising the length of time such surveillance equipment can continue to record.

Differing Security Levels

16.55 The PFSP should establish details of the procedures and security measures the port facility could adopt if the port facility is at a lower security level than that applying to a ship.

Activities not covered by the Code

16.56 The PFSP should establish details of the procedures and security measures the port facility should apply when:

.1 It is interfacing with a ship which has been at a port of a State which not a Contracting Government;

.2 It is interfacing with a ship to which this Code does not apply; and

.3 It is interfacing with fixed or floating platforms or mobile offshore drilling units on location.

Declarations of Security

16.57 The PFSP should establish the procedures to be followed when on the instructions of the Contracting Government the PFSO requests a Declaration of Security or when a DoS is requested by a ship.

Audit, Review and Amendment

16.58 The PFSP should establish how the PFSO intends to audit the continued effectiveness of the PFSP and the procedure to be followed to review, update or amend the PFSP.

16.59 The PFSP should be reviewed at the discretion of the PFSO. In addition it should be reviewed:

.1 If the PFSA relating to the port facility is altered;

.2 If an independent audit of the PFSP or the Contracting Government's testing of the port facility security organization identifies failings in the organization or questions the continuing relevance of significant element of the approved PFSP;

.3 Following security incidents or threats thereof involving the port facility; and

.4 Following changes in ownership or operational control of the port facility.

16.60 The PFSO can recommend appropriate amendments to the approved plan following any review of the plan. Amendments to the PFSP relating to:

.1 Proposed changes which could fundamentally alter the approach adopted to maintaining the security of the port facility; and

.2 The removal, alteration or replacement of permanent barriers, security and surveillance equipment and systems etc.,

previously considered essential in maintaining the security of the port facility;

Should be submitted to the Contracting Government that approved the original PFSP for their consideration and approval. Such approval can be given by, or on behalf of, the Contracting Government with, or without, amendments to the proposed changes.

On approval of the PFSP the Contracting Government should indicate which procedural or physical alterations have to be submitted to it for approval.

Approval of Port Facility Security Plans

16.61 PFSPs have to be approved by the relevant Contracting Government which should establish appropriate procedures to provide for:

.1 The submission of PFSPs to them;

.2 The consideration of PFSPs;

.3 The approval of PFSPs, with or without amendments;

.4 Consideration of amendments submitted after approval, and

.5 Procedures for inspecting or auditing the continuing relevance of the approved PFSP.

At all stages steps should be taken to ensure that the contents of the PFSP remains confidential.

Statement of Compliance of a Port Facility

16.62 The Contracting Government within whose territory a port facility is located may issue an appropriate Statement of Compliance of a Port Facility (SoCPF) indicating:

.1 The port facility;

.2 That the port facility complies with the provisions of chapter XI–2 and part A of the Code.

.3 The period of validity of the SoCPF which should be specified by the Contracting Governments but should not exceed five years; and

.4 The subsequent verification arrangements established by the Contracting Government and a confirmation when these are carried out.

16.63 The Statement of Compliance for Port Facility should be in form set out in the appendix to this Part of the Code. If the language used is not Spanish, French or English, the Contracting Government, if it considers it appropriate may also include a translation into one of these languages.

17 Port facility security officer

17.1 In those exceptional instances where the ship security officer has questions about the validity of credentials of those seeking to board the ship for official purposes, the port facility security officer should assist.

17.2 The port facility security officer should not be responsible for routine confirmation of the identity of those seeking to board the ship.

In addition relevant guidance is provided under sections 15, 16 and 18.

18 Training, drills and exercises for port facility security

18.1 The Port Facility Security Officer should have knowledge and receive training, in some or all of the following, as appropriate:

.1 Security administration;

.2 Relevant international conventions, codes and recommendations;

.3 Relevant Government legislation and regulations;

.4 Responsibilities and functions of other security organisations;

.5 Methodology of port facility security assessment;

.6 Methods of ship and port facility security surveys and inspections;

.7 Ship and port operations and conditions;

.8 Ship and port facility security measures;

.9 Emergency preparedness and response and contingency planning;

.10 Instruction techniques for security training and education, including security measures and procedures;

.11 Handling sensitive security related information and security related communications;

.12 Knowledge of current security threats and patterns;

.13 Recognition and detection of weapons, dangerous substances and devices;

.14 Recognition, on a non discriminatory basis, of characteristics and behavioural patterns of persons who are likely to threaten the security;

.15 Techniques used to circumvent security measures;

.16 Security equipment and systems, and their operational limitations;

.17 Methods of conducting audits, inspection, control and monitoring;

.18 Methods of physical searches and non-intrusive inspections;

.19 Security drills and exercises, including drills and exercises with ships; and

.20 Assessment of security drills and exercises.

18.2 Port facility personnel having specific security duties should have knowledge and receive training, in some or all of the following, as appropriate:

.1 Knowledge of current security threats and patterns;

.2 Recognition and detection of weapons, dangerous substances and devices;

.3 Recognition of characteristics and behavioural patterns of persons who are likely to threaten security;

.4 Techniques used to circumvent security measures;

.5 Crowd management and control techniques;

.6 Security related communications;

.7 Operations of security equipment and systems;

.8 Testing, calibration and maintenance of security equipment and systems,

.9 Inspection, control, and monitoring techniques; and

.10 Methods of physical searches of persons, personal effects, baggage, cargo, and ship's stores.

18.3 All other port facility personnel should have knowledge of and be familiar with relevant provisions of the PFSP, in some or all of the following, as appropriate:

.1 The meaning and the consequential requirements of the different security levels;

.2 Recognition and detection of weapons, dangerous substances and devices;

.3 Recognition of characteristics and behavioural patterns of persons who are likely to threaten the security; and

.4 Techniques used to circumvent security measures.

18.4 The objective of drills and exercises is to ensure that port facility personnel are proficient in all assigned security duties, at all security levels, and to identify any security related deficiencies, which need to be addressed.

18.5 To ensure the effective implementation of the provisions of the port facility security plan, drills should be conducted at least every three months unless the specific circumstances dictate otherwise. These drills should test individual elements of the plan such as those security threats listed in paragraph 15.11.

18.6 Various types of exercises which may include participation of port facility security officers, in conjunction with relevant authorities of Contracting Governments, company security officers, or ship security officers, if available, should be carried out at least once each calendar year with no more than 18 months between the exercises. Requests for the participation of company security officers or ships security officers in joint exercise should be made bearing in mind the security and work implications for the ship. These exercises should test communication, coordination, resource availability and response. These exercises may be:

.1 Full scale or live;

.2 Tabletop simulation or seminar; or

.3 Combined with other exercises held such as emergency response or other port State authority exercises.

19 Verification and certification for ships

No additional guidance.

Appendix to Part B

Appendix 1—Form of a Declaration of Security

Declaration of Security

Name of Ship:
Port of Registry:
IMO Number:
Name of Port Facility:

This Declaration of Security is valid from_____ until_____, for the following activities_____ (list the activities with relevant details) under the following security levels:

Security level(s) for the ship:
Security level(s) for the port facility:

The port facility and ship agree to the following security measures and responsibilities to ensure compliance with the requirements of Part A of the International Code for the Security of Ships and of Port Facilities.

Activity	The port facility	The ship
The affixing of the initials of the SSO or PFSO under these columns indicates that the activity will be done, in accordance with relevant approved plan, by		
Ensuring the performance of all security duties Monitoring restricted areas to ensure that only authorized personnel have access Controlling access to the port facility Controlling access to the ship Monitoring of the port facility, including berthing areas and areas surrounding the ship Monitoring of the ship, including berthing areas and areas surrounding the ship Handling of cargo Delivery of ship's stores Handling unaccompanied baggage Controlling the embarkation of persons and their effects Ensuring that security communication is readily available between the ship and port facility		

The signatories to this agreement certify that security measures and arrangements for both the port facility and the ship during the specified activities meet the provisions of chapter XI–2 and Part A of Code that will be implemented in accordance with the provisions already stipulated in their approved plan or the specific arrangements agreed to and set out in the attached annex.

Dated at_____on the_____.

SIGNED FOR AND ON BEHALF OF

The port facility	the ship
(Signature of Port Facility Security Officer)	(Signature of Master or Ship Security Officer)

NAME AND TITLE OF PERSON WHO SIGNED

Name: Title:	Name: Title:

CONTACT DETAILS (TO BE COMPLETED AS APPROPRIATE)

[Indicate the telephone numbers or the radio channels or frequencies to be used]

for the port facility:	for the ship:
Port Facility Port Facility Security Officer	Master Ship Security Officer Company Company Security Officer

Appendix 2—Form of a Statement of Compliance of a Port Facility

Statement of Compliance of a Port Facility

(Official seal)
(State)
Statement Number

Issued under the provisions of part B of the International Code for the Security of Ships and of Port Facilities (ISPS CODE).

The Government of_____(name of the State).

Name of the Port Facility: _____
Address of the Port Facility : _____

This is to Certify that the compliance of this port facility with the provisions of chapter XI–2 and part A of the International Code for the Security of Ships and of Port Facilities (ISPS Code) has been verified and that this port facility operates in accordance with the approved Port Facility Security Plan. This plan has been approved for the following <specify the types of operations, types of ship or activities or other relevant information>: (delete as appropriate):

Passenger ship
Passenger high speed craft
Cargo high speed craft
Bulk carrier
Oil tanker
Chemical tanker
Gas carrier
Mobile offshore Drilling Units
Cargo ships other than those referred to above

This Statement of Compliance is valid until_____, subject to verifications (as indicated overleaf).

Issued at_____(place of issue of the statement)

Date of issue_____

_____
(Signature of the duly authorized official issuing the document)

(Seal or stamp of issuing authority, as appropriate)

Endorsement for Verifications

The Government of <insert name of the State> has established that the validity of this Document of Compliance is subject to <insert relevant details of the verifications (*e.g.* mandatory annual or unscheduled)>.

This is to Certify that, during a verification carried out in accordance with paragraph B/16.40.3 of the ISPS Code, the Port Facility was found to comply with the relevant provisions of chapter XI–2 of the Convention and Part A of the ISPS Code.

1st Verification

Signed: _____
(Signature of authorized official)
Place: _____
Date: _____

2nd Verification

Signed: _____
(Signature of authorized official)
Place: _____
Date: _____

3rd Verification

Signed: _____
(Signature of authorized official)
Place: _____
Date: _____

4th Verification

Signed: _____
(Signature of authorized official)
Place: _____
Date: _____

Appendix C

Cost Analysis Report for Vessel, Facility, and Port Security, December 20, 2002, Standards Evaluation and Analysis Division, U.S. Coast Guard Headquarters

Acronyms

AOR—Area of Responsibility
BLS—U.S. Department of Labor Bureau of Labor Statistics
CCTV—Closed Circuit Television
CFR—Code of Federal Regulations
COTP—Captain of the Port
CSO—Company Security Officer
DOT—U.S. Department of Transportation
FSA—Facility Security Assessment
FSO—Facility Security Officer
FSP—Facility Security Plan
GT—Gross Tons
IMO—International Maritime Organization
ISPS Code—International Code for the Security of Ships and of Port Facilities
ITB—Integrated Tug-Barge
MARAD—U.S. Maritime Administration
MARSEC—Maritime Security Level
MODU—Mobile Offshore Drilling Unit
MSMS—Marine Safety Management System
NAICS—North American Industry Classification System
NVIC—Navigation and Vessel Inspection Circular
O&M—Operation and Maintenance
OSV—Offshore Supply Vessel
PFSA—Port Facility Security Assessment
PFSC—Port Facility Security Committee
PFSP—Port Facility Security Plan
PFSO—Port Facility Security Officer
PSA—Port Security Assessment
PSC—Port Security Committee
PSP—Port Security Plan
PV—Present Value
SBA—Small Business Administration
SOLAS—Convention for the Safety of Life at Sea
VSA—Vessel Security Assessment
VSP—Vessel Security Plan

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Executive Summary

Note: for definition of acronyms, refer to the list at the beginning of the report.

The United States has been a participant in negotiations at IMO developing the ISPS Code. This analysis presents the scope and magnitude of costs that the maritime transportation industry could incur for implementing

and complying with the ISPS Code, parts A and B, and Coast Guard issued NVICs (4–02, 9–02, 10–02). The purpose of this report is to present the broad set of assumptions that we used to develop our cost estimates, document our analysis, and make that information available to the public for comment.

For the purposes of good business practice or regulations promulgated by other Federal and State agencies, many companies have spent, to date, a substantial amount of money and resources to upgrade and improve security. The costs shown in this analysis do not include resources these companies have already spent to enhance security.

We realize that every company engaged in maritime commerce would not implement the ISPS Code exactly as presented in this analysis. Depending on each company's choices, some companies could spend much less than what is estimated herein while others could spend significantly more. In general, we assume that each company would implement the ISPS Code based on the type of vessels or facilities it owns or operates and whether it engages in international or domestic trade.

The ISPS Code provides requirements for ''Port Facilities.'' Because the Coast Guard differentiates between ports and facilities in domestic regulations, however, we are presenting this cost analysis in three sections: vessel security, facility security, and port security. As a result, for the purposes of this cost analysis, the terms PFSC, PFSO, PFSA, and PFSP have been replaced with PSC and PSP for the port security section and FSO, FSA, and FSP for the facility security section.

This analysis presents the estimated cost if vessels, facilities, and ports are operating at MARSEC 1 (the current level of operations since the events of September 11, 2001). We do not estimate costs for MARSEC 2 or 3 because the nature of a threat will determine the cost of responding to that threat. Depending on circumstances, one port, a U.S. coast, or the entire country could have an elevated MARSEC level. The costs for this vast range of threat levels are difficult to estimate with any accuracy. Under MARSEC 2 and 3, we would expect not just the immediate effects of increasing security with more personnel and more screening, but also ''ripple'' effects—delayed commerce, decreased product availability, price increases, increased unemployment, unstable markets worldwide, even negative psychological effects of threats. The recent shut-down of the West Coast ports, while not in response to a security threat, present a good example of the economic costs that we could experience under increased MARSEC levels.

We do not anticipate that implementing the ISPS Code will require additional manning aboard vessels; the duties envisioned can be assumed by existing personnel. For facilities, we anticipate additional personnel in the form of security guards that can be hired through contracting with a private firm specializing in security.

Based on this analysis, the first-year cost of implementing the ISPS Code for vessels, facilities, and ports is approximately $1.4 billion, with costs of approximately PV $6.0 billion over the next 10 years (2003–2012, 7 percent discount rate). Estimated costs are as follows.

- Vessel Security—The first-year cost of purchasing equipment, hiring security officers, and preparing paperwork is approximately $188 million. Following initial implementation, the annual cost is approximately $144 million. Over the next 10 years, the cost would be PV $1.1 billion approximately. The paperwork burden associated with planning would be approximately 141,000 hours in the first year and 7,000 hours in subsequent years.
- Facility Security—The first-year cost of purchasing equipment, hiring security officers, and preparing paperwork is an estimated $963 million. Following initial implementation, the annual cost is approximately $535 million. Over the next 10 years, the cost would be PV $4.4 billion approximately. The paperwork burden associated with planning would be approximately 464,000 hours in the first year and 17,000 hours in subsequent years.
- Port Security—The first-year cost is approximately $120 million. The second-year cost is approximately $106 million. In subsequent years, the annual cost is approximately $46 million. Over the next 10 years, the cost would be PV $477 million approximately. The paperwork burden associated with planning would be approximately 1,090,000 hours in 2003, 1,278,000 hours in 2004, and 827,000 hours in subsequent years.

Vessel Security

Summary

Note: for definition of acronyms throughout this analysis, refer to the list at the beginning of the report.

Implementing the ISPS Code and NVICs could affect about 10,625 vessels.

The estimated cost of complying with the ISPS Code, parts A and B, and NVICs is PV $1.129 billion (2003–2012, 7 percent discount rate). Approximately PV $257 million of this total is attributable to U.S.-flagged SOLAS vessels. The remaining PV $871 million is attributable to domestic vessels (non-SOLAS) that are affected. In the first year of compliance, the cost of purchasing equipment, hiring security officers, and preparing paperwork is an estimated $188 million (non-discounted, $42 million for the U.S.-flagged SOLAS fleet, $146 million for the domestic fleet). Following initial implementation, the annual cost of compliance is an estimated $144 million (non-discounted, $33 million for the U.S.-flagged SOLAS fleet, $111 million for the domestic fleet).

For the U.S.-flagged SOLAS fleet, approximately 60 percent of the initial cost is for hiring CSOs and training, 24 percent is for vessel equipment, 7 percent is for assigning VSOs to ships, and 9 percent is associated with paperwork (VSAs, VSPs). Following the first year, approximately 79 percent of the cost is for CSOs and training, 3 percent is for vessel equipment, 6 percent is for drilling, 9 percent is for VSOs, and 3 percent is associated with paperwork. CSOs and training are the primary cost driver for U.S.-flagged SOLAS vessels.

For the domestic fleet, approximately 61 percent of the initial cost is for hiring CSOs and training, 25 percent is for vessel equipment, 8 percent is for assigning VSOs to ships, and 6 percent is associated with paperwork (VSAs, VSPs). Following the first year, approximately 82 percent of the cost is for CSOs and training, 1 percent is for vessel equipment, 6 percent is for drilling, 10 percent is for VSOs, and 1 percent is associated with paperwork. As with SOLAS vessels, CSOs are the primary cost driver for the domestic fleet.

We estimate approximately 140,000 burden hours for paperwork during the first year of compliance (36,000 hours for U.S.-flagged SOLAS, 104,000 hours for the domestic fleet). We estimate approximately 7,000 burden hours annually following full implementation of the ISPS Code and NVICs (1,000 hours for U.S.-flagged SOLAS, 6,000 hours for the domestic fleet).

We assume shipping companies would apply the ISPS Code and NVICs differently based on the types of ships they own or operate and whether they operate internationally or domestically. Because an unacceptable amount of detail would be lost if we developed an ''average'' ship or an ''average'' company, this analysis calculates cost per affected vessel as well as cost per

affected company to capture characteristics unique to these entities.

Analysis

Period of Analysis

The period of analysis is 2003–2012 (10 years). Companies must come into compliance with the ISPS Code in 2004, but we assume that companies will purchase equipment and develop security plans prior to the effective date. We assume, therefore, that initial costs will be incurred in 2003, and annual costs will be incurred each year 2004–2012.

Population Affected

The population of affected vessels is derived from the Coast Guard's MSMS database and DOT's National Ferry Database. The U.S.-flagged SOLAS population affected is presented in Table 1. As shown, most of the U.S.-flagged SOLAS fleet are freight ships, tank ships, small passenger vessels, or OSVs. Approximately 170 companies own/operate these vessels.

TABLE 1.—ESTIMATED U.S.-FLAGGED SOLAS POPULATION[1, 2, 3, 4]

Vessel	Count	Percent[5]
Freight ship	241	37.6
Freight barge	2	0.3
Tank ship	114	17.8
Tank barge	14	2.2
Towboat	14	2.2
Fishing	39	6.1
Cruise vessel	2	0.3
Other passenger vessel	109	17.0
MODU	2	0.3
OSV	75	11.7
Oil recovery	1	0.2
Research vessel	8	1.2
Industrial vessel	20	3.1
Total	641	100.0

[1] All vessels engaged on international voyages (no GT threshold). There are 96 vessels < 100 GT; there are 112 < 300 GT.
[2] There are 89 freight ships, 19 tanks ships, 1 MODU, and 1 research vessel owned by MARAD.
[3] There are 15 ITBs. They are included in the tank ship population.
[4] There is 1 recreational vessel that is not included in these estimates.
[5] Sum may not add to total due to independent rounding.

The domestic population (non-SOLAS) affected is presented in Table 2. As shown, most of the domestic fleet are tank barges, towboats, or OSVs. Approximately 1,950 companies own/operate these vessels.

TABLE 2.—ESTIMATED DOMESTIC POPULATION

Vessel	Count	Percent[1]
Freight ship	99	1.0
Freight barge	262	2.6
Tank ship	34	0.3
Tank barge	2,891	29.0
Towboat >6 meters[2]	4,645	46.5
Passenger, ≤100 GT, not ferry	223	2.2
Passenger, ≤100 GT, ferry, >500 passengers	43	0.4
Passenger, ≤100 GT, ferry, ≤500 passengers	435	4.4
Passenger, >100 GT, cruise	2	0.0
Passenger, >100 GT, not ferry	67	0.7
Passenger, >100 GT, ferry, >500 passengers	49	0.5
Passenger, >100 GT, ferry, ≤500 passengers	92	0.9
MODU	159	1.6
OSV	983	9.9
Total	9,984	100.0

[1] Sum may not add to total due to independent rounding.
[2] Towboats over 50 GT. This is a good proxy for towboats > 6 meters.

Unit Cost Assumptions

Equipment

Costs of equipment are based on extensive research and analysis of several studies that addressed security needs. We estimate annual O&M cost for equipment is 5 percent of the purchase price. Not all vessels would install each piece of equipment. Unit costs of equipment are presented in Table 3.

TABLE 3.—UNIT COST OF EQUIPMENT

Equipment	Initial	Annual
Hand-held metal detector	$200	$10
Hand-held radio	200	10
Lock	300	15
Light	400	20
Camera	475	24
Auto-intrusion alarm	500	25
Ship security system (SOLAS only)	2,000	100
Archway metal detector	5,500	275
Portable vapor detector	8,000	400
X-ray baggage machine	39,000	1,950

Personnel, Training, Drilling, and Planning

Costs of personnel and training are based on extensive research and previous Coast Guard analyses that estimated training and planning costs. Personnel and training costs will be incurred each year of the analysis. Drilling costs will be incurred annually, but not initially. Planning costs will be incurred initially and annually, with more costs incurred initially as companies develop their security plans.

We assume costs will vary based on the types of vessels companies own. Companies differ by size and whether or not they are ''towing'' companies. For the purpose of this analysis, we assume that a large company owns more than 10 vessels (excluding towboats and barges). A small company owns 10 or fewer vessels (excluding towboats and barges).[1] A ''towing'' company owns only towboats and barges. A ''non-towing'' company is any other company (it owns only non-towing vessels or it owns a combination of towboats and non-towing vessels).

We assume that large companies will have a dedicated CSO. Small companies will have a part-time CSO (we estimate 0.25 of a dedicated person). CSOs and key crew will have some form of training annually as refresher courses and to address potential employee turnover within a company. The ISPS Code also requires all CSOs to participate in an annual security exercise; for the purposes of this analysis, these costs have been accounted for in the ''Port Security'' section. VSOs will be existing personnel on board vessels that will allocate part of their time toward security activities. Towing vessels will not have VSOs. For VSAs and VSPs, we assume the company will prepare the core documents, and there will be an incremental cost for each vessel included in the assessment or plan. The incremental cost added to each plan will be based on the number and type of vessels. We assume each hour of planning costs an average of $100/hour. This is a ''loaded'' labor rate, which means it includes the costs of benefits and other overhead costs. While some employees cost more than this and some cost less, we believe $100/hour is a reasonable average cost of the employees that would conduct this work. To calculate costs for VSAs and VSPs, we estimated number of hours that would be required initially (plan development and submission) and annually (plan updates), then multiplied by hourly cost.

For drilling, the time required will depend on the number of crewmembers aboard the vessel. We assume each hour of drilling also costs an average of $100/hour per crewmember (again, a loaded labor rate that represents an average cost of the labor performing these duties). Drilling for all vessels except towboats and barges will be conducted quarterly. Towboats and associated barges will drill under order of the COTP (approximately every 18 months). Table 4 summarizes personnel costs.

TABLE 4.—UNIT COST OF PERSONNEL

[Loaded labor costs]

Personnel	Large company		Small company	
	Initial	Annual	Initial	Annual
CSO	$150,000	$150,000	$37,500	$37,500
CSO training	3,500	3,500	2,000	2,000
Training of key crew	5,000	5,000	3,500	3,500
VSO	5,000	5,000	5,000	5,000
VSA, non-towing	8,000	400	4,000	200
VSA, towing	1,600	100	800	100
VSP, non-towing	8,000	400	4,000	200
VSP, towing	1,600	100	800	100

Vessel Costs

The following is a summary of the costs for each type of vessel. Company costs are estimated separately. These costs reflect the current state of the industry and the current level of compliance with security rulemakings already in effect, but not cost incurred in response to the events of September 11, 2001. Since neither the ISPS Code nor the NVICs require specific equipment, we estimated what an ''average'' vessel within each service type would likely install.

[1] Our use of ''large'' or ''small'' to characterize a vessel company does not have the same meaning as the SBA's definition. SBA uses NAICS, revenues, and number of employees to determine company size.

Freight Ships and Barges

Tables 5–8 present the per-vessel cost for U.S.-flagged SOLAS and domestic freight ships and freight barges.

TABLE 5.—COST PER U.S.-FLAGGED SOLAS FREIGHT SHIP

[241 Vessels affected]

Item	Initial			Annual		
	Number	Cost/item	Total cost	Number	Cost/item	Total cost
Hand-held metal detector	2	$200	$400	2	$10	$20
Hand-held radio	5	200	1,000	5	10	50
Lock	10	300	3,000	10	15	150
Light	5	400	2,000	5	20	100
Auto-intrusion alarm	5	500	2,500	5	25	125
Ship security system	1	2,000	2,000	1	100	100
Portable vapor detector	1	8,000	8,000	1	400	400
VSO	1	5,000	5,000	1	5,000	5,000
VSA (incremental cost)	16.00 hrs	100/hr	1,600	0.02 hrs	100/hr	2
VSP (incremental cost)	4.00 hrs	100/hr	400	0.02 hrs	100/hr	2
Quarterly drills				1 hr, 15 crew	1,500/drill	6,000
Total cost per vessel			25,900			11,949

TABLE 6.—COST PER U.S.-FLAGGED SOLAS FREIGHT BARGE

[2 Vessels affected]

Item	Initial			Annual		
	Number	Cost/item	Total cost	Number	Cost/item	Total cost
VSA (incremental cost)	4.00 hrs	$100/hr	$400	0.02 hrs	$100/hr	$2
VSP (incremental cost)	0.25 hrs	100/hr	25	0.02 hrs	100/hr	2
Total cost per vessel			425			4

TABLE 7.—COST PER DOMESTIC FREIGHT SHIP

[99 Vessels affected]

Item	Initial			Annual		
	Number	Cost/item	Total cost	Number	Cost/item	Total cost
Hand-held metal detector	2	$200	$400	2	$10	$20
Hand-held radio	5	200	1,000	5	10	50
Lock	10	300	3,000	10	15	150
Light	5	400	2,000	5	20	100
Auto-intrusion alarm	5	500	2,500	5	25	125
Portable vapor detector	1	8,000	8,000	1	400	400
VSO	1	5,000	5,000	1	5,000	5,000
VSA (incremental cost)	8.00 hrs	100/hr	800	0.02 hrs	100/hr	2
VSP (incremental cost)	4.00 hrs	100/hr	400	0.02 hrs	100/hr	2
Quarterly drills				1 hr, 15 crew	1,500/drill	6,000
Total cost per vessel			23,100			11,849

TABLE 8.—COST PER DOMESTIC FREIGHT BARGE

[262 Vessels affected]

Item	Initial			Annual		
	Number	Cost/item	Total cost	Number	Cost/item	Total cost
VSA (incremental cost)	0.02	$100	$2	0.02 hrs	100/hr	$2
VSP (incremental cost)	0.02 hrs	100/hr	2	0.02 hrs	100/hr	2
Total cost per vessel			4			4

Tank Ships and Barges

Tables 9–12 present the per-vessel cost for U.S.-flagged SOLAS and domestic tank ships and tank barges.

TABLE 9.—COST PER U.S.-FLAGGED SOLAS TANK SHIP

[114 Vessels affected]

Item	Initial			Annual		
	Number	Cost/item	Total cost	Number	Cost/item	Total cost
Hand-held metal detector	1	$200	$200	1	$10	$10
Hand-held radio	5	200	1,000	5	10	50
Lock	10	300	3,000	10	15	150
Light	5	400	2,000	5	20	100
Auto-intrusion alarm	5	500	2,500	5	25	125
Ship security system	1	2,000	2,000	1	100	100
VSO	1	5,000	5,000	1	5,000	5,000
VSA (incremental cost)	16.00 hrs	100/hr	1,600	0.02 hrs	100/hr	2
VSP (incremental cost)	4.00 hrs	100/hr	400	0.02 hrs	100/hr	2
Quarterly drills				1 hr, 15 crew	1,500/drill	6,000
Total cost per vessel			17,700			11,539

TABLE 10.—COST PER U.S.-FLAGGED SOLAS TANK BARGE

[14 Vessels affected]

Item	Initial			Annual		
	Number	Cost/item	Total cost	Number	Cost/item	Total cost
VSA (incremental cost)	4.00 hrs	$100/hr	$400	0.02 hrs	$100/hr	$2
VSP (incremental cost)	0.08 hrs	100/hr	8	0.02 hrs	100/hr	2
Total cost per vessel			408			4

TABLE 11.—COST PER DOMESTIC TANK SHIP

[34 Vessels affected]

Item	Initial			Annual		
	Number	Cost/item	Total cost	Number	Cost/item	Total cost
Hand-held metal detector	1	$200	$200	1	$10	$10
Hand-held radio	5	200	1,000	5	10	50
Lock	10	300	3,000	10	15	150
Light	5	400	2,000	5	20	100
Auto-intrusion alarm	5	500	2,500	5	25	125
VSO	1	5,000	5,000	1	5,000	5,000
VSA (incremental cost)	8.00 hrs	100/hr	800	0.02 hrs	100/hr	2
VSP (incremental cost)	4.00 hrs	100/hr	400	0.02 hrs	100/hr	2
Quarterly drills				1 hr, 15 crew	1,500/drill	6,000
Total cost per vessel			14,900			11,439

TABLE 12.—COST PER DOMESTIC TANK BARGE

[2,891 Vessels affected]

Item	Initial			Annual		
	Number	Cost/item	Total cost	Number	Cost/item	Total cost
VSA (incremental cost)	0.02 hrs	$100/hr	$2	0.02 hrs	$100/hr	$2
VSP (incremental cost)	0.02 hrs	100/hr	2	0.02 hrs	100/hr	2
Total cost per vessel			4			4

Uninspected Vessels

Tables 13–15 present the per-vessel cost for U.S.-flagged SOLAS towboats and fish processors and domestic towboats.

TABLE 13.—COST PER U.S.-FLAGGED SOLAS TOWBOAT

[14 Vessels affected]

Item	Initial			Annual		
	Number	Cost/item	Total cost	Number	Cost/item	Total cost
Hand-held radio	1	$200	$200	1	$10	$10
Lock	3	300	900	3	15	45
Light	2	400	800	2	20	40
Ship security system	1	2,000	2,000	1	100	100
VSA (incremental cost)	8.00 hrs	100/hr	800	0.02 hrs	100/hr	2
VSP (incremental cost)	2.00 hrs	100/hr	200	0.02 hrs	100/hr	2
Total cost per vessel			4,900			199

TABLE 14.—COST PER U.S.-FLAGGED SOLAS FISH PROCESSOR

[39 Vessels affected]

Item	Initial			Annual		
	Number	Cost/item	Total cost	Number	Cost/item	Total cost
Hand-held metal detector	1	$200	$200	1	$10	$10
Hand-held radio	3	200	600	3	10	30
Lock	10	300	3,000	10	15	150
Light	2	400	800	2	20	40
Auto-intrusion alarm	2	500	1,000	2	25	50
Ship security system	1	2,000	2,000	1	100	100
VSO	1	5,000	5,000	1	5,000	5,000
VSA (incremental cost)	8.00 hrs	100/hr	800	0.02 hrs	100/hr	2
VSP (incremental cost)	2.00 hrs	100/hr	200	0.02 hrs	100/hr	2
Quarterly drills				1 hr, 5 crew	500/drill	2,000
Total cost per vessel			13,600			7,384

TABLE 15.—COST PER DOMESTIC TOWBOAT

[4,645 Vessels affected]

Item	Initial			Annual		
	Number	Cost/item	Total cost	Number	Cost/item	Total cost
Lock	3	$300	$900	3	$15	$45
Light	2	400	800	2	20	40
VSA (incremental cost)	0.02 hrs	100/hr	2	0.02 hrs	100/hr	2
VSP (incremental cost)	0.02 hrs	100/hr	2	0.02 hrs	100/hr	2
Total cost per vessel			1,704			89

U.S.-Flagged SOLAS Passenger Vessels

Tables 16 and 17 present the per-vessel cost for U.S.-flagged SOLAS passenger vessels.

TABLE 16.—COST PER U.S.-FLAGGED SOLAS CRUISE VESSEL

[2 Vessels affected]

Item	Initial			Annual		
	Number	Cost/item	Total cost	Number	Cost/item	Total cost
Hand-held radio	10	$200	$2,000	10	$10	$100
Ship security system	1	2,000	2,000	1	100	100
VSO	1	5,000	5,000	1	5,000	5,000
VSA (incremental cost)	24.00 hrs	100/hr	2,400	0.02 hrs	100/hr	2
VSP (incremental cost)	4.00 hrs	100/hr	400	0.02 hrs	100/hr	2
Quarterly drills				1 hr, 20 crew	2,000/drill	8,000
Total cost per vessel			11,800			13,204

TABLE 17.—COST PER OTHER U.S.-FLAGGED SOLAS PASSENGER VESSEL

[109 Vessels affected]

Item	Initial			Annual		
	Number	Cost/item	Total cost	Number	Cost/item	Total cost
Hand-held metal detector	2	$200	$400	2	$10	$20
Hand-held radio	5	200	1,000	5	10	50
Lock	20	300	6,000	20	15	300
Auto-intrusion alarm	5	500	2,500	5	25	125
Ship security system	1	2,000	2,000	1	100	100
Archway metal detector	1	5,500	5,500	1	275	275
VSO	1	5,000	5,000	1	5,000	5,000
VSA (incremental cost)	8.00 hrs	100/hr	800	0.02 hrs	100/hr	2
VSP (incremental cost)	2.00 hrs	100/hr	200	0.02 hrs	100/hr	2
Quarterly drills				1 hr, 10 crew	1,000/drill	4,000
Total cost per vessel			23,400			9,874

Passenger Vessels ≤ 100 GT

Tables 18–20 present the per-vessel cost for domestic passenger vessels.

TABLE 18.—COST PER DOMESTIC PASSENGER VESSEL, NOT FERRY

[223 Vessels affected]

Item	Initial			Annual		
	Number	Cost/item	Total cost	Number	Cost/item	Total cost
Hand-held metal detector	1	$200	$200	1	$10	$10
Hand-held radio	5	200	1,000	5	10	50
Lock	10	300	3,000	10	15	150
Light	5	400	2,000	5	20	100
VSO	1	5,000	5,000	1	5,000	5,000
VSA (incremental cost)	8.00 hrs	100/hr	800	0.02 hrs	100/hr	2
VSP (incremental cost)	4.00 hrs	100/hr	400	0.02 hrs	100/hr	2
Quarterly drills				1 hr, 5 crew	500/drill	2,000
Total cost per vessel			12,400			7,314

TABLE 19.—COST PER DOMESTIC FERRY >500 PASSENGERS

[43 Vessels affected]

Item	Initial			Annual		
	Number	Cost/item	Total cost	Number	Cost/ item	Total cost
Hand-held metal detector	2	$200	$400	2	$10	$20
Hand-held radio	5	200	1,000	5	10	50
Lock	10	300	3,000	10	15	150
Light	5	400	2,000	5	20	100
Auto-intrusion alarm	5	500	2,500	5	25	125
Archway metal detector	2	5,500	11,000	2	275	550
Portable vapor detector	1	8,000	8,000	1	400	400
VSO	1	5,000	5,000	1	5,000	5,000
VSA (incremental cost)	8.00 hrs	100/hr	800	0.02 hrs	100/hr	2
VSP (incremental cost)	4.00 hrs	100/hr	400	0.02 hrs	100/hr	2
Quarterly drills				1 hr, 15 crew	1,500/drill	6,000
Total cost per vessel			34,100			12,399

TABLE 20.—COST PER DOMESTIC FERRY ≤500 PASSENGERS

[435 Vessels affected]

Item	Initial			Annual		
	Number	Cost/item	Total cost	Number	Cost/item	Total cost
Hand-held metal detector	2	$200	$400	2	$10	$20
Hand-held radio	5	200	1,000	5	10	50
Lock	10	300	3,000	10	15	150
Light	5	400	2,000	5	20	100

TABLE 20.—COST PER DOMESTIC FERRY ≤500 PASSENGERS—Continued

[435 Vessels affected]

Item	Initial			Annual		
	Number	Cost/item	Total cost	Number	Cost/item	Total cost
Portable vapor detector	1	8,000	8,000	1	400	400
VSO	1	5,000	5,000	1	5,000	5,000
VSA (incremental cost)	8.00 hrs	100/hr	800	0.02 hrs	100/hr	2
VSP (incremental cost)	4.00 hrs	100/hr	400	0.02 hrs	100/hr	2
Quarterly drills				1 hr, 10 crew	1,000/drill	4,000
Total cost per vessel			20,600			9,724

Passenger Vessels > 100 GT

Tables 21–24 present the per-vessel cost for domestic passenger vessels.

TABLE 21.—COST PER DOMESTIC CRUISE VESSEL

[2 Vessels affected]

Item	Initial			Annual		
	Number	Cost/item	Total cost	Number	Cost/item	Total cost
Hand-held radio	10	$200	$2,000	10	$10	$100
VSO	1	5,000	5,000	1	5,000	5,000
VSA (incremental cost)	16.00 hrs	100/hr	1,600	0.02 hrs	100/hr	2
VSP (incremental cost)	4.00 hrs	100/hr	400	0.02 hrs	100/hr	2
Quarterly drills				1 hr, 20 crew	2,000/drill	8,000
Total cost per vessel			9,000			13,104

TABLE 22.—COST PER DOMESTIC PASSENGER VESSEL, NOT FERRY

[67 Vessels affected]

Item	Initial			Annual		
	Number	Cost/item	Total cost	Number	Cost/item	Total cost
Hand-held metal detector	1	$200	$200	1	$10	$10
Hand-held radio	10	200	2,000	10	10	100
Lock	20	300	6,000	20	15	300
Camera	5	475	2,375	5	24	120
Auto-intrusion alarm	10	500	5,000	10	25	250
VSO	1	5,000	5,000	1	5,000	5,000
VSA (incremental cost)	8.00 hrs	100/hr	800	0.02 hrs	100/hr	2
VSP (incremental cost)	4.00 hrs	100/hr	400	0.02 hrs	100/hr	2
Quarterly drills				1 hr, 10 crew	1,000/drill	4,000
Total cost per vessel			21,775			9,784

TABLE 23.—COST PER DOMESTIC FERRY >500 PASSENGERS

[49 Vessels affected]

Item	Initial			Annual		
	Number	Cost/item	Total cost	Number	Cost/item	Total cost
Hand-held metal detector	2	$200	$400	2	$10	$20
Hand-held radio	10	200	2,000	10	10	100
Lock	20	300	6,000	20	15	300
Camera	5	475	2,375	5	24	120
Auto-intrusion alarm	10	500	5,000	10	25	250
Archway metal detector	2	5,500	11,000	2	275	550
Portable vapor detector	1	8,000	8,000	1	400	400
X-ray baggage machine	1	39,000	39,000	1	1,950	1,950
VSO	1	5,000	5,000	1	5,000	5,000
VSA (incremental cost)	8.00 hrs	100/hr	800	0.02 hrs	100/hr	2
VSP (incremental cost)	4.00 hrs	100/hr	400	0.02 hrs	100/hr	2
Quarterly drills				1 hr, 15 crew	1,500/drill	6,000

TABLE 23.—COST PER DOMESTIC FERRY >500 PASSENGERS—Continued

[49 Vessels affected]

Item	Initial			Annual		
	Number	Cost/item	Total cost	Number	Cost/item	Total cost
Total cost per vessel			79,975			14,694

TABLE 24.—COST PER DOMESTIC FERRY >500 PASSENGERS

[92 Vessels affected]

Item	Initial			Annual		
	Number	Cost/item	Total cost	Number	Cost/item	Total cost
Hand-held metal detector	2	$200	$400	2	$10	$20
Hand-held radio	5	200	1,000	5	10	50
Lock	20	300	6,000	20	15	300
Auto-intrusion alarm	5	500	2,500	5	25	125
Archway metal detector	2	5,500	11,000	2	275	550
Portable vapor detector	1	8,000	8,000	1	400	400
VSO	1	5,000	5,000	1	5,000	5,000
VSA (incremental cost)	8.00 hrs	100/hr	800	0.02 hrs	100/hr	2
VSP (incremental cost)	4.00 hrs	100/hr	400	0.02 hrs	100/hr	2
Quarterly drills				1 hr, 10 crew	1,000/drill	4,000
Total cost per vessel			35,100			10,449

MODUs

Tables 25 and 26 present the per-vessel cost for U.S.-flagged SOLAS and domestic MODUs.

TABLE 25.—COST PER U.S.-FLAGGED SOLAS MODU

[2 Vessels affected]

Item	Initial			Annual		
	Number	Cost/item	Total cost	Number	Cost/item	Total cost
Hand-held radio	5	$200	$1,000	5	$10	$50
Lock	10	300	3,000	10	15	150
Light	5	400	2,000	5	20	100
Auto-intrusion alarm	5	500	2,500	5	25	125
Ship security system	1	2,000	2,000	1	100	100
VSO	1	5,000	5,000	1	5,000	5,000
VSA (incremental cost)	16.00 hrs	100/hr	1,600	0.02 hrs	100/hr	2
VSP (incremental cost)	4.00 hrs	100/hr	400	0.02 hrs	100/hr	2
Quarterly drills				1 hr, 10 crew	1,000/drill	4,000
Total cost per vessel			17,500			9,529

TABLE 26.—COST PER DOMESTIC MODU

[159 Vessels affected]

Item	Initial			Annual		
	Number	Cost/item	Total cost	Number	Cost/item	Total cost
Hand-held radio	5	$200	$1,000	5	$10	$50
Lock	10	300	3,000	10	15	150
Light	5	400	2,000	5	20	100
Auto-intrusion alarm	5	500	2,500	5	25	125
VSO	1	5,000	5,000	1	5,000	5,000
VSA (incremental cost)	16.00 hrs	100/hr	1,600	0.02 hrs	100/hr	2
VSP (incremental cost)	4.00 hrs	100/hr	400	0.02 hrs	100/hr	2
Quarterly drills				1 hr, 10 crew	1,000/drill	4,000
Total cost per vessel			15,500			9,429

OSVs

Tables 27 and 28 present the per-vessel cost for U.S.-flagged SOLAS and domestic OSVs.

TABLE 27.—COST PER U.S.-FLAGGED SOLAS OSV

[75 Vessels affected]

Item	Initial			Annual		
	Number	Cost/item	Total cost	Number	Cost/item	Total cost
Hand-held metal detector	1	$200	$200	1	$10	$10
Hand-held radio	3	200	600	3	10	30
Lock	10	300	3,000	10	15	150
Light	2	400	800	2	20	40
Auto-intrusion alarm	2	500	1,000	2	25	50
Ship security system	1	2,000	2,000	1	100	100
VSO	1	5,000	5,000	1	5,000	5,000
VSA (incremental cost)	8.00 hrs	100/hr	800	0.02 hrs	100/hr	2
VSP (incremental cost)	4.00 hrs	100/hr	400	0.02 hrs	100/hr	2
Quarterly drills				1hr, 4 crew	400/drill	1,600
Total cost per vessel			13,800			6,984

TABLE 28.—COST PER DOMESTIC OSV

[983 Vessels affected]

Item	Initial			Annual		
	Number	Cost/item	Total cost	Number	Cost/item	Total cost
Hand-held metal detector	1	$200	$200	1	$10	$10
Hand-held radio	3	200	600	3	10	30
Lock	10	300	3,000	10	15	150
Light	2	400	800	2	20	40
Auto-intrusion alarm	2	500	1,000	2	25	50
VSO	1	5,000	5,000	1	5,000	5,000
VSA (incremental cost)	8.00 hrs	100/hr	800	0.02 hrs	100/hr	2
VSP (incremental cost)	4.00 hrs	100/hr	400	0.02 hrs	100/hr	2
Quarterly drills				1hr, 4 crew	400/drill	1,600
Total cost per vessel			11,800			6,884

Other U.S.-Flagged SOLAS Vessels

Tables 29–31 present the per-vessel cost for other U.S.-flagged SOLAS vessels.

TABLE 29.—COST PER U.S.-FLAGGED SOLAS OIL RECOVERY VESSEL

[1 Vessel affected]

Item	Initial			Annual		
	Number	Cost/item	Total cost	Number	Cost/item	Total cost
Hand-held radio	3	$200	$600	3	$10	$30
Lock	10	300	3,000	10	15	150
Light	2	400	800	2	20	40
Auto-intrusion alarm	2	500	1,000	2	25	50
Ship security system	1	2,000	2,000	1	100	100
VSO	1	5,000	5,000	1	5,000	5,000
VSA (incremental cost)	8.00 hrs	100/hr	800	0.02 hrs	100/hr	2
VSP (incremental cost)	2.00 hrs	100/hr	200	0.02 hrs	100/hr	2
Quarterly drills				1hr, 3 crew	300/drill	1,200
Total cost per vessel			13,400			6,574

TABLE 30.—COST PER U.S.-FLAGGED SOLAS RESEARCH VESSEL

[8 vessels affected]

Item	Initial			Annual		
	Number	Cost/item	Total cost	Number	Cost/item	Total cost
Hand-held radio	3	$200	$600	3	$10	$30
Lock	10	300	3,000	10	15	150
Light	2	400	800	2	20	40
Auto-intrusion alarm	2	500	1,000	2	25	50
Ship security system	1	2,000	2,000	1	100	100

TABLE 30.—COST PER U.S.-FLAGGED SOLAS RESEARCH VESSEL—Continued

[8 vessels affected]

Item	Initial			Annual		
	Number	Cost/item	Total cost	Number	Cost/item	Total cost
VSO	1	5,000	5,000	1	5,000	5,000
VSA (incremental cost)	8.00 hrs	100/hr	800	0.02 hrs	100/hr	2
VSP (incremental cost)	2.00 hrs	100/hr	200	0.02 hrs	100/hr	2
Quarterly drills				1 hr, 5 crew	500/drill	2,000
Total cost per vessel			13,400			7,374

TABLE 31.—COST PER U.S.-FLAGGED SOLAS INDUSTRIAL VESSEL

[20 vessels affected]

Item	Initial			Annual		
	Number	Cost/item	Total cost	Number	Cost/item	Total cost
Hand-held radio	1	$200	$200	1	$10	$10
Lock	3	300	900	3	15	45
Light	2	400	800	2	20	40
Ship security system	1	2,000	2,000	1	100	100
VSO	1	5,000	5,000	1	5,000	5,000
VSA (incremental cost)	8.00 hrs	100/hr	800	0.02 hrs	100/hr	2
VSP (incremental cost)	2.00 hrs	100/hr	200	0.02 hrs	100/hr	2
Quarterly drills				1 hr, 5 crew	500/drill	2,000
Total cost per vessel			9,900			7,199

Company Costs

The cost per company depends on the number and type of vessels a company owns. For this analysis, companies are defined as follows.

- Large non-towing company—company owns more than 10 vessels, none is a towboat or barge; there are 19 companies in our population
- Large towing company—company owns more than 10 vessels, at least one is a towboat or barge; there are 10 companies in our population
- Small non-towing company—company owns 10 or fewer vessels, none is a towboat or barge; there are 616 companies in our population
- Small towing company—company owns only towboats or barges, regardless of the number; there are 1,398 companies in our population
- U.S.-flagged SOLAS company—treated as a large non-towing company; there are 167 companies in our population

The cost per company by type is presented in Table 32.

TABLE 32.—COST PER COMPANY BY TYPE

Company type	Initial	Annual
Large non-towing company:		
CSO	$150,000	$150,000
CSO training	3,500	3,500
Training of key crew	5,000	5,000
VSA	8,000	400
VSP	8,000	400
Total cost	174,500	159,300
Large towing company:		
CSO	$150,000	$150,000
CSO training	3,500	3,500
Training of key crew	5,000	5,000
VSA	1,600	100
VSP	1,600	100
Total cost	161,700	158,700
Small non-towing company:		
CSO	$37,500	$37,500
CSO training	2,000	2,000
Training of key crew	3,500	3,500
VSA	4,000	200

TABLE 32.—COST PER COMPANY BY TYPE—Continued

Company type	Initial	Annual
VSP	4,000	200
Total cost	51,000	43,400
Small towing company:		
CSO	$37,500	$37,500
CSO training	2,000	2,000
Training of key crew	3,500	3,500
VSA	800	100
VSP	800	100
Total cost	44,600	43,200

To calculate total costs per company, we added the company-level costs (above) and the vessel-level costs (equipment, VSO, incremental VSA and VSP costs, drilling). Example calculations are presented below. The companies in these examples are good representations of the types of companies affected.

Example 1—U.S.-Flagged SOLAS Company

Company A owns 2 freight ships, 4 industrial vessels, 20 OSVs, and 4 research vessels, all of which are U.S.-flagged SOLAS vessels. The initial and annual costs for this company are presented in Table 33.

TABLE 33.—EXAMPLE COST FOR U.S.-FLAGGED SOLAS COMPANY

Cost	Initial			Annual	
	Number	Cost/item	Total cost	Cost/item	Total cost
Company (Table 32)	1	$174,500	$174,500	$159,300	$159,300
Freight ships (Table 5)	2	25,900	51,800	11,949	23,898
Industrial vessels (Table 31)	4	9,900	39,600	7,199	28,796
OSVs (Table 27)	20	13,800	276,000	6,984	139,680
Research vessels (Table 30)	4	13,400	53,600	7,374	29,496
Total company cost	.....	.....	595,500	.....	381,170

Example 2a—Large Non-Towing Company (No Passenger Vessels)

Company B owns 19 MODUs and 25 OSVs (*i.e.,* no passenger vessels). The initial and annual costs for this company are presented in Table 34.

TABLE 34.—EXAMPLE COST FOR LARGE NON-TOWING COMPANY

[No Passenger Vessels]

Cost	Number	Initial		Annual	
		Cost/item	Total cost	Cost/item	Total cost
Company (Table 32)	1	$174,500	$174,500	$159,300	$159,300
MODUs (Table 26)	19	15,500	294,500	9,429	179,151
OSVs (Table 28)	25	11,800	295,000	6,884	172,100
Total company cost	.....	.....	764,000	.....	510,551

Example 2b—Large Non-Towing Company (With Passenger Vessels)

Company C owns 9 ferries 100 GT or less carrying fewer than 500 passengers, 11 ferries over 100 GT carrying more than 500 passengers, and 14 ferries over 100 GT carrying fewer than 500 passengers. The initial and annual costs for this company are presented in Table 35.

TABLE 35.—EXAMPLE COST FOR LARGE NON-TOWING COMPANY

[With Passenger Vessels]

Cost	Number	Initial		Annual	
		Cost/item	Total cost	Cost/item	Total cost
Company (Table 32)	1	$174,500	$174,500	$159,300	$159,300
Ferries, ≤ 100 GT, ≤ 500 pass. (Table 20)	9	20,600	185,400	9,724	87,516
Ferries, > 100 GT, > 500 pass. (Table 23)	11	79,975	879,725	14,694	161,634
Ferries, > 100 GT, ≤ 500 pass. (Table 24)	14	35,100	491,400	10,449	146,286

TABLE 35.—EXAMPLE COST FOR LARGE NON-TOWING COMPANY—Continued

[With Passenger Vessels]

Cost	Number	Initial		Annual	
		Cost/item	Total cost	Cost/item	Total cost
Total company cost			1,731,025		544,736

Example 3—Large Towing Company

Company D owns 12 OSVs and 5 towboats. The initial and annual costs for this company are presented in Table 36.

TABLE 36.—EXAMPLE COST FOR LARGE TOWING COMPANY

Cost	Number	Initial		Annual	
		Cost/item	Total cost	Cost/item	Total cost
Company (Table 32)	1	$161,700	$161,700	$158,700	$158,700
OSVs (Table 28)	12	11,800	141,600	6,884	82,608
Towboats (Table 15)	5	1,704	8,520	89	445
Total company cost			311,820		241,753

Example 4—Small Non-Towing Company

Company E owns 3 ferries 100 GT or less carrying more than 500 passengers and 6 ferries 100 GT or less carrying fewer than 500 passengers. The initial and annual costs for this company are presented in Table 37.

TABLE 37.—EXAMPLE COST FOR SMALL NON-TOWING COMPANY

Cost	Number	Initial		Annual	
		Cost/item	Total cost	Cost/item	Total cost
Company (Table 32)	1	$51,000	$51,000	$43,400	$43,400
Large ferries (Table 19)	3	34,100	102,300	12,399	37,197
Small ferries (Table 20)	6	20,600	123,600	9,724	58,344
Total company cost			276,900		138,941

Example 5—Small Towing Company

Company F owns 1 freight barge, 6 tank barges, and 6 towboats. The initial and annual costs for this company are presented in Table 38.

TABLE 38.—EXAMPLE COST FOR SMALL TOWING COMPANY

Cost	Initial			Annual	
	Number	Cost/item	Total cost	Cost/item	Total cost
Company (Table 32)	1	$44,600	$44,600	$43,200	$43,200
Freight barges (Table 8)	1	4	4	4	4
Tank barges (Table 12)	6	4	24	4	24
Towboats (Table 15)	6	1,704	10,224	89	534
Total company cost			54,852		43,762

Total National Cost of Vessel Security

The national cost of vessel security is the sum of the individual cost estimated for each company affected. National cost is discounted to its PV at 7 percent (2003–2012). The national initial and annual cost is presented in Table 39.

TABLE 39.—TOTAL NATIONAL PV COST FOR VESSEL SECURITY, IN $MILLIONS

[2003–2012, 7 Percent discount rate]

	U.S.-flagged SOLAS	Domestic	Total	PV total
2003 (initial)	$42	$146	$188	$188
2004 (annual)	33	111	144	135
2005 (annual)	33	111	144	126
2006 (annual)	33	111	144	118
2007 (annual)	33	111	144	110

TABLE 39.—TOTAL NATIONAL PV COST FOR VESSEL SECURITY, IN $MILLIONS—Continued
[2003–2012, 7 Percent discount rate]

	U.S.-flagged SOLAS	Domestic	Total	PV total
2008 (annual)	33	111	144	103
2009 (annual)	33	111	144	96
2010 (annual)	33	111	144	90
2011 (annual)	33	111	144	84
2012 (annual)	33	111	144	79
Total cost ($m)	339	1,145	1,484	1,129

Table 40 presents the national cost for different elements of compliance for U.S.-flagged SOLAS and domestic vessels (these costs are not discounted).

TABLE 40.—TOTAL NATIONAL INITIAL AND ANNUAL COST BY ELEMENT OF COMPLIANCE, IN $MILLIONS

Cost	Initial				Annual			
	U.S.-flagged SOLAS	Percent of total	Domestic	Percent of total	U.S.-flagged SOLAS	Percent of total	Domestic	Percent
Equipment	$10	24	$36	25	$1	3	$1	1
Drilling	0	0	0	0	2	6	7	6
VSO	3	7	11	8	3	9	11	10
CSO, training	25	60	89	61	26	79	91	82
Paperwork	4	9	10	6	1	3	1	1
Total	42	100	146	100	33	100	111	100

As shown, CSOs and training are the driving costs both initially and annually. In the initial year, equipment accounts for approximately 25 percent of the total cost. Following implementation, drilling and VSO costs are a notable portion of the costs.

Facility Security

Summary

Note: for definition of acronyms throughout this analysis, refer to the list at the beginning of the report.

Implementing the ISPS Code could affect about 4,400 facilities.

The estimated cost for U.S. facilities to implement the ISPS Code is PV $4.4 billion (2003 to 2012, 7 percent discount rate). Approximately PV $2.4 billion of this total is attributable to facilities engaged in the transfer of hazardous bulk liquids (petroleum, edible oils, and liquefied gases). The remaining PV $2.0 billion is attributable to facilities that receive ships on international voyages or carry more than 149 passengers. During the initial year of compliance, the cost is attributable to purchasing equipment, hiring security officers, and preparing paperwork. The initial cost is an estimated $963 million (non-discounted, $478 million for the facilities with hazardous bulk liquids, $485 million for the other facilities). Following initial implementation, the annual cost is an estimated $535 million (non-discounted, $300 million for the facilities with hazardous bulk liquids, $235 million for the other facilities).

Approximately 46 percent of the initial cost is for installing or upgrading equipment, 37 percent for hiring and training FSOs[2], 13 percent for hiring additional security guards, and 4 percent for paperwork (FSAs and FSPs). Following the first year, approximately 4 percent of the annual cost is for O&M for equipment, 66 percent for FSOs, 23 percent for security guards, 7 percent for drills, and approximately 1 percent for paperwork (updating FSAs and FSPs). Installing or upgrading equipment and FSOs are the primary cost drivers for the cost of facility security.

The paperwork burden for developing FSAs and FSPs is approximately 465,000 hours during the initial year. In subsequent years, the annual burden is approximately 17,000 hours.

Analysis

Period of Analysis

The period of analysis is 2003–2012 (10 years). Implementation will become effective in 2004, but we assume that companies will purchase equipment and develop security plans prior to the effective date. We assume, therefore, that initial costs will be incurred in 2003, and annual costs will be incurred each year 2004–2012.

Population Affected

Implementing the ISPS Code would affect about 4,400 facilities that engage in the transfer of hazardous substances or that service vessels on international voyages. The facility population affected is presented in Table 41. To determine the number of facilities we used data from the U.S. Army Corps of Engineers, DOT's National Ferry Database, and the Coast Guard's MSMS database.

TABLE 41.—ESTIMATED FACILITY POPULATION 1 2 3

Facility	Count	Percent [4]
Container and break-bulk	263	6.0
Dry bulk	255	5.8
Hazardous bulk liquid	2,718	6.2
Hazardous substance (other)	565	12.9
Other bulk liquid	150	3.4
Ferry	306	7.0
Other passenger	108	2.5
Total	4,365	100.0

[1] Facilities that transfer, store, or otherwise contain hazardous cargoes.
[2] Facilities servicing vessels that carry more than 149 passengers.
[3] Facilities receiving ships on international voyages.
[4] Sum may not add to total due to independent rounding.

[2] The ISPS Code provides requirements for ''Port Facilities.'' The Coast Guard, however, differentiates between ports anf facilities in domestic regulations. As a result, for the purposes of this cost analysis, the terms PFSO, PFSA, and PFSP have been replaced with FSO, FSA, and FSP for the facility security section.

Container and break-bulk facilities include container, general cargo, and Ro-Ro facilities. Hazardous bulk liquid facilities include petroleum, liquefied gases, and edible oils. Other hazardous substances are dry hazardous cargoes specified in 33 CFR 126, 127, and 154. The cargoes are further discussed in 49 CFR 172 and 46 CFR 148.

We recognize that not all facilities will incur the same cost for personnel salaries, hire the same number of security guards or spend the same hours in drafting FSAs and FSPs. For the purpose of this analysis we have divided the facility population in two. One group is composed of one third of all facilities and would pay high salaries, hire more guards, and spend more time drafting FSAs and FSPs than the other group composed of two thirds of the total population. Facilities in the first group are addressed in this analysis as ''A'' and facilities in the second group as ''B.''

Unit Cost Assumptions

Equipment

Costs of equipment are based on internal Coast Guard data and market research. We estimate annual O&M cost for equipment is 5 percent of the purchase price. Not all facilities will install each piece of equipment. The unit costs for upgrading or installing equipment are presented in Table 42.

TABLE 42.—UNIT COST OF EQUIPMENT

Equipment	Initial	Annual
Hand-held radio	$200	$10
Upgrading/installing gates	100,000	5,000
Upgrading/installing CCTV	130,000	6,500
Upgrading/installing lights	200,000	10,000
Upgrading/installing communications system	300,000	15,000
Upgrading/installing fencing	500,000	25,000

Personnel, Training, Drilling, and Planning

Costs of personnel and training are based on extensive research and previous Coast Guard analyses that estimated training and planning costs.

We assume that group A facilities will have a dedicated FSO while facilities in group B will have a part-time FSO (we estimate 0.25 or 0.5 of a dedicated person depending on the type of facility). FSOs or key facility personnel will have training annually as refresher courses and to address potential employee turnover within a facility. We also assume that the cost of a full time FSO is $150,000 per year. The ISPS Code requires all FSOs to participate in an annual security exercise; for the purposes of this analysis, these costs have been accounted for in the ''Port Security'' section.

The cost of a security guard was determined using the annual wage estimate from the 2001 National Occupation Employment and Wage Statistics published by the BLS. We took the annual salary for the upper 90th percentile of $28,660 per year and multiplied (or ''loaded'') this estimate by an assumed average benefit multiplier of 1.4 to create a wage that reflects current industry benefits and administrative costs paid by owners and operators. We assumed this higher-than-average wage reflects a full-time, permanent wage for skilled labor.

Personnel and training costs will be incurred each year of the analysis. Drilling costs will be incurred quarterly, but not initially. Planning costs will be incurred initially and annually, with more costs incurred initially as facilities develop their security plans.

We assume each hour of planning or drilling costs an average of $100/hour. This is a ''loaded'' labor rate, which means it includes the costs of benefits and other overhead costs. While some employees cost more than this and some cost less, we believe $100/hour is a reasonable average cost of the employees that would conduct this work. Drilling for all facilities will be conducted following initial implementation of the ISPS Code. We assume that conducting a quarterly drill would take about 2 hours per facility. We also assume that group A facilities will use 20 people in conducting the drill and that group B facilities will use 5 people. Table 43 summarizes personnel costs.

TABLE 43.—UNIT COST OF PERSONNEL

Personnel	Group A		Group B dry bulk		Group B other	
	Initial	Annual	Initial	Annual	Initial	Annual
FSO	$150,000	$150,000	$75,000	$75,000	$37,500	$37,500
Security guard	40,000	40,000	40,000	40,000	40,000	40,000
FSA	8,000	400	4,000	100	4,000	100
FSP	8,000	400	4,000	100	4,000	100
Training	5,000	5,000	3,500	3,500	3,500	3,500
Quarterly drill	.....	4,000	.....	1,000	.....	1,000

Facility costs

Facilities differ greatly from one another, and they must do a variety of activities to implement the ISPS Code. Within group A or group B facilities, we assume that a facility will have to upgrade/install equipment based on cargo received and current level of compliance with the ISPS Code. For example, to comply with the ISPS Code a facility may upgrade/install CCTV, lights, or fencing, but it does not have to do all three. For illustration purposes, Tables 44 and 45 present potential costs for a non-specific group A facility and a non-specific group B facility.

TABLE 44.—INITIAL AND ANNUAL COST FOR A NON-SPECIFIC GROUP A FACILITY

Item	Initial			Annual		
	Number	Cost/item	Total cost	Number	Cost/item	Total cost
Communications system	1	$300,000	$300,000	1	$15,000	$15,000
Gates	1	100,000	100,000	1	5,000	5,000
Hand-held radio	18	200	3,600	18	10	180

TABLE 44.—INITIAL AND ANNUAL COST FOR A NON-SPECIFIC GROUP A FACILITY—Continued

Item	Initial			Annual		
	Number	Cost/item	Total cost	Number	Cost/item	Total cost
Security guards	9	40,000	360,000	9	40,000	360,000
FSO	1	150,000	150,000	1	150,000	150,000
Training	1	5,000	5,000	1	5,000	5,000
FSA	80 hrs	100/hr	8,000	4 hrs	100/hr	400
FSP	80 hrs	100/hr	8,000	4 hrs	100/hr	400
Quarterly drills				4	4,000	16,000
Base cost per facility			934,600			551,980
Cost per facility with CCTV	1	130,000	$1,064,600	1	6,500	$558,480
Cost per facility with lights	1	200,000	1,134,600	1	10,000	561,980
Cost per facility with fencing	1	500,000	1,434,600	1	25,000	576,980

TABLE 45.—INITIAL AND ANNUAL COST FOR A NON-SPECIFIC GROUP B FACILITY

Item	Initial			Annual		
	Number	Cost/item	Total cost	Number	Cost/item	Total cost
Communications system	1	$300,000	$300,000	1	$15,000	$15,000
Gates	1	100,000	100,000	1	5,000	5,000
Hand-held radio	18	200	3,600	18	10	180
Security guards	3	40,000	120,000	3	40,000	120,000
FSO	1	37,500	37,500	1	37,500	37,500
Training	1	3,500	3,500	1	3,500	3,500
FSA	40 hrs	100/hr	4,000	1 hr	100/hr	100
FSP	40 hrs	100/hr	4,000	1 hr	100/hr	100
Quarterly drills				4	1,000	4,000
Base cost per facility			572,600			185,380
Cost per facility with CCTV	1	130,000	702,600	1	6,500	191,880
Cost per facility with lights	1	200,000	772,600	1	10,000	195,380
Cost per facility with fencing	1	500,000	1,072,600	1	25,000	210,380

The estimated percentage of facilities that would need to purchase, install, or upgrade security measures is presented in Table 46. The figure in each cell represents the percentage of facilities of that type that would install or employ the various security items.

TABLE 46.—ESTIMATED PERCENTAGE OF FACILITIES THAT WILL PURCHASE OR ENHANCE SECURITY MEASURES, BY FACILITY TYPE [1, 2, 3]

Item	Container, break-bulk	Dry bulk	Haz. bulk liquid	Haz. sub other	Other bulk liquid	Ferry	Other passenger
Hand-held radio	5	70	5	5	10	5	5
Gates	30	70	10	5	10	60 (A), 80 (B)	5
CCTV	5	10	5	5	10	10	5
Lights	5	60	5	5	10	10	5
Coms system	5	0	5	5	10	0	5
Fencing	5	20	5	5	10	50	5
Security guards	30	70	10	5	10	60 (A), 80 (B)	5

[1] Facilities that transfer, store, or otherwise contain hazardous cargoes.
[2] Facilities servicing vessels that carry more than 149 passengers.
[3] Facilities receiving ships on international voyages.

Tables 47 through 60 present initial and annual costs of complying with the ISPS Code for different types of facilities.

TABLE 47.—INITIAL AND ANNUAL COST FOR CONTAINER OR BREAK-BULK FACILITIES, GROUP A

[87 Facilities]

Item	Number (%) estimated to purchase/draft	Initial			Annual		
		Number	Cost/item	Total cost	Number	Cost/item	Total cost
Coms system	4 (5%)	1	$300,000	$1,200,000	1	$15,000	$60,000
Gates	26 (30%)	1	100,000	2,600,000	1	5,000	130,000
Hand-held radio	4 (5%)	18	200	14,400	18	10	720
CCTV	4 (5%)	1	130,000	520,000	1	6,500	26,000

TABLE 47.—INITIAL AND ANNUAL COST FOR CONTAINER OR BREAK-BULK FACILITIES, GROUP A—Continued

[87 Facilities]

Item	Number (%) estimated to purchase/draft	Initial			Annual		
		Number	Cost/item	Total cost	Number	Cost/item	Total cost
Lights	4 (5%)	1	200,000	800,000	1	10,000	40,000
Fencing	4 (5%)	1	500,000	2,000,000	1	25,000	100,000
Security guards	26 (30%)	15	40,000	15,600,000	15	40,000	15,600,000
FSO	87 (100%)	1	150,000	13,050,000	1	150,000	13,050,000
Training	87 (100%)	1	5,000	435,000	1	5,000	435,000
FSA	87 (100%)	1	8,000	696,000	1	400	34,800
FSP	87 (100%)	1	8,000	696,000	1	400	34,800
Quarterly drills	87 (100%)				1	16,000	1,392,000
Total cost				37,611,400			30,903,320

TABLE 48.—INITIAL AND ANNUAL COST FOR CONTAINER OR BREAK-BULK FACILITIES, GROUP B

[176 Facilities]

Item	Number (%) estimated to purchase/draft	Initial			Annual		
		Number	Cost/item	Total cost	Number	Cost/item	Total cost
Coms system	9 (5%)	1	$300,000	$2,700,000	1	$15,000	$135,000
Gates	53 (30%)	1	100,000	5,300,000	1	5,000	265,000
Hand-held radio	9 (5%)	18	200	32,400	18	10	1,620
CCTV	9 (5%)	1	130,000	1,170,000	1	6,500	58,500
Lights	9 (5%)	1	200,000	1,800,000	1	10,000	90,000
Fencing	9 (5%)	1	500,000	4,500,000	1	25,000	225,000
Security guards	53 (30%)	4	40,000	8,480,000	4	40,000	8,480,000
FSO	176 (100%)	1	37,500	6,600,000	1	37,500	6,600,000
Training	176 (100%)	1	3,500	616,000	1	3,500	616,000
FSA	176 (100%)	1	4,000	704,000	1	100	17,600
FSP	176 (100%)	1	4,000	704,000	1	100	17,600
Quarterly drills	176 (100%)				1	4,000	704,000
Total cost				32,606,400			17,210,320

TABLE 49.—INITIAL AND ANNUAL COST FOR DRY BULK FACILITIES, GROUP A

[84 Facilities]

Item	Number (%) estimated to purchase/draft	Initial			Annual		
		Number	Cost/item	Total cost	Number	Cost/item	Total cost
Gates	59 (70%)	1	$100,000	$5,900,000	1	$5,000	$295,000
Hand-held radio	59 (70%)	2	200	23,600	2	10	1,180
CCTV	8 (10%)	1	130,000	1,040,000	1	6,500	52,000
Lights	50 (60%)	1	200,000	10,000,000	1	10,000	500,000
Fencing	17 (20%)	1	500,000	8,500,000	1	25,000	425,000
Security guards	59 (70%)	2	40,000	4,720,000	2	40,000	4,720,000
FSO	84 (100%)	1	150,000	12,600,000	1	150,000	12,600,000
Training	84 (100%)	1	5,000	420,000	1	5,000	420,000
FSA	84 (100%)	1	8,000	672,000	1	400	33,600
FSP	84 (100%)	1	8,000	672,000	1	400	33,600
Quarterly drills	84 (100%)				1	16,000	1,344,000
Total cost				44,547,600			20,424,380

TABLE 50.—INITIAL AND ANNUAL COST FOR DRY BULK FACILITIES, GROUP B

[171 Facilities]

Item	Number (%) estimated to purchase/draft	Initial			Annual		
		Number	Cost/item	Total cost	Number	Cost/item	Total cost
Gates	120 (70%)	1	$100,000	$12,000,000	1	$5,000	$600,000
Hand-held radio	120 (70%)	2	200	48,000	2	10	2,400
CCTV	17 (10%)	1	130,000	2,210,000	1	6,500	110,500
Lights	103 (60%)	1	200,000	20,600,000	1	10,000	1,030,000
Fencing	34 (20%)	1	500,000	17,000,000	1	25,000	850,000

TABLE 50.—INITIAL AND ANNUAL COST FOR DRY BULK FACILITIES, GROUP B—Continued

[171 Facilities]

Item	Number (%) estimated to purchase/draft	Initial			Annual		
		Number	Cost/item	Total cost	Number	Cost/item	Total cost
Security guards	120 (70%)	1	40,000	4,800,000	1	40,000	4,800,000
FSO	171 (100%)	1	75,000	12,825,000	1	75,000	12,825,000
Training	171 (100%)	1	3,500	598,500	1	3,500	598,500
FSA	171 (100%)	1	4,000	684,000	1	100	17,100
FSP	171 (100%)	1	4,000	684,000	1	100	17,100
Quarterly drills	171 (100%)				1	4,000	684,000
Total cost				71,449,500			21,534,600

TABLE 51.—INITIAL AND ANNUAL COST FOR HAZARDOUS BULK LIQUID FACILITIES, GROUP A

[897 Facilities]

Item	Number (%) estimated to purchase/draft	Initial			Annual		
		Number	Cost/item	Total cost	Number	Cost/item	Total cost
Coms system	45 (5%)	1	$300,000	$13,500,000	1	$15,000	$675,000
Gates	90 (10%)	1	100,000	9,000,000	1	5,000	450,000
Hand-held radio	45 (5%)	18	200	162,000	18	10	8,100
CCTV	45 (5%)	1	130,000	5,850,000	1	6,500	292,500
Lights	45 (5%)	1	200,000	9,000,000	1	10,000	450,000
Fencing	45 (5%)	1	500,000	22,500,000	1	25,000	1,125,000
Security guards	90 (10%)	9	40,000	32,400,000	9	40,000	32,400,000
FSO	897 (100%)	1	150,000	134,550,000	1	150,000	134,550,000
Training	897 (100%)	1	5,000	4,485,000	1	5,000	4,485,000
FSA	897 (100%)	1	8,000	7,176,000	1	400	358,800
FSP	897 (100%)	1	8,000	7,176,000	1	400	358,800
Quarterly drills	897 (100%)				1	16,000	14,352,000
Total cost				245,799,000			189,505,200

TABLE 52.—INITIAL AND ANNUAL COST FOR HAZARDOUS BULK LIQUID FACILITIES, GROUP B

[1,821 Facilities]

Item	Number (%) estimated to purchase/draft	Initial			Annual		
		Number	Cost/item	Total cost	Number	Cost/item	Total cost
Coms system	91 (5%)	1	$300,000	$27,300,000	1	$15,000	$1,365,000
Gates	182 (10%)	1	100,000	18,200,000	1	5,000	910,000
Hand-held radio	91 (5%)	18	200	327,600	18	10	16,380
CCTV	91 (5%)	1	130,000	11,830,000	1	6,500	591,500
Lights	91 (5%)	1	200,000	18,200,000	1	10,000	910,000
Fencing	91 (5%)	1	500,000	45,500,000	1	25,000	2,275,000
Security guards	182 (10%)	3	40,000	21,840,000	3	40,000	21,840,000
FSO	1,821 (100%)	1	37,500	68,287,500	1	37,500	68,287,500
Training	1,821 (100%)	1	3,500	6,373,500	1	3,500	6,373,500
FSA	1,821 (100%)	1	4,000	7,284,000	1	100	182,100
FSP	1,821 (100%)	1	4,000	7,284,000	1	100	182,100
Quarterly drills	1,821 (100%)				1	4,000	7,284,000
Total cost				232,426,600			110,217,080

TABLE 53.—INITIAL AND ANNUAL COST FOR HAZARDOUS SUBSTANCE (OTHER) FACILITIES, GROUP A

[186 Facilities]

Item	Number (%) estimated to purchase/draft	Initial			Annual		
		Number	Cost/item	Total cost	Number	Cost/item	Total cost
Coms system	9 (5%)	1	$300,000	$2,700,000	1	$15,000	$135,000
Gates	9 (5%)	1	100,000	900,000	1	5,000	45,000
Hand-held radio	9 (5%)	18	200	32,400	18	10	1,620
CCTV	9 (5%)	1	130,000	1,170,000	1	6,500	58,500
Lights	9 (5%)	1	200,000	1,800,000	1	10,000	90,000
Fencing	9 (5%)	1	500,000	4,500,000	1	25,000	225,000

TABLE 53.—INITIAL AND ANNUAL COST FOR HAZARDOUS SUBSTANCE (OTHER) FACILITIES, GROUP A—Continued

[186 Facilities]

Item	Number (%) estimated to purchase/draft	Initial			Annual		
		Number	Cost/item	Total cost	Number	Cost/item	Total cost
Security guards	9 (5%)	9	40,000	3,240,000	9	40,000	3,240,000
FSO	186 (100%)	1	150,000	27,900,000	1	150,000	27,900,000
Training	186 (100%)	1	5,000	930,000	1	5,000	930,000
FSA	186 (100%)	1	8,000	1,488,000	1	400	74,400
FSP	186 (100%)	1	8,000	1,488,000	1	400	74,400
Quarterly drills	186 (100%)				1	16,000	2,976,000
Total cost				46,148,400			35,749,920

TABLE 54.—INITIAL AND ANNUAL COST FOR HAZARDOUS SUBSTANCE (OTHER) FACILITIES, GROUP B

[379 Facilities]

Item	Number (%) estimated to purchase/draft	Initial			Annual		
		Number	Cost/item	Total cost	Number	Cost/item	Total cost
Coms system	19 (5%)	1	$300,000	$5,700,000	1	$15,000	$285,000
Gates	19 (5%)	1	100,000	1,900,000	1	5,000	95,000
Hand-held radio	19 (5%)	18	200	68,400	18	10	3,420
CCTV	19 (5%)	1	130,000	2,470,000	1	6,500	123,500
Lights	19 (5%)	1	200,000	3,800,000	1	10,000	190,000
Fencing	19 (5%)	1	500,000	9,500,000	1	25,000	475,000
Security guards	19 (5%)	3	40,000	2,280,000	3	40,000	2,280,000
FSO	379 (100%)	1	37,500	14,212,500	1	37,500	14,212,500
Training	379 (100%)	1	3,500	1,326,500	1	3,500	1,326,500
FSA	379 (100%)	1	4,000	1,516,000	1	100	37,900
FSP	379 (100%)	1	4,000	1,516,000	1	100	37,900
Quarterly drills	379 (100%)				1	4,000	1,516,000
Total cost				44,289,400			20,582,720

TABLE 55.—INITIAL AND ANNUAL COST FOR OTHER BULK LIQUID FACILITIES, GROUP A (50 FACILITIES)

Item	Number (%) estimated to purchase/draft	Initial			Annual		
		Number	Cost/item	Total cost	Number	Cost/item	Total cost
Coms system	5 (10%)	1	$300,000	$1,500,000	1	$15,000	$75,000
Gates	5 (10%)	1	100,000	500,000	1	5,000	25,000
Hand-held radio	5 (10%)	18	200	18,000	18	10	900
CCTV	5 (10%)	1	130,000	650,000	1	6,500	32,500
Lights	5 (10%)	1	200,000	1,000,000	1	10,000	50,000
Fencing	5 (10%)	1	500,000	2,500,000	1	25,000	125,000
Security guards	5 (10%)	2	40,000	400,000	2	40,000	400,000
FSO	50 (100%)	1	150,000	7,500,000	1	150,000	7,500,000
Training	50 (100%)	1	5,000	250,000	1	5,000	250,000
FSA	50 (100%)	1	8,000	400,000	1	400	20,000
FSP	50 (100%)	1	8,000	400,000	1	400	20,000
Quarterly drills	50 (100%)				1	16,000	800,000
Total cost				15,118,000			9,298,400

TABLE 56.—INITIAL AND ANNUAL COST FOR OTHER BULK LIQUID FACILITIES, GROUP B

[100 Facilities]

Item	Number (%) estimated to purchase/draft	Initial			Annual		
		Number	Cost/item	Total cost	Number	Cost/item	Total cost
Coms system	10 (10%)	1	$300,000	$3,000,000	1	$15,000	$150,000
Gates	10 (10%)	1	100,000	1,000,000	1	5,000	50,000
Hand-held radio	10 (10%)	18	200	36,000	18	10	1,800
CCTV	10 (10%)	1	130,000	1,300,000	1	6,500	65,000
Lights	10 (10%)	1	200,000	2,000,000	1	10,000	100,000
Fencing	10 (10%)	1	500,000	5,000,000	1	25,000	250,000
Security guards	10 (10%)	1	40,000	400,000	1	40,000	400,000

TABLE 56.—INITIAL AND ANNUAL COST FOR OTHER BULK LIQUID FACILITIES, GROUP B—Continued

[100 Facilities]

Item	Number (%) estimated to purchase/draft	Initial			Annual		
		Number	Cost/item	Total cost	Number	Cost/item	Total cost
FSO	100 (100%)	1	75,000	7,500,000	1	75,000	7,500,000
Training	100 (100%)	1	3,500	350,000	1	3,500	350,000
FSA	100 (100%)	1	4,000	400,000	1	100	10,000
FSP	100 (100%)	1	4,000	400,000	1	100	10,000
Quarterly drills	100 (100%)				1	4,000	400,000
Total cost				21,386,000			9,286,800

TABLE 57.—INITIAL AND ANNUAL COST FOR FERRY TERMINALS, GROUP A

[101 Facilities]

Item	Number (%) estimated to purchase/draft	Initial			Annual		
		Number	Cost/item	Total cost	Number	Cost/item	Total cost
Gates	61 (60%)	1	$100,000	$6,100,000	1	$5,000	$305,000
Hand-held radio	5 (5%)	12	200	12,000	12	10	600
CCTV	10 (10%)	1	130,000	1,300,000	1	6,500	65,000
Lights	10 (10%)	1	200,000	2,000,000	1	10,000	100,000
Fencing	51 (50%)	1	500,000	25,500,000	1	25,000	1,275,000
Security guards	61 (60%)	6	40,000	14,640,000	6	40,000	14,640,000
FSO	101 (100%)	1	150,000	15,150,000	1	150,000	15,150,000
Training	101 (100%)	1	5,000	505,000	1	5,000	505,000
FSA	101 (100%)	1	8,000	808,000	1	400	40,400
FSP	101 (100%)	1	8,000	808,000	1	400	40,400
Quarterly drills	101 (100%)				1	16,000	1,616,000
Total cost				66,823,000			33,737,400

TABLE 58.—INITIAL AND ANNUAL COST FOR FERRY TERMINALS, GROUP B

[205 Facilities]

Item	Number (%) estimated to purchase/draft	Initial			Annual		
		Number	Cost/item	Total cost	Number	Cost/item	Total cost
Gates	164 (80%)	1	$30,000	4,920,000	1	$1,500	$246,000
Hand-held radio	10 (5%)	12	200	24,000	12	10	1,200
CCTV	21 (10%)	1	130,000	2,730,000	1	6,500	136,500
Lights	21 (10%)	1	200,000	4,200,000	1	10,000	210,000
Fencing	103 (50%)	1	500,000	51,500,000	1	25,000	2,575,000
Security guards	164 (80%)	2	40,000	13,120,000	2	40,000	13,120,000
FSO	205 (100%)	1	37,500	7,687,500	1	37,500	7,687,500
Training	205 (100%)	1	3,500	717,500	1	3,500	717,500
FSA	205 (100%)	1	4,000	820,000	1	100	20,500
FSP	205 (100%)	1	4,000	820,000	1	100	20,500
Quarterly drills	205 (100%)				1	4,000	820,000
Total cost				86,539,000			25,554,700

TABLE 59.—INITIAL AND ANNUAL COST FOR PASSENGER TERMINALS, GROUP A

[36 Facilities]

Item	Number (%) estimated to purchase/draft	Initial			Annual		
		Number	Cost/item	Total cost	Number	Cost/item	Total cost
Coms system	2 (5%)	1	$300,000	$600,000	1	$15,000	$30,000
Gates	2 (5%)	1	100,000	200,000	1	5,000	10,000
Hand-held radio	2 (5%)	18	200	7,200	18	10	360
CCTV	2 (5%)	1	130,000	260,000	1	6,500	13,000
Lights	2 (5%)	1	200,000	400,000	1	10,000	20,000
Fencing	2 (5%)	1	500,000	1,000,000	1	25,000	50,000
Security guards	2 (5%)	15	40,000	1,200,000	15	40,000	1,200,000
FSO	36 (100%)	1	150,000	5,400,000	1	150,000	5,400,000
Training	36 (100%)	1	5,000	180,000	1	5,000	180,000

TABLE 59.—INITIAL AND ANNUAL COST FOR PASSENGER TERMINALS, GROUP A—Continued

[36 Facilities]

Item	Number (%) estimated to purchase/draft	Initial			Annual		
		Number	Cost/item	Total cost	Number	Cost/item	Total cost
FSA	36 (100%)	1	8,000	288,000	1	400	14,400
FSP	36 (100%)	1	8,000	288,000	1	400	14,400
Quarterly drills	36 (100%)				1	16,000	576,000
Total cost				9,823,200			7,508,160

TABLE 60.—INITIAL AND ANNUAL COST FOR PASSENGER TERMINALS, GROUP B

[72 Facilities]

Item	Number (%) estimated to purchase/draft	Initial			Annual		
		Number	Cost/item	Total cost	Number	Cost/item	Total cost
Coms system	4 (5%)	1	$300,000	$1,200,000	1	$15,000	$60,000
Gates	4 (5%)	1	100,000	400,000	1	5,000	20,000
Hand-held radio	4 (5%)	18	200	14,400	18	10	720
CCTV	4 (5%)	1	130,000	520,000	1	6,500	26,000
Lights	4 (5%)	1	200,000	800,000	1	10,000	40,000
Fencing	4 (5%)	1	500,000	2,000,000	1	25,000	100,000
Security guards	4 (5%)	4	40,000	640,000	4	40,000	640,000
FSO	72 (100%)	1	37,500	2,700,000	1	37,500	2,700,000
Training	72 (100%)	1	3,500	252,000	1	3,500	252,000
FSA	72 (100%)	1	4,000	288,000	1	100	7,200
FSP	72 (100%)	1	4,000	288,000	1	100	7,200
Quarterly drills	72 (100%)				1	4,000	288,000
Total cost				9,102,400			4,141,120

Example cost calculations for different facility owners are presented below. The companies in these examples are good representations of the types of companies affected.

Example 1—Ferry Terminal Owner

Company A owns 11 group A and 21 group B terminals. The estimated costs for this company are presented in Table 61.

TABLE 61.—EXAMPLE COST FOR FERRY TERMINAL OWNER

Item	Number (%) estimated to purchase/draft	Initial			Annual		
		Number	Cost/item	Total cost	Number	Cost/item	Total cost
Group A terminals:							
Gates	7 (60%)	1	$100,000	$700,000	1	$5,000	$35,000
Hand-held radio	1 (5%)	12	200	2,400	12	10	120
CCTV	1 (10%)	1	130,000	130,000	1	6,500	6,500
Lights	1 (10%)	1	200,000	200,000	1	10,000	10,000
Fencing	6 (10%)	1	500,000	3,000,000	1	25,000 1	50,000
Security guards	7 (60%)	6	40,000	1,680,000	2	40,000	1,680,000
FSO	11 (100%)	1	150,000	1,650,000	1	150,000	1,650,000
Training	11 (100%)	1	5,000	55,000	1	5,000	55,000
FSA	11 (100%)	1	8,000	88,000	1	400	4,400
FSP	11 (100%)	1	8,000	88,000	1	400	4,400
Quarterly drills	11 (100%)				1	16,000	176,000
Subtotal				7,593,400			3,771,420
Group B terminals:							
Gates	17 (80%)	1	30,000	510,000	1	15,000	25,500
Hand-held radio	1 (5%)	12	200	2,400	12	10	120
CCTV	2 (10%)	1	130,000	260,000	1	6,500	13,000
Lights	2 (10%)	1	200,000	400,000	1	10,000	20,000
Fencing	11 (50%)	1	500,000	5,500,000	1	25,000	275,000
Security guards	17 (80%)	2	40,000	1,360,000	2	40,000	1,360,000
FSO	21 (100%)	1	37,500	787,500	1	37,500	787,500
Training	21 (100%)	1	3,500	73,500	1	3,500	73,500
FSA	21 (100%)	1	4,000	84,000	1	100	2,100
FSP	21 (100%)	1	4,000	84,000	1	100	2,100
Quarterly drills	21 (100%)				1	4,000	84,000

TABLE 61.—EXAMPLE COST FOR FERRY TERMINAL OWNER—Continued

Item	Number (%) estimated to purchase/draft	Initial			Annual		
		Number	Cost/item	Total cost	Number	Cost/item	Total cost
Subtotal				9,061,400			2,642,820
Grand total				16,654,800			6,414,240

Example 2—Dry Bulk Facility Owner

Company B owns 7 group A and 13 group B dry bulk facilities. The estimated costs for this company are presented in Table 62.

TABLE 62.—EXAMPLE COST FOR DRY BULK FACILITY OWNER

Item	Number (%) estimated to purchase/draft	Initial			Annual		
		Number	Cost/item	Total cost	Number	Cost/item	Total cost
Group A facilities:							
Gates	5 (70%)	1	$100,000	$500,000	1	$5,000	$25,000
Hand-held radio	5 (70%)	2	200	2,000	2	10	100
CCTV	1 (10%)	1	130,000	130,000	1	6,500	6,500
Lights	4 (60%)	1	200,000	800,000	1	10,000	40,000
Fencing	1 (20%)	1	500,000	500,000	1	25,000	25,000
Security guards	5 (70%)	2	40,000	400,000	2	40,000	400,000
FSO	7 (100%)	1	150,000	1,050,000	1	150,000	1,050,000
Training	7 (100%)	1	5,000	35,000	1	5,000	35,000
FSA	7 (100%)	1	8,000	56,000	1	400	2,800
FSP	7 (100%)	1	8,000	56,000	1	400	2,800
Quarterly drills	7 (100%)				1	16,000	112,000
Subtotal				3,529,000			1,699,200
Group B facilities:							
Gates	9 (70%)	1	$100,000	$900,000	1	$1,500	$45,000
Hand-held radio	9 (70%)	2	200	3,600	2	10	180
CCTV	1 (10%)	1	130,000	130,000	1	6,500	6,500
Lights	8 (60%)	1	200,000	1,600,000	1	10,000	80,000
Fencing	3 (20%)	1	500,000	1,500,000	1	25,000	75,000
Security guards	9 (70%)	1	40,000	360,000	1	40,000	360,000
FSO	13 (100%)	1	75,000	975,000	1	75,000	975,000
Training	13 (100%)	1	3,500	45,500	1	3,500	45,500
FSA	13 (100%)	1	4,000	52,000	1	100	1,300
FSP	13 (100%)	1	4,000	52,000	1	100	1,300
Quarterly drills	13 (100%)				1	4,000	52,000
Subtotal				5,618,100			1,641,780
Grand total				9,147,100			3,340,980

Example 3—Petroleum Facility Owner

Company C owns 7 group A and 13 group B petroleum facilities. The estimated costs for this company are presented in Table 63.

TABLE 63.—EXAMPLE COST FOR PETROLEUM FACILITY OWNER

Item	Number (%) estimated to purchase/draft	Initial			Annual		
		Number	Cost/item	Total cost	Number	Cost/item	Total cost
Group A facilities:							
Gates	1 (10%)	1	$100,000	$100,000	1	$5,000	$5,000
Security guards	1 (10%)	9	40,000	360,000	9	40,000	360,000
FSO	7 (100%)	1	150,000	1,050,000	1	150,000	1,050,000
Training	7 (100%)	1	5,000	35,000	1	5,000	35,000
FSA	7 (100%)	1	8,000	56,000	1	400	2,800
FSP	7 (100%)	1	8,000	56,000	1	400	2,800

TABLE 63.—EXAMPLE COST FOR PETROLEUM FACILITY OWNER—Continued

Item	Number (%) estimated to purchase/draft	Initial			Annual		
		Number	Cost/item	Total cost	Number	Cost/item	Total cost
Quarterly drills	7 (100%)				1	16,000	112,000
Subtotal				1,657,000			1,567,600
Group B facilities:							
Coms system	1 (5%)	1	$300,000	$300,000	1	$15,000	$15,000
Gates	1 (10%)	1	100,000	100,000	1	5000	5,000
Hand-held radio	1 (5%)	18	200	3,600	18	10	180
CCTV	1 (5%)	1	130,000	130,000	1	6,500	6,500
Lights	1 (5%)	1	200,000	200,000	1	10,000	10,000
Fencing	1 (5%)	1	500,000	500,000	1	25,000	25,000
Security guards	1 (10%)	3	40,000	120,000	3	40,000	120,000
FSO	13 (100%)	1	37,500	487,500	1	37,500	487,500
Training	13 (100%)	1	3,500	45,500	1	3,500	45,500
FSA	13 (100%)	1	4,000	52,000	1	100	1,300
FSP	13 (100%)	1	4,000	52,000	1	100	1,300
Quarterly drills	13 (100%)				1	4,000	52,000
Subtotal				1,990,600			769,280
Grand total				3,647,600			2,336,880

Total national cost for facility security

The national cost of the facility security aspects of the ISPS Code is the sum of the individual costs estimated for each facility affected. National cost is discounted to its PV at 7 percent (2003-2012). The total national initial and annual cost is presented in Table 64.

TABLE 64.—TOTAL NATIONAL PV COST FOR FACILITY SECURITY, IN $MILLIONS

[2003–2012, 7 Percent Discount Rate]

Year	Container, breakbulk	Dry bulk	Haz. bulk liquid	Haz. sub other	Other bulk liquid	Ferry	Other passenger	Total	PV Total
2003 (initial)	$70	$116	$478	$90	$37	$153	$19	$963	$963
2004 (annual)	48	42	300	55	19	59	12	535	500
2005 (annual)	48	42	300	55	19	59	12	535	467
2006 (annual)	48	42	300	55	19	59	12	535	437
2007 (annual)	48	42	300	55	19	59	12	535	408
2008 (annual)	48	42	300	55	19	59	12	535	381
2009 (annual)	48	42	300	55	19	59	12	535	356
2010 (annual)	48	42	300	55	19	59	12	535	333
2011 (annual)	48	42	300	55	19	59	12	535	311
2012 (annual)	48	42	300	55	19	59	12	535	291
Total	502	494	3,178	585	208	684	127	5,778	4,447

Table 65 presents the national cost for different elements of implementing the ISPS Code for facilities (these costs are not discounted).

TABLE 65.—TOTAL NATIONAL INITIAL AND ANNUAL COST BY ELEMENT OF COMPLIANCE, IN $MILLIONS

Element	Initial cost	Percent of total	Annual cost	Percent of total
FSA	$23	2	$1	0
FSP	23	2	1	0
FSO	335	35	335	63
Training	17	2	17	3
Drilling	0	0	35	7
Security guards	124	13	124	23
Equipment	441	46	22	4
Total	963	100	509	100

As shown, upgrading/installing equipment is the driving costs of implementing the ISPS Code initially. Annually, FSOs are the driving cost. In the initial year, FSOs account for approximately 35 percent of the initial cost and increase in significance to 66 percent annually.

Port Security

Summary

Note: for definition of acronyms throughout this analysis, refer to the list at the beginning of the report.

Implementing the ISPS Code and NVICs could affect stakeholders in 47 COTP AORs containing 361 ports.[3] The following analysis details preliminary costs to public and private stakeholders and does not include costs to the Coast Guard.

The preliminary cost estimate of implementing ISPS Code as it pertains to port security is PV $477 million (2003–2012, 7 percent discount rate). The initial cost of the startup period (June 2003–December 2003) for establishing PSCs and creating PSPs in all AORs is estimated to be $120 million (non-discounted). Following the startup period, the first year of implementation (2004), consisting of monthly PSC meetings and PSP drill exercises for all AORs, is estimated to be $106 million (non-discounted). After the first year of implementation, the annual cost of quarterly PSC meetings and PSP drills for all AORs is estimated to be $46 million (non-discounted). The startup period cost associated with creating PSCs and PSPs for each AOR is the primary cost driver of implementing the ISPS Code at U.S. ports. Both the startup and implementation year period (2003–2004) combined is nearly half of the total 10-year PV cost estimate, making initial development, planning, and testing the primary costs of port security.

Implementing the ISPS Code and complying with NVICs would require all COTPs to develop security committees, plans, and training drills for their AORs, with the participation of maritime transportation stakeholders in their AORs. The above costs to stakeholders would be paperwork, travel, and communication costs associated with participation in PSP implementation.

[3] The ISPS Code provides requirements for ''Port Facilities.'' The Coast Guard, however, differentiates between ports and facilities in domestic regulations. As a result, for the purposes of this cost analysis, the terms PFSC and PFSP have been replaced with PSC and PSP for the port security section.

We estimate 1,090,400 hours of paperwork and other associated planning activities during 2003, the initial period of port security meetings and development. In 2004, the first year of implementation, we estimate the value will rise slightly to 1,278,400 hours of paperwork and other related information and communication activities related to monthly PSC meetings. In subsequent years, we estimate the hours will fall to 827,200 hours annually associated with PSC meetings, PSP revisions, and information drills.

Analysis

Period of Analysis

The period of analysis is from mid 2003 (the startup year) to 2012 (approximately 10 years). The port security aspects would be effective in 2004, so we assume the last 6 months in 2003 of the project to be a startup period of establishing PSCs and creating PSPs for all COTP AORs. We assume, therefore, that initial costs will be incurred in 2003, and annual costs will be incurred each year 2004–2012.

Population Affected

Implementing the ISPS Code would affect stakeholders nationally in 47 COTP AORs containing 361 total ports. The Army Corps of Engineers Navigation Data Center and MARAD provided the data for total ports affected. For this analysis, ''ports'' include all areas located within or adjacent to a marine environment through which maritime commerce is conducted or people are transported. Consistent with NVIC 9–02, Guidelines for Port Security Committees and Port Security Plans Required for U.S. Ports, and parts A and B of the ISPS Code, PSPs will be developed by PSCs headed by COTPs. COTPs also determine the size and composition of the PSCs. The affected population per COTP AOR is assumed to be stakeholders who participate in the PSC, planning, and drilling. A stakeholder is considered to be any business, organization, (non-Federal) government entity, or individual involved with maritime commerce in a given port area.

We believe the composition and number of stakeholders will vary greatly from AOR to AOR and will be determined by the commercial scope of the ports in each AOR. For the purpose of estimating average costs, we assumed the average level of meeting, planning, and drilling participation to be 200 stakeholders per AOR, based on discussions with COTPs and estimates of average U.S. facility and vessel presence per port. We understand that some AORs may have higher participation levels and other AORs have very lower participation levels; however, we believe this to be a reasonable national estimate of stakeholder participation per AOR.

Unit Cost Assumptions

The port security implementation cost per stakeholder is expected to be small in comparison to facility and vessel security implementation. Stakeholders are not required to purchase or upgrade materials or services, as in the implementation of the ISPS Code for facilities or vessels. Some companies and facilities are required to have CSOs and FSOs (as detailed in the vessel and facility security sections) attend at least one of the quarterly PSC meetings a year; however, we expect few stakeholders to fully participate in all of the implementation or annual activities for a given COTP AOR. Finally, most stakeholders in large to medium-sized ports have already completed or adopted appropriate and transferable PSPs before the ISPS Code will become effective.

All costs for ISPS Code implementation for port security are related to personnel. Stakeholder hourly costs are assumed to be $100 per burden hour for managerial personnel and $35 per burden hour for administrative/clerical personnel. These costs are ''loaded'' wage rates, which means they include benefits, local travel, and other overhead costs. These rates are based on BLS data and previous Coast Guard analyses that estimated meeting and planning costs. While some employees cost more than this and some cost less, we believe these estimates for the two labor types are reasonable average costs of the employees that would conduct this work.

The stakeholder costs are divided into three hourly activities: PSC meetings, PSP development, and drilling, which include tabletop management drills and administrative drills. PSC meetings are estimated to consume an average of 6 hours for office preparation and meeting time, plus 2 hours of travel time. PSC meetings are monthly for the first 18 months and quarterly thereafter. Initial PSP development and planning is estimated to be a maximum of 80 hours (2 weeks) of non-PSC meeting time in 2003. PSP administrative and management drills are information and communication exercises that will take place at the stakeholder site. Administrative drills will occur twice a year for 2 hours to update company and facility contact information. Management drills will occur four times

a year for 4 hours to exercise PSP information and communication readiness. These activities collectively involve meetings, planning coordination, and communication drills that are information-gathering events. Costs to stakeholders, therefore, are determined by the labor rates and the number of hours each type of labor will be involved in each activity.

The frequency of the PSC meeting activity, estimated hours, and unit cost per stakeholder at a full participation level is presented in Table 66, and the frequency of the PSP planning and drill activities, estimated hours, and unit cost per stakeholder at a full participation level is presented in Table 67.

TABLE 66.—PSC MEETING FREQUENCY, HOURS, AND UNIT COST PER STAKEHOLDER

Stakeholder meeting	Hours per meeting	Frequency [1]	Cost per hour	Initial		Annual	
				Total hours per stakeholder	Total cost per stakeholder	Total hours per stakeholder	Total cost per stakeholder
Startup PSC meetings—2003.	8	1/month	$100	48	$4,800	.....	.....
Annual PSC meetings:							
2004	8	1/month	100	.....	.....	96	9,600
2005–2012	8	4/year	100	.....	.....	28	2,800

[1] Startup meetings (July–December 2003) consist of monthly planning meetings; the first year of implementation beginning 2004 consists of 12 monthly meetings; meetings for future years will be quarterly.

TABLE 67.—PSP PLANNING AND DRILL FREQUENCY, HOURS, AND UNIT COST PER STAKEHOLDER

Stakeholder activity	Hours per activity	Frequency	Cost per hour	Initial		Annual	
				Total hours per stakeholder	Total cost per stakeholder	Total hours per stakeholder	Total cost per stakeholder
PSP Planning—Year 2003.	80	1/year	$100	80	$8,000	.....	.....
PSP Drilling (2004–2012):							
Management	4	4/year	100	.....	.....	16	400
Administrative	2	2/year	35	.....	.....	4	140

Total National Cost for Port Security

We estimated national cost (both initial and annual) to public and private stakeholders for implementation of the ISPS Code for port security. Each cost is discounted to its PV at 7 percent for years 2003–2012. National cost for port security is presented in Table 68.

TABLE 68.—TOTAL NATIONAL PV COST FOR PORT SECURITY, IN $MILLIONS

[2003–2012, 7 percent discount rate]

	PSPs	Meetings	Drills	Total	PV total
2003 (initial)	$75	$45	$	$120	$120
2004 (annual)	.....	90	16	106	99
2005 (annual)	.....	30	16	46	40
2006 (annual)	.....	30	16	46	38
2007 (annual)	.....	30	16	46	35
2008 (annual)	.....	30	16	46	33
2009 (annual)	.....	30	16	46	31
2010 (annual)	.....	30	16	46	29
2011 (annual)	.....	30	16	46	27
2012 (annual)	.....	30	16	46	25
Total cost ($m)	75	375	144	594	$477

As shown, the initial cost associated with creating a PSP and holding development PSC meetings for each AOR is the primary cost driver for implementing the ISPS Code at U.S. ports. In addition, both the startup and implementation year periods (2003–2004) combined are nearly half of the total 10-year PV cost, making initial development and planning the primary costs to port security. These estimates are conservative because most COTP AORs have already done some security planning and organization. Furthermore, the level of stakeholder participation may not be as high as 200 per COTP AOR, and stakeholders will not be required to participate in all of the port security activities and drills in a given year.

[FR Doc. 02–32845 Filed 12–24–02; 11:41am]

BILLING CODE 4910–15–P

Federal Register

Monday,
December 30, 2002

Part IV

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7430–6]

RIN 2060–AE77

National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; amendments.

SUMMARY: On March 23, 2000, the EPA issued national emission standards for hazardous air pollutants (NESHAP) for secondary aluminum production facilities under section 112 of the Clean Air Act (CAA). This action amends the applicability provisions for aluminum die casters, foundries, and extruders. The amendments also add new provisions governing control of commonly-ducted units; revise the procedures for adoption of operation, maintenance, and monitoring plans; revise the criteria concerning testing of representative emission units; revise the standard for unvented in-line flux boxes; and clarify the control requirements for sidewell furnaces. These changes are being made pursuant to settlement agreements in two cases seeking judicial review of the NESHAP for secondary aluminum production. A separate rule to clarify compliance dates and defer certain early compliance obligations which might have otherwise come due before completion of this rulemaking was published on September 24, 2002.

EFFECTIVE DATE: December 30, 2002.

ADDRESSES: Docket A–2002–05, containing supporting information used in developing these final rule amendments, is available for public inspection and copying between 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding Federal holidays, at the following address: U.S. EPA, Air and Radiation Docket and Information Center, Room B–108, 1301 Constitution Avenue, NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mr. John Schaefer, U.S. EPA, Minerals and Inorganic Chemicals Group, Emission Standards Division (C504–05), Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711, telephone number (919) 541–0296, electronic mail address, *schaefer.john@epa.gov*.

SUPPLEMENTARY INFORMATION: *Regulated Entities.* The amendments change the applicability provisions of the NESHAP for three types of facilities: aluminum extruded product manufacturing facilities (NAICS 331316), aluminum die casting facilities (NAICS 331521), and aluminum foundry facilities (NAICS 331524). Consequently, categories and entities potentially regulated by this action include:

Category	NAICS*	Examples of regulated entities
Industry	331314	Secondary smelting and alloying of aluminum facilities.
		Secondary aluminum production facility affected sources that are collocated at:
	331312	Primary aluminum production facilities.
	331315	Aluminum sheet, plate, and foil manufacturing facilities.
	331316	Aluminum extruded product manufacturing facilities.
	331319	Other aluminum rolling and drawing facilities.
	331521	Aluminum die casting facilities.
	331524	Aluminum foundry facilities.

* North American Information Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in § 63.1500 of the final rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Docket. We have established an official public docket for this action under Docket ID No. A–2002–06 and E-Docket ID No. OAR–2002–0084. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Air Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

Electronic Docket Access. You may access the final rule electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility in the above paragraph entitled ''Docket.'' Once in the system, select ''search,'' then key in the appropriate docket identification number.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's amendments will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of these actions will be posted on the TTN's policy and guidance page for newly proposed rules or promulgated rules at *http://www.epa.gov/ttn/oarpg*. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Judicial Review. Under section 307(b)(1) of the CAA, judicial review of these final rule amendments is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by February 28, 2003. Under section 307(d)(7)(B) of the CAA, only an objection to these final rule amendments that was raised with reasonable specificity during the period

for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by these final rule amendments may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce these requirements.

Outline. The information presented in this preamble is organized as follows:

I. Background
II. Summary of the Final Amendments
A. How Are We Amending the Applicability provisions?
B. What Amendments Are We Making Concerning Control of Commonly-Ducted Units?
C. How Are We Amending the Procedures for Adoption of an Operation, Maintenance, and Monitoring Plan?
D. How Are We Amending the Provisions Concerning Testing of Representative Emission Units?
E. How Are We Amending the Standards for Unvented In-Line Flux Boxes?
F. How Are We Clarifying the Control Requirements for Sidewell Furnaces?
G. What Other Amendments Are We Making?
III. Response to Comments on Amendments to the NESHAP for Secondary Aluminum Production
IV. Statutory and Executive Order Reviews
A. Executive Order 12866, Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. *et seq.*
D. Unfunded Mandates Reform Act of 1995
E. Executive Order 13132, Federalism
F. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks
H. Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Congressional Review Act

I. Background

On March 23, 2000 (63 FR 15690), we promulgated the NESHAP for secondary aluminum production (40 CFR part 63, subpart RRR). Those standards were established under the authority of section 112(d) of the CAA to reduce emissions of hazardous air pollutants (HAP) from major and area sources.

After promulgation of the NESHAP for secondary aluminum production, two petitions for judicial review of the standards were filed in the D.C. Circuit Court of Appeals. The first of these petitions was filed by the American Foundrymen's Society, the North American Die Casting Association, and the Non-Ferrous Founders' Society (*American Foundrymen's Society et al.* v. *U.S. EPA*, Civ. No 00–1208 (D.C. Cir.)). A second petition for judicial review was filed by the Aluminum Association (*The Aluminum Association* v. *U.S. EPA*, No. 00–1211 (D.C. Cir.)). There was no significant overlap in the issues presented by the two petitions, and the cases have never been consolidated. However, we did thereafter enter into separate settlement discussions with the petitioners in each case.

The *Foundrymen's* case presented issues concerning the applicability of subpart RRR to aluminum die casters and aluminum foundries which were considered during the initial rulemaking development. Because aluminum die casters and foundries sometimes conduct the same type of operations as other secondary aluminum producers, we originally intended to apply the standards to these facilities, but only in those instances where they conduct such operations. However, representatives of the affected facilities argued that they should not be considered to be secondary aluminum producers and should be wholly exempt from the NESHAP. During the rulemaking development, we decided to permit die casters and foundries to melt contaminated internal scrap without being considered to be secondary aluminum producers, but their representatives insisted that too many facilities would still be subject to the NESHAP. At the time of promulgation of the standards, in response to a request by the die casters and foundries, we announced we would withdraw the standards as applied to die casters and foundries and develop separate maximum achievable control technology (MACT) standards for these facilities.

After the *Foundrymen's* case was filed, we negotiated an initial settlement agreement in that case which established a process to effectuate our commitment to develop new MACT standards. In that first settlement, EPA agreed that it would stay the current standards for these facilities, collect comprehensive data to support alternate standards, and promulgate alternate standards. We then published a proposal to stay the standards for these facilities (65 FR 55491, September 14, 2000) and an advance notice of proposed rulemaking (ANPR) announcing new standards for these facilities (65 FR 55489, September 14, 2000).

During the subsequent process of preparing for information collection, the petitioners concluded that the existing standards were not as sweeping in applicability as they had feared, and the parties then agreed to explore an alternate approach to settlement based on clarifications of the current standards. We subsequently reached agreement with the *Foundrymen's* petitioners on a new settlement which entirely supplanted the prior settlement. Accordingly, we published a notice withdrawing the proposed stay of the existing standards for aluminum die casters and foundries, and announcing that we would take no further action on new standards for those facilities (67 FR 41138, June 14, 2002).

In the new settlement, we agreed to propose some changes in the applicability provisions of the current standards concerning aluminum die casters and foundries. These changes included permitting customer returns without paints or solid coatings to be treated like internal scrap, and permitting facilities operated by the same company at different locations to be aggregated for purposes of determining what is internal scrap. These revisions of the applicability criteria were proposed on June 14, 2002 (67 FR 41125) and are being adopted in today's final rule.

In the *Foundrymen's* settlement, we also agreed to defer the compliance date for new sources constructed or reconstructed at existing aluminum die casters, foundries, and extruders until the compliance date for existing sources, so that the rulemaking on general applicability issues could be completed first. We took final action concerning that element of the *Foundrymen's* settlement in a final rule published on September 24, 2002 (67 FR 59787).

In entirely separate discussions, we also agreed on a settlement of the *Aluminum Association* case. That settlement required that we propose a number of substantive clarifications and revisions of the standards, which we are also adopting in today's final rule. The *Aluminum Association* settlement also required that we clarify and simplify the compliance dates for the standards, and defer certain early compliance obligations which might otherwise come due during the rulemaking process. We took final action concerning those compliance issues in the final rule published on September 24, 2002 (67 FR 59787).

II. Summary of the Final Amendments

A. How Are We Amending the Applicability Provisions?

We originally intended to regulate aluminum die casting facilities,

aluminum foundries, and aluminum extruders under subpart RRR only when they engage in the same types of operations as other secondary aluminum producers. We decided during rulemaking development that such facilities should be permitted to melt their own internally-generated scrap without being automatically treated the same as secondary aluminum producers, who typically process contaminated aluminum scrap obtained from other sources. Thus, § 63.1500(d) in the current standards exempts such facilities if:

- The facility does not melt any materials other than clean charge and materials generated within the facility; and
- The facility does not operate a thermal chip dryer, sweat furnace, or scrap dryer/delacquering kiln/decoating kiln.

However, it became apparent during discussions with representatives of these facilities that some aluminum die casting facilities that do not otherwise engage in secondary aluminum operations might fall within the rule solely because they melt certain materials which do not fit clearly within the phrase ''materials generated within the facility.'' In particular, some facilities routinely have defective or incorrect aluminum castings returned by customers and then remelt them. In addition, some companies conduct operations at multiple locations and may melt scrap initially generated at one location at a different location.

To address these issues, the amendments contain new applicability language which permits aluminum die casters, foundries, and extruders to melt customer returns which contain no paint or other solid coatings without thereby becoming subject to the standards. The amendments also include a new definition of internal scrap which includes all scrap originating from aluminum castings or extrusions that remains at all times within the control of the company that produced the castings or extrusions. We do not regard either of these changes in the applicability language as materially altering our original intent to only cover those aluminum die casters, foundries, and extruders who conduct secondary aluminum operations. Under the new language we are adopting, customer returns would not qualify if they have been painted or are contaminated with other solid coatings because these castings would normally require prior cleaning to avoid excess emissions. Moreover, scrap obtained from an external source does not qualify unless it fits within the definition of clean charge.

The amendments also change the existing definitions of ''secondary aluminum production facility,'' ''clean charge,'' ''internal runaround'' (now called ''runaround scrap''), and ''thermal chip dryer,'' and add new definitions of ''customer returns'' and ''internal scrap.'' In the aggregate, these revisions clarify the circumstances when aluminum die casters, foundries, and extruders are considered to be secondary aluminum production facilities and, thus, within the applicability of the rule.

We are also adding a new section to the general applicability provisions which permits aluminum die casters, foundries, and extruders which are area sources to operate thermal chip dryers subject to the requirements of the rule without automatically subjecting their furnace operations to the rule. We are making this change to eliminate an incentive which might exist for small facilities, which are otherwise outside the applicability of the rule, to discontinue their use of thermal chip dryers. As long as such chip dryers are operated in conformity with the rule, we think their use will promote safety and lower emissions at some small operations.

We are mindful that some may question why contaminated internal scrap generated by aluminum die casters, foundries, and extruders should be treated differently than external scrap with similar contamination levels which is processed by the secondary aluminum industry. We stress that the decision we made during the original secondary aluminum rulemaking process to make this distinction was based on the qualitative differences in the operations being undertaken by the facilities in question, rather than on any conclusions regarding the likely magnitude of emissions from such operations. Moreover, we think that the additional revisions and clarifications of applicability for aluminum die casters, foundries, and extruders which we have made are reasonable clarifications and fully consistent with that original decision.

B. What Amendments Are We Making Concerning Control of Commonly-Ducted Units?

The current rule permits secondary aluminum producers to combine existing group 1 furnaces and in-line fluxers within a particular facility in a ''secondary aluminum processing unit'' or SAPU. The facility can then demonstrate compliance by determining the permissible emissions for the entire SAPU and then controlling emissions for the SAPU to that level. This broader definition of the affected source which must be controlled gives a secondary aluminum production facility added flexibility in fashioning the most cost-effective control strategies which will meet the standards.

The existing rule also permits new group 1 furnaces and new in-line fluxers to be included in a new SAPU. However, it does not afford a facility the latitude to combine new and existing sources in the same SAPU. This is because the respective standards for existing sources and new sources are separate legal requirements, and we construe the CAA to require that standards be separately applied to all affected units.

Because the standards for an existing SAPU and the standards for a new SAPU happen to be identical in this instance, the legal constraints on combining existing emission units with new emission units have been understandably frustrating to some facilities. Moreover, in some facilities it may make the most sense from an engineering perspective to manifold emissions from units which are subject to differing standards to the same emission control device. In order to help facilities meet the standards in the most efficient and cost-effective manner, we are adding additional language pertaining to commonly-ducted units. The new language reflects two different approaches to this problem. A facility subject to the standards may use either approach or both approaches if it wishes.

First, the amendments add a new paragraph to § 63.1505(k) for SAPU. The new paragraph (k)(6) allows the owner or operator to redesignate any existing group 1 furnace or in-line fluxer at a secondary aluminum processing facility as a new emission unit. Any redesignated emission unit may then be included in a new SAPU at that facility. Any such redesignation (which requires prior approval of the responsible permitting authority) applies only under subpart RRR and is irreversible.

Second, we are also adding new language which clarifies the procedures by which units which are subject to differing standards but are manifolded to the same control device can demonstrate compliance. We believe that this new language is not required to permit this type of combined compliance demonstration, but we think it will give useful additional guidance to permitting authorities in establishing sound and defensible procedures for documenting compliance when units

are commonly-ducted but subject to separate standards.

We are adding two new paragraphs to § 63.1511 pertaining to compliance demonstrations for commonly-ducted units. The first of these paragraphs simply confirms other provisions of the rule which provide that aggregate emissions can be measured to demonstrate compliance for all emission units within a SAPU.

The second new paragraph covers those situations where commonly-ducted units are not within a single existing or new SAPU. In this instance, the following criteria apply:

- Testing must be designed to verify that each affected source or emission unit individually satisfies all applicable emission requirements.
- Emissions must be tested at the outlet of each individual affected source or emission unit while it is operating under the highest load or capacity reasonably expected to occur, prior to the point that the emissions are combined with those from other affected sources or emission units.
- Combined emissions for the affected sources and emission units must be tested at the outlet of the control device while they are operating simultaneously under the highest load or capacity reasonably expected to occur.
- When determining compliance for a commonly-ducted unit, emissions of a particular pollutant from the individual unit are presumed to be controlled by the same percentage as total emissions of that pollutant from all commonly-ducted units.

C. How Are We Amending the Procedures for Adoption of an Operation, Maintenance, and Monitoring Plan?

In the final rule amendments published on September 24, 2002 (67 FR 59787), we clarified the timing of submission of an operation, maintenance, and monitoring (OM&M) plan to the permitting authority, which is ambiguous in the rule as initially promulgated on March 23, 2000. In this action, we are clarifying the procedures by which a facility submits an OM&M plan to the permitting authority and by which the permitting authority can require any necessary revisions of the plan.

Section 63.1505(k) of the existing rule refers to approval of an OM&M plan by the permitting authority, and the necessary elements of an OM&M plan are described in § 63.1510(b), but the procedures for submission and approval of the plan are not specified. We are amending the existing rule to correct that omission.

Under the amendments, the facility is required to certify that the OM&M plan it is submitting complies with all requirements of the standards and to comply with the OM&M plan as submitted to the permitting authority, unless and until the plan is revised. If the permitting authority determines that any revisions of the plan are necessary to satisfy the requirements of the standards, the facility is required to promptly make all necessary revisions and resubmit the revised plan. If the facility itself determines that revisions of the OM&M plan are necessary, such revisions will not become effective until the owner or operator submits a description of the changes and a revised plan incorporating them to the permitting authority. These same general procedures also apply to the site-specific monitoring plan, which is one element of the OM&M plan.

D. How Are We Amending the Provisions Concerning Testing of Representative Emission Units?

Section 63.1511(f) of the existing rule establishes a procedure which permits a secondary aluminum production facility to test a representative group 1 furnace or in-line flux box in order to determine the emission rate for other units of the same type at that facility. We are clarifying the criteria for demonstrating compliance by testing of representative emission units.

In particular, the existing rule provides that the emission unit being tested must use ''identical feed/charge and flux materials in the same proportions'' as those emission units it represents. Industry representatives have expressed concern that this language could be given an unduly restrictive construction. To clarify our original intent, we are amending the criteria to require ''feed materials and charge rates which are comparable'' and ''the same type of flux materials in the same proportions'' as the emission units the tested unit represents.

E. How Are We Amending the Standards for Unvented In-Line Flux Boxes?

The existing rule requires that all in-line flux boxes meet the same emission standards and be tested in the same manner. Industry representatives have argued that the testing procedures in the rule are not practicable for in-line flux boxes which are unvented (units which have no ventilation ductwork manifolded to an outlet or emission control device). Documenting compliance with the particulate matter (PM) standard for such units might require construction of a temporary enclosure around the unit to capture and measure emissions.

Industry representatives have also argued that the emissions of hydrogen chloride (HCl) and PM from such units are intrinsically low, but we believe it is quite possible for the HCl emissions from such units to exceed the applicable standards. The existing rule provides a procedure by which a facility can demonstrate compliance for HCl by limiting its use of reactive chlorine flux and then assuming that all chlorine used is emitted as HCl. However, because of the greater complexity of the reactions which generate PM emissions, there is no analogous procedure for PM.

While we do not agree with the industry that all emissions from unvented in-line flux boxes are intrinsically low, we do agree that the physical characteristics of these units and the nature of the reactions that generate PM mean that we can reliably conclude that an unvented unit which demonstrates compliance with the emission standards for HCl by limiting reactive chlorine flux will also be in compliance with the emission standards for PM. Therefore, we are adding new language to § 63.1512(h) which permits a facility with an unvented in-line flux box, which elects to demonstrate compliance with the emission standards for HCl by limiting use of reactive chlorine flux, to infer compliance with the emission standards for PM as well. This gives facilities an alternative to testing of actual emissions, which could require costly construction of an enclosure around the unit or other engineering modifications. If a facility infers compliance with the PM standard in this manner, the facility is also required to use the maximum permissible PM emission rate for the flux box when determining the total emissions for any secondary aluminum processing unit which includes the flux box.

F. How Are We Clarifying the Control Requirements for Sidewell Furnaces?

Industry representatives have pointed out that § 63.1506(m)(6) includes language that could require installation of an additional control device on sidewell furnaces whenever the level of molten metal is permitted to fall below the passage between the sidewell and the hearth, or reactive flux is added in the hearth. While we believe that a control device will sometimes be necessary in these circumstances, this result was not our intent.

As indicated in the preamble to our original proposal, we believe that there is a potential for additional emissions if

the level of molten metal is permitted to fall below the top of the passage between the sidewell and the hearth, or if reactive flux is added in the hearth. Therefore, if these events occur, the emissions from both the sidewell and the hearth must be captured and tested in order to demonstrate compliance with the applicable emission standards. If the emission tests show that a control device is necessary to attain compliance, it must be installed. We are revising the language in question to clarify our intent.

In addition, we are amending § 63.1505(i)(7) to correct an erroneous cross-reference. As amended, certain sidewell group 1 furnaces are required to meet the limits in paragraphs (i)(1) through (4) rather than (j)(1) through (4).

G. What Other Amendments Are We Making?

We are amending § 63.1510(w) to clarify the procedures for obtaining approval of alternative monitoring methods. The new language makes it clear that this section refers to alternative monitoring methods other than those which may be separately authorized pursuant to § 63.1510(j)(5) or § 63.1510(v).

We are also clarifying the recordkeeping requirements for in-line fluxers which do not use reactive flux. Section 63.1517(b)(11) is amended to permit the facility to document that a particular in-line fluxer does not use reactive flux through the use of operating logs that show that no source of reactive flux was used, labels that prohibit use of reactive flux, or operating logs which document the type of flux used during each operating cycle.

We are amending § 63.1505(f)(1), which establishes emission standards for sweat furnaces, to correct an erroneous residence time.

We are clarifying the definition of a melting/holding furnace in § 63.1503.

We are amending § 63.1517(b)(16) to clarify that both major and area sources must keep a copy of the OM&M plan on-site by deleting language in § 63.1517(b)(16)(ii) that requires only major sources to keep a copy of the OM&M plan on-site.

We are also making minor amendments to correct printing or technical errors in the final rule. These include:

- Revising Tables 2 and 3 of subpart RRR to correct entries which were inadvertently printed in the wrong columns and an incorrect specification for a weight measurement device.
- Revising Equation 2 of § 63.1505(k)(2) to correct the HCl emission limit (L_{cHCl}).
- Revising the entry for § 63.14 in appendix A to subpart RRR to include incorporation by reference for a second document.

III. Response to Comments on Amendments to the NESHAP for Secondary Aluminum Production

Comment: One commenter opposes the proposed revision of the applicability criteria which would permit facilities to melt customer returns. This commenter argues that there is no reason to conclude that melting scrap contaminated with oils and coating applied outside the facility is less likely to result in dioxin formation than melting purchased scrap with similar contaminants.

Response: In considering this comment, it should be noted that those customer returns which are contaminated with paints or other solid coatings are not included in the proposed applicability change. In any case, our decision to permit melting of certain customer returns is based on a decision to treat this scrap like contaminated internal scrap in deciding whether a facility is engaged in secondary aluminum production. Our decision is not based on any technical assessment regarding the likelihood of dioxin formation.

Comment: One commenter argues that the amendments would allow foundries and die casters, including those facilities which are major sources of HAP, to permanently avoid emission limitations, testing requirements and monitoring requirements.

Response: We recognize that some aluminum foundries and die casters may have the potential to emit more than 10 tons per year of chlorine (a listed HAP), but we do not agree with the conclusion of the commenter that the rule will permit such facilities to escape regulation entirely. We note that the same argument could be made concerning the applicability exclusion in the existing subpart RRR. Our decision to exclude certain aluminum die casters, foundries, and extruders from the applicability of subpart RRR does not constitute a determination that such facilities should be entirely unregulated. We believe that most, if not all, of the excluded facilities are only area sources of HAP. However, if there is any aluminum foundry or die caster which would be entirely exempt under the revised applicability provisions for the secondary aluminum source category and which also has the potential to emit major source quantities of HAP, a separate MACT standard may ultimately be necessary. If the commenter identifies any facility which is a major source of HAP but is not included in any listed source category, EPA has authority to augment the source category list as provided in CAA section 112(c)(5).

Comment: One commenter opposes the provisions permitting redesignation of existing emission units as new, on the basis that uncontrolled or poorly controlled new emission units could comply by averaging their emissions with well-controlled redesignated older units.

Response: We believe the commenter has misconstrued the effect of the new provisions. The existing rule provides that certain types of emission units may be included within a secondary aluminum processing unit or SAPU, which is the affected source to which the standards apply. We construe the statute to prohibit combining new emission units with existing emission units. The final rule amendments pursuant to the settlement provide that existing emission units may be permanently redesignated as new. Because the standard for an existing SAPU and the standard for a new SAPU are identical, this procedure will not alter the basic control requirements which apply to the redesignated units. The final rule amendments also establish a procedure under which multiple units can be ducted to the same control device, but compliance will still be separately demonstrated for each commonly-ducted unit.

Comment: One commenter states that there are no data to support the change in residence time requirements for sweat furnace afterburners.

Response: We established the emission limits for sweat furnaces based on limited performance test data. The EPA established the work practice standards for sweat furnaces on the basis of conditions which were thought to have existed during these performance tests. Upon review of the performance test data, we determined incorrect dimensional data provided in the test report led to an incorrect calculation of afterburner residence time. The amendments do not make the emission limits less stringent but only alter the work practice requirements which are necessary to ensure compliance with the emission limits. We have no further sweat furnace emission data and the commenter has not provided any such data.

Comment: The same commenter who questioned the technical basis for the decreased residence time for sweat furnaces argues that EPA is obligated to

consider longer residence times as a ''beyond the floor control option.''

Response: We are not aware of any technologies which could decrease the HAP emission rate for sweat furnaces beyond the floor technology and have no data upon which to evaluate any such technologies. While an increase in the residence time for the floor technology may increase the overall control efficiency by a marginal amount, no data are available to make this determination.

Comment: One commenter requests that the amendments include a work practice standard for thermal chip dryers, analogous to the work practice requirement for sweat furnaces.

Response: The amendments requested by the commenter are outside of the scope of these amendments and cannot be considered in this rulemaking. In any event, the commenter supplied no test data in support of a work practice standard for thermal chip dryers, and EPA has no data that would support the suggested change in the standard.

IV. Statutory and Executive Order Review

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is ''significant'' and therefore subject to review by the OMB and the requirements of the Executive Order. The Executive Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this action is not a ''significant regulatory action'' and was not submitted to OMB for review.

B. Paperwork Reduction Act

The Office of Management and Budget (OMB) has previously approved the information collection requirements in the existing rule (subpart RRR) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and assigned OMB control No. 2060–0433. This action does not change the information collection requirements in subpart RRR, but does reduce the number of facilities subject to the rule. An amended Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1894.01), and a copy may be obtained from Susan Auby by mail at U.S. EPA, Office of Environmental Information, Collection Strategies Division (2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, by e-mail at *auby.susan@epa.gov*, or by calling (202) 566–1672. A copy may also be downloaded from the Internet at *http://www.epa.gov.icr.*

The information requirements in the existing rule include mandatory notifications, records, and reports required by the NESHAP General Provisions (40 CFR part 63, subpart A). These information requirements are needed to confirm the compliance status of major sources, to identify any nonmajor sources not subject to the standards and any new or reconstructed sources subject to the standards, and to confirm that emission control devices are being properly operated and maintained. Based on the recorded and reported information, EPA can decide which facilities, records, or processes should be inspected. These recordkeeping and reporting requirements are specifically authorized under section 114 of the CAA. All information submitted to EPA for which a claim of confidentiality is made will be safeguarded according to Agency policies in 40 CFR part 2, subpart B.

Under the amendments, fewer facilities would be subject to the testing, monitoring, recordkeeping, and reporting requirements. For this reason, the overall burden estimate for the existing rule will be reduced by approximately 20 percent.

As a result of these amendments, the annual public reporting and recordkeeping burden for this collection of information (averaged over the first 3 years after the effective date of the rule) is estimated to decrease by 28,000 labor hours per year and $8.5 million per year. Total capital costs associated with monitoring requirements over the 3-year period of the ICR remain unchanged at an estimated $1.3 million; this estimate includes the capital and startup costs associated with installation of monitoring equipment.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information; process and maintain information and disclose and provide information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search existing data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. et seq.

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with these final rule amendments. The EPA has also determined that these final rule amendments will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's final rule amendments on small entities, a small entity is defined as: (1) A small business whose parent company has fewer than 750 employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule amendments on small entities, the EPA has concluded that this action will not create any new costs for affected firms, large or small. In fact, the amendments will reduce the economic impact on small businesses because of the revised applicability requirements for die casters, extruders, and foundries. Because these plants will not incur any significant costs or economic impact, EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with these final rule amendments. After

considering the economic impact of today's final rule amendments on small entities, the EPA has concluded that they will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least-burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least-costly, most cost-effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that these final rule amendments do not contain a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector in any 1 year. No incremental costs are attributable to these amendments. In addition, the amendments do not significantly or uniquely affect small governments because they contain no requirements that apply to such governments or impose obligations upon them. Therefore, the requirements of the UMRA do not apply to these amendments.

E. Executive Order 13132, Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the EPA consults with State and local officials early in the process of developing the proposed regulation.

These rule amendments do not have federalism implications. They do 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. None of the affected plants are owned or operated by State governments. Thus, the requirements of section 6 of the Executive Order do not apply to these rule amendments.

F. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes.''

These rule amendments do not have tribal implications. They do not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. No tribal governments own plants subject to the existing rule or today's amendments. Thus, Executive Order 13175 does not apply to these rule amendments.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant,'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives.

We interpret Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. These final rule amendments are not subject to Executive Order 13045 because they are based on technology performance and not on health or safety risks.

H. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

These final rule amendments are not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because they are not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Public Law 104–113; 15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be

inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (such as material specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA requires Federal agencies to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

The EPA's response to the NTTAA requirements are discussed in the preamble to the final rule (65 FR 15690). These amendments do not change the required methods or procedures, but would expand provisions for the use of alternative methods. If a plant wishes to use an alternative method other than those identified in the existing rule, the owner or operator may submit an application to EPA according to the procedures described in the existing rule.

J. Congressional Review Act

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

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: December 19, 2002.

Christine Todd Whitman,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

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

Subpart RRR—[AMENDED]

2. Section 63.1500 is amended by:

a. Revising paragraph (a);

b. Removing existing paragraph (d);

c. Redesignating existing paragraphs (e) and (f) as (d) and (e); and

d. Adding new paragraph (f).

The addition and revision reads as follows:

§ 63.1500 Applicability.

(a) The requirements of this subpart apply to the owner or operator of each secondary aluminum production facility as defined in § 63.1503.

* * * * *

(f) An aluminum die casting facility, aluminum foundry, or aluminum extrusion facility shall be considered to be an area source if it does not emit, or have the potential to emit considering controls, 10 tons per year or more of any single listed HAP or 25 tons per year of any combination of listed HAP from all emission sources which are located in a contiguous area and under common control, without regard to whether or not such sources are regulated under this subpart or any other subpart. In the case of an aluminum die casting facility, aluminum foundry, or aluminum extrusion facility which is an area source and is subject to regulation under this subpart only because it operates a thermal chip dryer, no furnace operated by such a facility shall be deemed to be subject to the requirements of this subpart if it melts only clean charge, internal scrap, or customer returns.

3. Section 63.1503 is amended by:

a. Adding in alphabetical order new definitions for the terms ''aluminum scrap,'' ''customer returns,'' ''internal scrap,'' and ''runaround scrap''; and

b. Revising definitions for the terms ''clean charge,'' ''cover flux,'' ''group 1 furnace,'' ''group 2 furnace,'' ''melting/holding furnace,'' ''reactive fluxing,'' ''scrap dryer/delacquering kiln/decoating kiln,'' ''secondary aluminum processing unit (SAPU),'' ''secondary aluminum production facility,'' and ''thermal chip dryer.''

The additions and revisions read as follows:

§ 63.1503 Definitions.

* * * * *

Aluminum scrap means fragments of aluminum stock removed during manufacturing (*i.e.*, machining), manufactured aluminum articles or parts rejected or discarded and useful only as material for reprocessing, and waste and discarded material made of aluminum.

* * * * *

Clean charge means furnace charge materials including molten aluminum, T-bar, sow, ingot, billet, pig, alloying elements, *aluminum scrap* known by the owner or operator to be entirely free of paints, coatings, and lubricants; uncoated/unpainted aluminum chips that have been thermally dried or treated by a centrifugal cleaner; *aluminum scrap* dried at 343 °C (650 °F) or higher; *aluminum scrap* delacquered/decoated at 482 °C (900 °F) or higher, and *runaround scrap*.

Cover flux means salt added to the surface of molten aluminum in a *group 1* or *group 2 furnace*, without agitation of the molten aluminum, for the purpose of preventing oxidation.

Customer returns means any aluminum product which is returned by a customer to the aluminum company that originally manufactured the product prior to resale of the product or further distribution in commerce, and which contains no paint or other solid coatings (*i.e.*, lacquers).

* * * * *

Group 1 furnace means a furnace of any design that melts, holds, or processes aluminum that contains paint, lubricants, coatings, or other foreign materials with or without *reactive fluxing*, or processes *clean charge* with *reactive fluxing*.

Group 2 furnace means a furnace of any design that melts, holds, or processes only *clean charge* and that performs no *fluxing* or performs *fluxing* using only nonreactive, non-HAP-containing/non-HAP-generating gases or agents.

* * * * *

Internal scrap means all aluminum scrap regardless of the level of contamination which originates from castings or extrusions produced by an aluminum die casting facility, aluminum foundry, or aluminum extrusion facility, and which remains at all times within the control of the company that produced the castings or extrusions.

* * * * *

Melting/holding furnace means a *group 1 furnace* that processes only *clean charge*, performs melting, holding, and fluxing functions, and does not transfer molten aluminum to or from another furnace except for purposes of alloy changes, off-specification product drains, or maintenance activities.

* * * * *

Reactive fluxing means the use of any gas, liquid, or solid flux (other than cover flux) that results in a HAP emission. Argon and nitrogen are not reactive and do not produce HAP.

* * * * *

Runaround scrap means scrap materials generated on-site by aluminum casting, extruding, rolling, scalping, forging, forming/stamping, cutting, and trimming operations and that do not contain paint or solid coatings. Uncoated/unpainted aluminum chips generated by turning, boring, milling, and similar machining operations may be clean charge if they have been thermally dried or treated by a centrifugal cleaner, but are not considered to be *runaround scrap.*

Scrap dryer/delacquering kiln/decoating kiln means a unit used primarily to remove various organic contaminants such as oil, paint, lacquer, ink, plastic, and/or rubber from *aluminum scrap* (including used beverage containers) prior to melting.

Secondary aluminum processing unit (SAPU). An existing SAPU means all existing *group 1 furnaces* and all existing *in-line fluxers* within a *secondary aluminum production facility*. Each existing *group 1 furnace* or existing *in-line fluxer* is considered an *emission unit* within a *secondary aluminum processing unit.* A new *SAPU* means any combination of individual *group 1 furnaces* and *in-line fluxers* within a *secondary aluminum processing facility* which either were constructed or reconstructed after February 11, 1999, or have been permanently redesignated as new emission units pursuant to § 63.1505(k)(6). Each of the *group 1 furnaces* or *in-line fluxers* within a new *SAPU* is considered an *emission unit* within that *secondary aluminum processing unit.*

Secondary aluminum production facility means any establishment using *clean charge*, *aluminum scrap*, or dross from aluminum production, as the raw material and performing one or more of the following processes: scrap shredding, scrap drying/delacquering/decoating, thermal chip drying, furnace operations (*i.e.*, melting, holding, sweating, refining, fluxing, or alloying), recovery of aluminum from dross, in-line fluxing, or dross cooling. A *secondary aluminum production facility* may be independent or part of a primary aluminum production facility. For purposes of this subpart, aluminum die casting facilities, aluminum foundries, and aluminum extrusion facilities are not considered to be secondary aluminum production facilities if the only materials they melt are *clean charge*, customer returns, or internal scrap, and if they do not operate sweat furnaces, thermal chip dryers, or scrap dryers/delacquering kilns/decoating kilns. The determination of whether a facility is a *secondary aluminum production facility* is only for purposes of this subpart and any regulatory requirements which are derived from the applicability of this subpart, and is separate from any determination which may be made under other environmental laws and regulations, including whether the same facility is a ''secondary metal production facility'' as that term is used in 42 U.S.C. § 7479(1) and 40 CFR 52.21(b)(1)(i)(A) (''prevention of significant deterioration of air quality'').

* * * * *

Thermal chip dryer means a device that uses heat to evaporate oil or oil/water mixtures from unpainted/uncoated aluminum chips. Pre-heating boxes or other dryers which are used solely to remove water from aluminum scrap are not considered to be thermal chip dryers for purposes of this subpart.

* * * * *

4. Section 63.1505 is amended by:

a. Revising the section heading;

b. Revising paragraph (f)(1);

c. Revising paragraph (i)(7);

d. Republishing the introductory text of paragraph (k)(2) and revising Equation 2; and

e. Adding new paragraph (k)(6).

The revisions and addition read as follows:

§ 63.1505 Emission standards for affected sources and emission units.

* * * * *

(f) *Sweat furnace.* * * *

(1) The owner or operator is not required to conduct a performance test to demonstrate compliance with the emission standard of paragraph (f)(2) of this section, provided that, on and after the compliance date of this rule, the owner or operator operates and maintains an afterburner with a design residence time of 0.8 seconds or greater and an operating temperature of 1600 °F or greater.

* * * * *

(i) *Group 1 furnace.* * * *

(7) The owner or operator of a sidewell group 1 furnace that conducts reactive fluxing (except for cover flux) in the hearth, or that conducts reactive fluxing in the sidewell at times when the level of molten metal falls below the top of the passage between the sidewell and the hearth, must comply with the emission limits of paragraphs (i)(1) through (4) of this section on the basis of the combined emissions from the sidewell and the hearth.

* * * * *

(k) *Secondary aluminum processing unit.* * * *

(2) The owner or operator must not discharge or allow to be discharged to the atmosphere any 3-day, 24-hour rolling average emissions of HCl in excess of:

$$L_{c_{HCl}} = \frac{\sum_{i=1}^{n}\left(L_{ti_{HCl}} \times T_{ti}\right)}{\sum_{i=1}^{n}\left(T_{ti}\right)} \qquad \text{(Eq. 2)}$$

* * * * *

(6) With the prior approval of the responsible permitting authority, an owner or operator may redesignate any existing group 1 furnace or in-line fluxer at a secondary aluminum production facility as a new emission unit. Any emission unit so redesignated may thereafter be included in a new SAPU at that facility. Any such redesignation will be solely for the purpose of this MACT standard and will be irreversible.

* * * * *

5. Section 63.1506 is amended by:

a. Removing existing paragraph (a)(2);

b. Redesignating existing paragraphs (a)(3) through (a)(5) as paragraphs (a)(2) through (a)(4); and

c. Revising paragraphs (m)(6)(i) and (ii).

The revisions read as follows:

§ 63.1506 Operating requirements.

* * * * *

(m) *Group 1 furnace with add-on air pollution control devices.* * * *

(6) * * *

(i) The level of molten metal remains above the top of the passage between the sidewell and hearth during reactive flux injection, unless emissions from both the sidewell and the hearth are included in demonstrating compliance with all applicable emission limits.

(ii) Reactive flux is added only in the sidewell, unless emissions from both the sidewell and the hearth are included in demonstrating compliance with all applicable emission limits.

* * * * *

6. Section 63.1510 is amended by:

a. Removing the last sentence in the introductory text of paragraph (b), ''Each plan must contain the following information'', and adding, in its place, five new sentences;

b. Revising the introductory text of paragraph (o)(1); and

c. Revising the introductory text of paragraph (w).

The revisions read as follows:

§ 63.1510 Monitoring requirements.

* * * * *

(b) *Operation, maintenance, and monitoring (OM&M) plan.* * * * The plan must be accompanied by a written certification by the owner or operator that the OM&M plan satisfies all

requirements of this section and is otherwise consistent with the requirements of this subpart. The owner or operator must comply with all of the provisions of the OM&M plan as submitted to the permitting authority, unless and until the plan is revised in accordance with the following procedures. If the permitting authority determines at any time after receipt of the OM&M plan that any revisions of the plan are necessary to satisfy the requirements of this section or this subpart, the owner or operator must promptly make all necessary revisions and resubmit the revised plan. If the owner or operator determines that any other revisions of the OM&M plan are necessary, such revisions will not become effective until the owner or operator submits a description of the changes and a revised plan incorporating them to the permitting authority. Each plan must contain the following information:

* * * * *

(o) *Group 1 furnace without add-on air pollution control devices.* * * *

(1) The owner or operator must develop, in consultation with the responsible permitting authority, a written site-specific monitoring plan. The site-specific monitoring plan must be submitted to the permitting authority as part of the OM&M plan. The site-specific monitoring plan must contain sufficient procedures to ensure continuing compliance with all applicable emission limits and must demonstrate, based on documented test results, the relationship between emissions of PM, HCl, and D/F and the proposed monitoring parameters for each pollutant. Test data must establish the highest level of PM, HCl, and D/F that will be emitted from the furnace. This may be determined by conducting performance tests and monitoring operating parameters while charging the furnace with feed/charge materials containing the highest anticipated levels of oils and coatings and fluxing at the highest anticipated rate. If the permitting authority determines that any revisions of the site-specific monitoring plan are necessary to meet the requirements of this section or this subpart, the owner or operator must promptly make all necessary revisions and resubmit the revised plan to the permitting authority.

* * * * *

(w) *Alternative monitoring methods.* If an owner or operator wishes to use an alternative monitoring method to demonstrate compliance with any emission standard in this subpart, other than those alternative monitoring methods which may be authorized pursuant to § 63.1510(j)(5) and § 63.1510(v), the owner or operator may submit an application to the Administrator. Any such application will be processed according to the criteria and procedures set forth in paragraphs (w)(1) through (6) of this section.

* * * * *

7. Section 63.1511 is amended by revising paragraph (f) and adding paragraphs (h) and (i) to read as follows:

§ 63.1511 Performance test/compliance demonstration general requirements.

* * * * *

(f) *Testing of representative emission units.* With the prior approval of the permitting authority, an owner or operator may utilize emission rates obtained by testing a particular type of group 1 furnace which is not controlled by any add-on control device, or by testing an in-line flux box which is not controlled by any add-on control device, to determine the emission rate for other units of the same type at the same facility. Such emission test results may only be considered to be representative of other units if all of the following criteria are satisfied:

(1) The tested emission unit must use feed materials and charge rates which are comparable to the emission units that it represents;

(2) The tested emission unit must use the same type of flux materials in the same proportions as the emission units it represents;

(3) The tested emission unit must be operated utilizing the same work practices as the emission units that it represents;

(4) The tested emission unit must be of the same design as the emission units that it represents; and

(5) The tested emission unit must be tested under the highest load or capacity reasonably expected to occur for any of the emission units that it represents.

* * * * *

(h) *Testing of commonly-ducted units within a secondary aluminum processing unit.* When group 1 furnaces and/or in-line fluxers are included in a single existing SAPU or new SAPU, and the emissions from more than one emission unit within that existing SAPU or new SAPU are manifolded to a single control device, compliance for all units within the SAPU is demonstrated if the total measured emissions from all controlled and uncontrolled units in the SAPU do not exceed the emission limits calculated for that SAPU based on the applicable equation in § 63.1505(k).

(i) *Testing of commonly-ducted units not within a secondary aluminum processing unit.* With the prior approval of the permitting authority, an owner or operator may do combined performance testing of two or more individual affected sources or emission units which are not included in a single existing SAPU or new SAPU, but whose emissions are manifolded to a single control device. Any such performance testing of commonly-ducted units must satisfy the following basic requirements:

(1) All testing must be designed to verify that each affected source or emission unit individually satisfies all emission requirements applicable to that affected source or emission unit;

(2) All emissions of pollutants subject to a standard must be tested at the outlet from each individual affected source or emission unit while operating under the highest load or capacity reasonably expected to occur, and prior to the point that the emissions are manifolded together with emissions from other affected sources or emission units;

(3) The combined emissions from all affected sources and emission units which are manifolded to a single emission control device must be tested at the outlet of the emission control device;

(4) All tests at the outlet of the emission control device must be conducted with all affected sources and emission units whose emissions are manifolded to the control device operating simultaneously under the highest load or capacity reasonably expected to occur; and

(5) For purposes of demonstrating compliance of a commonly-ducted unit with any emission limit for a particular type of pollutant, the emissions of that pollutant by the individual unit shall be presumed to be controlled by the same percentage as total emissions of that pollutant from all commonly-ducted units are controlled at the outlet of the emission control device.

8. Section 63.1512 is amended by revising paragraph (h) to read as follows:

§ 63.1512 Performance test/compliance demonstration requirements and procedures.

* * * * *

(h) *In-line fluxer.* (1) The owner or operator of an in-line fluxer that uses reactive flux materials must conduct a performance test to measure emissions of HCl and PM or otherwise demonstrate compliance in accordance with paragraph (h)(2) of this section. If the in-line fluxer is equipped with an add-on control device, the emissions must be measured at the outlet of the control device.

(2) The owner or operator may choose to limit the rate at which reactive chlorine flux is added to an in-line fluxer and assume, for the purposes of demonstrating compliance with the SAPU emission limit, that all chlorine in the reactive flux added to the in-line fluxer is emitted as HCl. Under these circumstances, the owner or operator is not required to conduct an emission test for HCl. If the owner or operator of any in-line flux box which has no ventilation ductwork manifolded to any outlet or emission control device chooses to demonstrate compliance with the emission limit for HCl by limiting use of reactive chlorine flux and assuming that all chlorine in the flux is emitted as HCl, compliance with the HCl limit shall also constitute compliance with the emission limit for PM, and no separate emission test for PM is required. In this case, the owner or operator of the unvented in-line flux box must utilize the maximum permissible PM emission rate for the in-line flux boxes when determining the total emissions for any SAPU which includes the flux box.

* * * * *

9. Section 63.1515 is amended by revising paragraphs (b)(8) and (b)(9) to read as follows:

§ 63.1515 Notifications.

* * * * *

(b) * * *

(8) Manufacturer's specification or analysis documenting the design residence time of no less than 0.8 seconds and design operating temperature of no less than 1,600 °F for each afterburner used to control emissions from a sweat furnace that is not subject to a performance test.

(9) The OM&M plan (including site-specific monitoring plan for each group 1 furnace with no add-on air pollution control device).

* * * * *

10. Section 63.1517 is amended by revising paragraphs (b)(11) and (b)(16)(ii) to read as follows:

§ 63.1517 Records.

* * * * *

(b) * * *

(11) For each in-line fluxer for which the owner or operator has certified that no reactive flux was used:

(i) Operating logs which establish that no source of reactive flux was present at the in-line fluxer;

(ii) Labels required pursuant to § 63.1506(b) which establish that no reactive flux may be used at the in-line fluxer; or

(iii) Operating logs which document each flux gas, agent, or material used during each operating cycle.

* * * * *

(16) * * *

(ii) OM&M plan; and

* * * * *

11. Table 2 to subpart RRR is amended under the entry for ''Group 1 furnace with lime-injected fabric filter (including those that are part of secondary aluminum processing unit)'' by revising in column 2 the entry ''Fabric filter inlet temperature'' to read as follows:

TABLE 2 TO SUBPART RRR OF PART 63.—SUMMARY OF OPERATING REQUIREMENTS FOR NEW AND EXISTING AFFECTED SOURCES AND EMISSION UNITS

Affected source/emission unit	Monitor type/operation/ process	Operating requirements
* * *	* * * * *	* * * * * * * * *
Group 1 furnace with lime-injected fabric filter filter (including those that are part of a secondary aluminum processing unit).	Fabric filter inlet temperature.	Maintain average fabric filter inlet temperature for each 3-hour period at or below average temperature during the performance test +14 °C (+25 °F).

* * * * *

12. Table 3 to subpart RRR is amended by:

a. Under the entry for ''Group 1 furnace with lime-injected fabric filter'', revising in column 2 the entry ''Reactive flux injection rate Weight measurement device accuracy of +1%b; calibrate every 3 months; record weight and type of reactive flux added or injected for each 15-minute block period while reactive fluxing occurs; calculate and record total reactive flux injection rate for each operating cycle or time period used in performance test; or Alternative flux injection rate determination procedure per § 63.1510(j)(5).''; and

b. Under the entry for ''Group 1 furnace without add-on controls'', revising in column 2 the entry for ''Feed material (melting/holding furnace)''.

The revisions read as follows:

TABLE 3 TO SUBPART RRR OF PART 63.—SUMMARY OF MONITORING REQUIREMENTS FOR NEW AND EXISTING AFFECTED SOURCES AND EMISSION UNITS

Affected source/emission unit	Monitor type/Operation/ Process	Monitoring requirements
* * *	* * * * *	* * * * * * * * *
Group 1 furnace with lime-injected fabric filter	Reactive flux injection rate	Weight measurement device accuracy of ±1%[b]; calibrate every 3 months; record weight and type of reactive flux added or injected for each 15-minute block period while reactive fluxing occurs; calculate and record total reactive flux injection rate for each operating cycle or time period used in performance test; or Alternative flux injection rate determination procedure per § 63.1510(j)(5).

* * * * *

TABLE 3 TO SUBPART RRR OF PART 63.—SUMMARY OF MONITORING REQUIREMENTS FOR NEW AND EXISTING AFFECTED SOURCES AND EMISSION UNITS—Continued

Affected source/emission unit	Monitor type/Operation/ Process	Monitoring requirements
	* * * * *	* * * * *
Group 1 furnace without add-on controls	* * * * *	* * * * *
	Feed material (melting/ holding furnace).	Record type of permissible feed/charge material; certify charge materials every 6 months.

* * * * *

13. Appendix A to subpart RRR is amended under the entry for ''§ 63.14'' by revising in column 2 the entry for ''Incorporation by reference'' to read as follows:

APPENDIX A TO SUBPART RRR OF PART 63.—GENERAL PROVISIONS APPLICABILITY TO SUBPART RRR

Citation	Requirement	Applies to RRR	Comment
*	*	* *	* * *
§ 63.14	Incorporation by Reference.	Yes	Chapters 3 and 5 of ACGIH Industrial Ventilation Manual for capture/ collection systems; and Interim Procedures for Estimating Risk Associated with Exposure to Mixtures of Chlorinated Dibenzofurans (CDDs and CDFs) and 1989 Update (incorporated by reference in § 63.1502).

* * * * *

[FR Doc. 02–32779 Filed 12–27–02; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Monday,

December 30, 2002

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 129

Security Consideration for the Flightdeck on Foreign Operated Transport Category Airplanes; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 129

[Docket No. FAA–2002–12504; Amendment No. 129–36]

RIN 2120–AH70

Security Considerations for the Flightdeck on Foreign Operated Transport Category Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action clarifies the applicability of regulations addressing flightdeck security and operational procedures for foreign carriers operating to and from the United States. It also makes other technical corrections to the regulation.

DATES: This rule is effective on December 30, 2002. Comments must be received by February 28, 2003.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2002–12504 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to http://dms.dot.gov. You may review the public docket containing comments to this final rule 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*.

Comments that you may consider to be of a sensitive security nature should not be sent to the docket management system. Send those comments to the FAA, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: Mike E. Daniel, International Programs and Policy Office, AFS–50, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 385–4510; facsimile (202) 385–4561; e-mail *mike.e.daniel@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

This final rule is being adopted without prior notice and prior public comment. The Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 1134; February 26, 1979), however, provide that, to the maximum extent possible, operating administrations of the DOT should provide an opportunity for public comment on regulations issued without prior notice. Accordingly, interested persons are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments relating to the environmental, energy, federalism, or international trade impacts that might result from this amendment are also invited. Comments must include the regulatory docket or amendment number and must be submitted in duplicate to the DOT Docket Management System address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this final rule, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

The FAA will consider all comments received on or before the closing date for comments. Late filed comments will be considered to the extent practicable. This final rule may be amended in light of the comments received.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) web page (*http://dms.dot.gov/search*).

(2) On the search page type in the last four 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 view.

You can also get an electronic copy using the Internet through FAA's web page at *http://www.faa.gov/avr/arm/nprm.cfm* or the **Federal Register**'s web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html*.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number and amendment number of this rulemaking.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT**. You can find out more about SBREFA on the Internet at our site, *http://www.gov/avr/arm/sbrefa.htm*. For more information on SBREFA, e-mail us *9–AWA–SBREFA@faa.gov*.

Background

On June 21, 2002, the FAA issued a final rule to require improved flightdeck security and operational and procedure changes to prevent unauthorized access to the flightdeck on passenger carrying aircraft and some cargo aircraft operated by foreign carriers under the provisions of 14 CFR part 129 (67 FR 42450; Amendment No. 129–33). Part 129 was amended with the objective of ensuring that foreign operators conducting service to and from the United States under 14 CFR part 129 would have flightdeck security measures commensurate with those of 14 CFR part 121 carriers operating in the United States.

In addition to opening a 60-day comment period for Amendment 129–33, the FAA held a public meeting on July 30 to allow the public an additional opportunity to participate in the rulemaking process. A copy of the transcript of the public meeting has been placed into the docket; comments from the public meeting as well the comments in the docket will be dispositioned, and a notice will be published by the FAA in the **Federal Register**.

After reviewing several issues raised at the public meeting, the FAA decided that certain issues need to be clarified immediately.

Applicability

Part 129 governs foreign operators who operate either within the United States, except for overflights, or who operate solely outside the United States, but with aircraft registered in the United States. In the case of operations within the United States, except for overflights, part 129 is effectively equivalent to both part 121 and 135 in terms of the types of operations conducted and the aircraft used. With part 121 flightdeck security improved, the FAA was concerned that part 129 operations would be more attractive targets for terrorist actions if security was not similarly improved.

In Amendment 129–33, the FAA's intent was ''to have consistent flight deck security requirements for parts 121 and 129.'' This action is consistent with, but more restrictive than the new International Civil Aviation Authority (ICAO) Security of the Flight Crew Compartment standards, which will apply only to airplanes with a maximum takeoff weight of 45,500 kg (about 100,000 lbs) or with a passenger seating capacity greater than 60, because the ICAO requirement is not inclusive of all the types of airplanes that would be required to operate under part 121 in the United States. Even though part 129 covers the operational equivalent of both parts 121 and 135, the FAA has not applied the flightdeck security requirements to carriers operating under part 135 in the United States. In amendment No. 129–33, no distinction was made regarding foreign air carrier operations that are equivalent to part 135 operations.

Section 129.28(a) mandates that there be a flightdeck door on passenger carrying operations'' that parallels the requirement in § 121.313. We also indicate ''this requirement is intended to prevent the removal of flightdeck doors, and is not expected to result in installation of flightdeck doors where none existed.'' As the rule is presently written, however, it would require doors meeting the requirements of § 129.28 on such aircraft as Learjets, Falcons, etc., and helicopters, which was not the FAA's intent. To resolve this situation, the FAA is adding a new paragraph to restrict the applicability to transport category airplanes with 20 or more passenger seats. While this is not an exact correlation with part 121, it is a reasonable approximation, and there are currently no known airplane types that would be excluded under part 129 that are required to comply under part 121.

In addition, the final rule uses the term, ''transport category aircraft,'' which includes transport category rotorcraft (type certificated under part 29), as well as transport category airplanes. As with the parallel part 121 rule, the FAA intended that the requirements apply only to transport category airplanes, and § 129.28 is revised accordingly.

Finally, the flightdeck security requirements in Amendment 129–33 apply to any passenger carrying transport category aircraft ''operated'' by the foreign air carrier. This would include operations of newly manufactured aircraft that are being delivered to the foreign air carrier, and would have the effect of requiring installation of the strengthened flightdeck door before the delivery flight. In many cases, the foreign air carriers, like their domestic counterparts, have made arrangements to have the door strengthened by a third party after delivery of the airplane, and the FAA did not intend to interfere with these arrangements. As with the part 121 regulation, the FAA intends that the door be strengthened before entering revenue service. Therefore, § 129.28(a) and (c) are amended to create an exception for newly manufactured airplanes on non-revenue delivery flights.

Elimination of the Overflight Provision

Section 129.1(a) covers foreign carrier operations ''within the United States,'' which conflicts with the requirement in § 129.28 that imposes the requirement both for operations ''within the United States or on overflights.'' In general, the FAA has no practical means of conducting surveillance of foreign carriers other than on the ground within the United States. Accordingly, we are changing the phrase ''within the United States or on overflights'' to read ''within the United States, except for overflights'' in § 129.28.

Compliance Date

In section 129.28(a)(2), we indicate that foreign carriers cannot operate in the United States without the door installed between the pilot compartment and any other occupied compartment after January 15, 2002. The intent of the compliance date in § 129.28 (a)(2) for all-cargo airplanes was to prevent a foreign carrier from removing a door that was installed as of that date. Amendment 129–33, which imposed the requirement, was not issued until June 21, 2002, and no advance public notice of this requirement was provided to the foreign carriers. To resolve this issue, the FAA is changing the compliance date contained in paragraph § 129.28 (a)(2) to read ''June 21, 2002,'' the issuance date of the final rule.

Justification for Immediate Adoption

This action is necessary to clarify the applicability and requirements of the existing part 129 regulations. The deadline for compliance with these regulations is imminent, and delaying issuance of this action pending notice and public comment would place numerous affected operators in potential non-compliance, contrary to the FAA's intent in adopting the part 129 regulations. Because the circumstances described herein warrant immediate action by the FAA, the Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and contrary to the public interest. Further, the Administrator finds that good cause exists under 5 U.S.C. 553(d) for making this final rule effective immediately upon publication.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to implement ICAO Standards and Recommended Practices to the maximum extent practicable. The need for improved flightdeck security is an operational and security issue and is demonstrably necessary to provide safe operation within the United States. This amendment clarifies Amendment 129–33.

Economic Evaluation, Regulatory Flexibility Determination, Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency to 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. section 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, use them as the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal

governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation.)

In conducting these analyses, FAA has determined this rule (1) Has benefits which justify its costs; (2) is a ''significant regulatory action'' as defined in Executive Order 12866 and is ''significant'' as defined in DOT's Regulatory Policies and Procedures; (3) will not have a significant impact on a substantial number of small entities; (4) will have little effect on international trade; and (5) does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector.

For regulations with an expected minimal impact the above-specified analyses are not required. The Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If it is determined that the expected impact is so minimal that the proposal does not warrant a full evaluation, a statement to that effect and the basis for it is included in the proposed regulation. The FAA has determined that there are no costs associated with this final rule. Instead, this rule change relieves operators of foreign registered airplanes from costs that would have been inadvertently imposed on them in the adoption of Amendment 129–33. This change effectuates the original intent of Amendment 129–33 revisions.

Regulatory Flexibility Act

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 businesses, 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 side-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA. However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This action is cost relieving. Therefore, the FAA certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Trade Impact Assessment

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. The FAA has assessed the potential effect of this rulemaking and has determined that it will have a minimal effect on international trade.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in 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 final rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has determined that there are no requirements for information collection associated with this rule.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action would not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we determined that this final rule does not have federalism implications.

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 rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the 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. It has been determined that the rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 129

Aircraft, Aviation safety, Reporting and recordkeeping requirements, Safety, Transportation.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends part 129 of Title 14 Code of Federal Regulations, as follows;

PART 129—OPERATIONS: FOREIGN AIR CARRIERS AND FOREIGN OPERATORS OF U.S.-REGISTERED AIRCRAFT ENGAGED IN COMMON CARRIAGE

1. The authority citation for part 129 continues to read as follows:

Authority: 49 U.S.C.1372, 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901–44904, 44906, 44912, 46105, Pub.L. 107–71 sec. 104.49 U.S.C.

2. Revise § 129.28 to read as follows:

§ 129.28 Flightdeck security.

(a) After August 20, 2002, except for a newly manufactured airplane on a non-revenue delivery flight, no foreign air carrier covered by § 129.1(a), may operate:

(1) A passenger carrying transport category airplane within the United States, except for overflights, unless the airplane is equipped with a door between the passenger and pilot compartment that incorporates features to restrict the unwanted entry of persons into the flightdeck that are operable from the flightdeck only; or

(2) A transport category all-cargo airplane within the United States,

except for overflights, that has a door installed between the pilot compartment and any other occupied compartment on or after June 21, 2002, unless the door incorporates features to restrict the unwanted entry of persons into the flightdeck that are operable from the flightdeck only.

(b) To the extent necessary to meet the requirements of paragraph (a) of this section, the requirements of § 129.13(a) to maintain airworthiness certification are waived until April 9, 2003. After that date, the requirements of § 129.13(a) apply in full.

(c) After April 9, 2003, except for a newly manufactured airplane on a non-revenue delivery flight, no foreign air carrier covered by § 129.1(a) may operate a passenger carrying transport category airplane, or a transport category all-cargo airplane that has a door installed between the pilot compartment and any other occupied compartment on or after June 21, 2002, within the United States, except for overflights, unless the airplane's flightdeck door installation meets the requirements of paragraphs (c)(1) and(2) of this section or an alternative standard found acceptable to the Administrator.

(1) Resist forcible intrusion by unauthorized persons and be capable of withstanding impacts of 300 joules (221.3 foot-pounds) at the critical locations on the door, as well as a 1,113-newton (250 pounds) constant tensile load on the knob or handle, and

(2) Resist penetration by small arms fire and fragmentation devices to a level equivalent to level IIIa of the National Institute of Justice Standard (NIJ) 0101.04.

(d) After August 20, 2002, no foreign air carrier covered by § 129.1 may operate a passenger carrying transport category airplane, or a transport category all-cargo airplane that has a door installed between the pilot compartment and any other occupied compartment on or after June 21, 2002, within the United States, except for overflights, unless the carrier has procedures in place that are acceptable to the civil aviation authority responsible for oversight of the foreign air carriers operating under this part to prevent access to the flightdeck except as authorized as follows:

(1) No person other than a person who is assigned to perform duty on the flight deck may have a key to the flight deck door that will provide access to the flightdeck.

(2) Except when it is necessary to permit access and egress by persons authorized in accordance with paragraph (d)(3) of this section, a pilot in command of an airplane that has a lockable flight deck door in accordance with § 129.28(a) and that is carrying passengers shall ensure that the door separating the flight crew compartment from the passenger compartment is closed and locked at all times when the airplane is being operated.

(3) No person may admit any person to the flight deck of an airplane unless the person being admitted is—

(i) A crewmember,

(ii) An inspector of the civil aviation authority responsible for oversight of the part 129 operator, or

(iii) Any other person authorized by the civil aviation authority responsible for oversight of the part 129 operator.

(e) The requirements of paragraph (a) through (d) except (d)(3), do not apply to transport category passenger carrying airplanes originally type certificated with a maximum passenger seating configuration of 19 seats or less, or to all-cargo airplanes with a payload capacity of 7,500 pounds or less.

Issued in Washington, DC, on December 23, 2002.

Marion Blakey,

Administrator.

[FR Doc. 02–32946 Filed 12–27–02; 8:45 am]

BILLING CODE 4910–13–P

Federal Register

Monday,

December 30, 2002

Part VI

Environmental Protection Agency

40 CFR Part 122

Modification of National Pollutant Discharge Elimination System (NPDES) Permit Deadline for Storm Water Discharges for Oil and Gas Construction Activity That Disturbs One to Five Acres of Land; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 122

[FRL–7433–9]

RIN 2040–AC82

Modification of National Pollutant Discharge Elimination System (NPDES) Permit Deadline for Storm Water Discharges for Oil and Gas Construction Activity That Disturbs One to Five Acres of Land

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Today's action proposes to postpone until March 10, 2005, the permit authorization deadline for National Pollutant Discharge Elimination System (NPDES) storm water permits for oil and gas construction activity that disturbs one to five acres of land. On December 8, 1999 (64 FR 68722), the U.S. Environmental Protection Agency (EPA) published a final rule expanding the then-existing NPDES permitting program to require permit coverage by March 10, 2003 for, among other things, construction sites that disturb one to five acres. As part of that rulemaking, EPA assumed that few, if any, oil and gas exploration, production, processing, or treatment operations or transmission facilities would be affected by the rule. Since rule promulgation, information has become available indicating that close to 30,000 oil and gas sites per year may be affected by the December 8, 1999, storm water regulations.

EPA is proposing a two-year postponement of the deadline from March 10, 2003, to March 10, 2005, in order to allow time for EPA to analyze and better evaluate the impact of the permit requirements on the oil and gas industry, the appropriate best management practices for preventing contamination of storm water runoff resulting from construction associated with oil and gas exploration, production, processing, or treatment operations or transmission facilities, and the scope and effect of 33 U.S.C. 1342 (l)(2) and other storm water provisions of the Clean Water Act.

DATES: Comments on the proposed rule must be received on or before January 29, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Send written comments to: Water Docket, Environmental Protection Agency, Mail Code 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. OW–2002–0068. For other types of delivery, see the detailed instructions in section I.C.

FOR FURTHER INFORMATION CONTACT: Wendy Bell, Office of Wastewater Management, Office of Water, Environmental Protection Agency, at 202–564–0746 or e-mail: *bell.wendy@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Regulated Entities. Entities Potentially Regulated by This Action Include:

Category	Examples of regulated entities
Industry	Oil and gas producers constructing drilling sites disturbing one to five acres of land, construction site operators associated with oil and gas construction projects disturbing one to five acres of land.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility or company is regulated by this action, you should carefully examine the applicability criteria in 40 CFR 122.26(b)(15). If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

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

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. OW–2002–0068. The official public docket is the collection of materials that are available for public viewing at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.*

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

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in section I.B.1.

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

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

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

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

i. *EPA Dockets.* EPA's preferred method for receiving comments is through use of the Agency's electronic public docket. To access this docket, go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in Docket ID No. OW–2002–0068. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to *ow-docket@epa.gov,* Attention Docket ID No. OW–2002–0068. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

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

2. *By Mail.* Send the original and three copies of your comments to: ''Water Docket, Environmental Protection Agency, Mailcode 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. OW–2002–0068.

3. *By Hand Delivery or Courier.* Deliver your comments to: EPA Docket Center, EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC, Attention Docket ID No. OW–2002–0068. Such deliveries are only accepted during the Docket's normal hours of operation as identified in section I.B.1.

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

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

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background

Section 405 of the Water Quality Act of 1987 (WQA) added section 402(p) of the Clean Water Act (CWA), which directs EPA to develop a phased approach to regulate storm water discharges under the National Pollutant Discharge Elimination System (NPDES) program. EPA published a final regulation on the first phase of this program on November 16, 1990, establishing permit application requirements for ''storm water discharges associated with industrial activity.'' EPA defined the term ''storm water discharge associated with industrial activity'' in a manner that covered a wide variety of facilities. Construction activities that disturb five acres of land and greater are considered ''industrial activity'' under 40 CFR 122.26(b)(14)(x).

Phase II of the storm water program regulations were published in the **Federal Register** on December 8, 1999. Phase II requires storm water permits for sites disturbing equal to or greater than one acre of land and less than five acres. 40 CFR 122.26(b)(15)(i). Discharges from these sources require permit authorization by March 10, 2003 (40 CFR 122.26(e)(8)).

In developing the Phase II storm water regulations, EPA conducted an analysis of the potential impacts of the regulation on the national economy and also analyzed impacts on small businesses. These impacts are associated with implementation of sediment and erosion control practices or best management practices to reduce pollutants commonly associated with construction storm water discharges. In performing these analyses, EPA considered affected industrial sectors, including the oil and gas industry. Based on information provided, EPA assumed that few, if any, oil and gas exploration, production, processing, or treatment operations, or transmission facilities would be affected by Phase II. Therefore, EPA did not include oil and gas exploration sites in the Economic Analysis of the Phase II Final Rule.

Based on recent information from the U.S. Department of Energy, EPA now estimates that on average there are 30,000 oil and gas starts per year, including exploration and development activities. Initially, EPA assumed that very few of these starts would incur compliance costs associated with the Phase II rule because most of them would be less than one acre. However, based on new information, EPA now believes that a significant number of such sites may exceed one acre. In addition, EPA had assumed that the oil and gas industry would use best management practices (BMPs) similar to those in other industrial sectors involved in construction and development, if affected. EPA estimated the costs of these BMPs to range from $1,206 to $8,709 depending on the size, slope and soil characteristics of a given site. EPA plans to gather more data on the BMPs used by the oil and gas

industry to determine if this cost range is accurate.

Title 33 U.S.C. 1342(l)(2) exempts certain storm water discharges from oil and gas exploration, production, processing, or treatment operations or transmission facilities from the NPDES permit requirement. The statute provides that ''[t]he Administrator shall not require a permit under this section, nor shall the Administrator directly or indirectly require any State to require a permit, for *discharges of stormwater runoff from * * * oil and gas exploration, production, processing, or treatment operations or transmission facilities*, composed entirely of flows which are from conveyances or systems of conveyances (including but not limited to pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and which *are not contaminated by contact with, or do not come into contact with, any overburden, raw material, intermediate products, finished product, byproduct, or waste products located on the site of such operations*.'' Emphasis added. The NPDES storm water regulations repeat this exemption at 40 CFR 122.26(a)(2). However, as noted above, those regulations also currently require NPDES permits for storm water discharges from ''[c]onstruction activity including clearing, grading, and excavation except operations that result in the disturbance of less than five acres of total land area.'' 40 CFR 122.26(b)(14)(x). In addition, as currently written, these regulations will require NPDES permits by March 10, 2003, for storm water discharges from construction sites disturbing at least one acre, and less than five acres. 40 CFR 122.26(b)(15)(i).

III. Today's Action

In today's action, EPA is proposing to postpone until March 10, 2005, the permit authorization deadline for National Pollutant Discharge Elimination System (NPDES) storm water permits for oil and gas construction activity that disturbs one to five acres of land and sites disturbing less than one acre that are part of a larger common plan of development or sale that disturbs one to five acres. Since January 2002, information has become available indicating that close to 30,000 oil and gas sites may be affected by the Phase II storm water regulations. In the spirit of Executive Order 13211, which directs EPA to consider the impact of its actions on energy-related production activities, the Agency believes it is important to review this new information in light of the Phase II rule to determine the impact on the oil and gas industry. During the proposed two-year postponement of this deadline, EPA plans to gather information about the area of land disturbed during construction of oil and gas exploration and production facilities.

In evaluating the impact, the Agency will work with states, industry, and other entities to gather and evaluate data on the development and use of appropriate best management practices for the oil and gas industry. As part of today's rulemaking, EPA is seeking additional information on size, location and other site characteristics to better evaluate compliance costs, as well as technical and cost data to evaluate best management practices appropriate to controlling storm water runoff from oil and gas starts. EPA will also evaluate the applicability of the exemption at 33 U.S.C. 1342(l)(2) to construction activity at oil and gas exploration, production, processing, or treatment operations or transmission facilities. EPA will use the additional data and analyses produced during the two-year period to determine the appropriate NPDES requirements, if any, for construction of oil and gas exploration and production facilities of one to five acres.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* It merely postpones implementation of an existing rule deadline.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information; processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business based on SBA size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic

impact on a substantial number of small entities. It merely postpones the permit authorization deadline for oil and gas construction activities that disturb one to five acres.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. This rule does not impose any costs. It merely postpones the permit authorization deadline for oil and gas construction activities that disturb one to five acres. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA. For the same reason, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, today's proposed rule is not subject to the requirements of section 203 of UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. It merely postpones the permit authorization deadline for oil and gas construction activities that disturb one to five acres. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This proposed rule does not have Tribal implications. It will not have substantial direct effects on Tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. It merely postpones the permit authorization deadline for oil and gas construction activities that disturb one to five acres. Thus, Executive Order 13175 does not apply to this rule.

In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits comment on this proposed rule from tribal officials.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This regulation is not subject to Executive Order 13045 because it is not economically significant as defined under Executive Order 12866.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866. The only effect of this proposed rule would be to delay the permit authorization requirement for affected small oil and gas operations by two years. As noted above, EPA will use the two-year delay to analyze the broader question of whether the imposition of storm water permitting requirements on construction of oil and gas facilities of one to five acres would result in a significant energy impact, and will factor the results of this analysis into its final determination regarding

appropriate requirements for such facilities.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standard bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 122

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous substances, Reporting and recordkeeping requirements, Water pollution control.

Dated: December 24, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set forth in the preamble, chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

1. The authority citation for part 122 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

2. Revise § 122.26(e)(8) to read as follows:

§ 122.26 Storm water discharges (applicable to State NPDES programs, see § 123.25).

* * * * *

(e) *Application deadlines.* * * *

(8) For any storm water discharge associated with small construction activity identified in paragraph (b)(15)(i) of this section, see § 122.21(c)(1). Discharges from these sources, other than discharges associated with small construction activity at oil and gas exploration, production, processing, and treatment operations or transmission facilities, require permit authorization by March 10, 2003, unless designated for coverage before then. Discharges associated with small construction activity at such oil and gas sites require permit authorization by March 10, 2005.

[FR Doc. 02–32984 Filed 12–27–02; 8:45 am]

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Atlantic highly migratory species—

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Atlantic highly migratory species—

Atlantic tunas, swordfish, and sharks, and Atlantic billfish; exempted fishing activities; comments due by 1-6-03; published 12-6-02 [FR 02-30874]

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LIST OF PUBLIC LAWS

Note: The List of Public Laws for the second session of the 107th Congress has been completed. It will resume when bills are enacted into public law during the next session of Congress. A cumulative List of Public Laws for the second session of the 107th Congress will appear in the issue of January 31, 2003.
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100–169	(869–048–00060–7)	46.00	Apr. 1, 2002
170–199	(869–048–00061–5)	47.00	Apr. 1, 2002
200–299	(869–048–00062–3)	16.00	Apr. 1, 2002
300–499	(869–048–00063–1)	29.00	Apr. 1, 2002
500–599	(869–048–00064–0)	46.00	Apr. 1, 2002
600–799	(869–048–00065–8)	16.00	Apr. 1, 2002
800–1299	(869–048–00066–6)	56.00	Apr. 1, 2002
1300–End	(869–048–00067–4)	22.00	Apr. 1, 2002
22 Parts:			
1–299	(869–048–00068–2)	59.00	Apr. 1, 2002
300–End	(869–048–00069–1)	43.00	Apr. 1, 2002
23	(869–048–00070–4)	40.00	Apr. 1, 2002
24 Parts:			
0–199	(869–048–00071–2)	57.00	Apr. 1, 2002
200–499	(869–048–00072–1)	47.00	Apr. 1, 2002
500–699	(869–048–00073–9)	29.00	Apr. 1, 2002
700–1699	(869–048–00074–7)	58.00	Apr. 1, 2002
1700–End	(869–048–00075–5)	29.00	Apr. 1, 2002
25	(869–048–00076–3)	68.00	Apr. 1, 2002
26 Parts:			
§§ 1.0-1–1.60	(869–048–00077–1)	45.00	Apr. 1, 2002
§§ 1.61–1.169	(869–048–00078–0)	58.00	Apr. 1, 2002
§§ 1.170–1.300	(869–048–00079–8)	55.00	Apr. 1, 2002
§§ 1.301–1.400	(869–048–00080–1)	44.00	Apr. 1, 2002
§§ 1.401–1.440	(869–048–00081–0)	60.00	Apr. 1, 2002
§§ 1.441-1.500	(869-048-00082-8)	47.00	Apr. 1, 2002
§§ 1.501–1.640	(869–048–00083–6)	44.00	[6] Apr. 1, 2002
§§ 1.641–1.850	(869–048–00084–4)	57.00	Apr. 1, 2002
§§ 1.851–1.907	(869–048–00085–2)	57.00	Apr. 1, 2002
§§ 1.908–1.1000	(869–048–00086–1)	56.00	Apr. 1, 2002
§§ 1.1001–1.1400	(869–048–00087–9)	58.00	Apr. 1, 2002
§§ 1.1401–End	(869–048–00088–7)	61.00	Apr. 1, 2002
2–29	(869–048–00089–5)	57.00	Apr. 1, 2002
30–39	(869–048–00090–9)	39.00	Apr. 1, 2002
40–49	(869–048–00091–7)	26.00	Apr. 1, 2002
50–299	(869–048–00092–5)	38.00	Apr. 1, 2002
300–499	(869–048–00093–3)	57.00	Apr. 1, 2002
500–599	(869–048–00094–1)	12.00	[5] Apr. 1, 2002
600–End	(869–048–00095–0)	16.00	Apr. 1, 2002
27 Parts:			
1–199	(869–048–00096–8)	61.00	Apr. 1, 2002

Title	Stock Number	Price	Revision Date
200–End	(869–048–00097–6)	13.00	Apr. 1, 2002
28 Parts:			
0-42	(869–048–00098–4)	58.00	July 1, 2002
43-end	(869-048-00099-2)	55.00	July 1, 2002
29 Parts:			
0–99	(869–048–00100–0)	45.00	[8]July 1, 2002
100–499	(869–048–00101–8)	21.00	July 1, 2002
500–899	(869–048–00102–6)	58.00	July 1, 2002
900–1899	(869–048–00103–4)	35.00	July 1, 2002
1900–1910 (§§ 1900 to 1910.999)	(869–048–00104–2)	58.00	July 1, 2002
1910 (§§ 1910.1000 to end)	(869–048–00105–1)	42.00	[8]July 1, 2002
1911–1925	(869–048–00106–9)	29.00	July 1, 2002
1926	(869–048–00107–7)	47.00	July 1, 2002
1927–End	(869–048–00108–5)	59.00	July 1, 2002
30 Parts:			
1–199	(869–048–00109–3)	56.00	July 1, 2002
200–699	(869–048–00110–7)	47.00	July 1, 2002
700–End	(869–048–00111–5)	56.00	July 1, 2002
31 Parts:			
0–199	(869–048–00112–3)	35.00	July 1, 2002
200–End	(869–048–00113–1)	60.00	July 1, 2002
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–048–00114–0)	56.00	July 1, 2002
191–399	(869–048–00115–8)	60.00	July 1, 2002
400–629	(869–048–00116–6)	47.00	July 1, 2002
630–699	(869–048–00117–4)	37.00	July 1, 2002
700–799	(869–048–00118–2)	44.00	July 1, 2002
800–End	(869–048–00119–1)	46.00	July 1, 2002
33 Parts:			
1–124	(869–048–00120–4)	47.00	July 1, 2002
125–199	(869–048–00121–2)	60.00	July 1, 2002
200–End	(869–048–00122–1)	47.00	July 1, 2002
34 Parts:			
1–299	(869–048–00123–9)	45.00	July 1, 2002
300–399	(869–048–00124–7)	43.00	July 1, 2002
400–End	(869–048–00125–5)	59.00	July 1, 2002
35	(869–048–00126–3)	10.00	[7]July 1, 2002
36 Parts			
1–199	(869–048–00127–1)	36.00	July 1, 2002
200–299	(869–048–00128–0)	35.00	July 1, 2002
300–End	(869–048–00129–8)	58.00	July 1, 2002
37	(869–048–00130–1)	47.00	July 1, 2002
38 Parts:			
0–17	(869–048–00131–0)	57.00	July 1, 2002
18–End	(869–048–00132–8)	58.00	July 1, 2002
39	(869–048–00133–6)	40.00	July 1, 2002
40 Parts:			
1–49	(869–048–00134–4)	57.00	July 1, 2002
50–51	(869–048–00135–2)	40.00	July 1, 2002
52 (52.01–52.1018)	(869–048–00136–1)	55.00	July 1, 2002
52 (52.1019–End)	(869–048–00137–9)	58.00	July 1, 2002
53–59	(869–048–00138–7)	29.00	July 1, 2002
60 (60.1–End)	(869–048–00139–5)	56.00	July 1, 2002
60 (Apps)	(869–048–00140–9)	51.00	[8]July 1, 2002
61–62	(869–048–00141–7)	38.00	July 1, 2002
63 (63.1–63.599)	(869–048–00142–5)	56.00	July 1, 2002
63 (63.600–63.1199)	(869–048–00143–3)	46.00	July 1, 2002
63 (63.1200-End)	(869–048–00144–1)	61.00	July 1, 2002
64–71	(869–048–00145–0)	29.00	July 1, 2002
72–80	(869–048–00146–8)	59.00	July 1, 2002
81–85	(869–048–00147–6)	47.00	July 1, 2002
86 (86.1–86.599–99)	(869–048–00148–4)	52.00	[8]July 1, 2002
86 (86.600–1–End)	(869–048–00149–2)	47.00	July 1, 2002
87–99	(869–048–00150–6)	57.00	July 1, 2002
100–135	(869–048–00151–4)	42.00	July 1, 2002
136–149	(869–048–00152–2)	58.00	July 1, 2002
150–189	(869–048–00153–1)	47.00	July 1, 2002
190–259	(869–048–00154–9)	37.00	July 1, 2002
260–265	(869–048–00155–7)	47.00	July 1, 2002
266–299	(869–048–00156–5)	47.00	July 1, 2002
300–399	(869–048–00157–3)	43.00	July 1, 2002
400–424	(869–048–00158–1)	54.00	July 1, 2002
425–699	(869–048–00159–0)	59.00	July 1, 2002
700–789	(869–048–00160–3)	58.00	July 1, 2002
790–End	(869–048–00161–1)	45.00	July 1, 2002
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–048–00162–0)	23.00	July 1, 2002
101	(869–048–00163–8)	43.00	July 1, 2002
102–200	(869–048–00164–6)	41.00	July 1, 2002
201–End	(869–048–00165–4)	24.00	July 1, 2002
42 Parts:			
1–399	(869–044–00166–7)	51.00	Oct. 1, 2001
400–429	(869–048–00167–1)	59.00	Oct. 1, 2002
430–End	(869–048–00168–9)	61.00	Oct. 1, 2002
43 Parts:			
1–999	(869–044–00169–1)	45.00	Oct. 1, 2001
1000–end	(869–048–00170–1)	59.00	Oct. 1, 2002
44	(869–048–00171–9)	47.00	Oct. 1, 2002
45 Parts:			
1–199	(869–048–00172–7)	57.00	Oct. 1, 2002
200–499	(869–048–00173–5)	31.00	[9]Oct. 1, 2002
500–1199	(869–044–00174–8)	45.00	Oct. 1, 2001
1200–End	(869–048–00175–1)	57.00	Oct. 1, 2002
46 Parts:			
1–40	(869–048–00176–0)	44.00	Oct. 1, 2002
41–69	(869–048–00177–8)	37.00	Oct. 1, 2002
70–89	(869–048–00178–6)	14.00	Oct. 1, 2002
90–139	(869–044–00179–9)	41.00	Oct. 1, 2001
140–155	(869–048–00180–8)	24.00	[9]Oct. 1, 2002
156–165	(869–048–00181–6)	31.00	[9]Oct. 1, 2002
166–199	(869–044–00182–9)	42.00	Oct. 1, 2001
200–499	(869–044–00183–7)	36.00	Oct. 1, 2001
500–End	(869–048–00184–1)	24.00	Oct. 1, 2002
47 Parts:			
0–19	(869–044–00185–3)	55.00	Oct. 1, 2001
20–39	(869–048–00186–7)	45.00	Oct. 1, 2002
40–69	(869–044–00187–0)	36.00	Oct. 1, 2001
70–79	(869–044–00188–8)	58.00	Oct. 1, 2001
80–End	(869–044–00189–6)	55.00	Oct. 1, 2001
48 Chapters:			
1 (Parts 1–51)	(869–044–00190–0)	60.00	Oct. 1, 2001
1 (Parts 52–99)	(869–044–00191–8)	45.00	Oct. 1, 2001
2 (Parts 201–299)	(869–048–00192–1)	53.00	Oct. 1, 2002
3–6	(869–048–00193–0)	30.00	Oct. 1, 2002
7–14	(869–044–00194–2)	51.00	Oct. 1, 2001
15–28	(869–044–00195–1)	53.00	Oct. 1, 2001
29–End	(869–048–00196–4)	38.00	[9]Oct. 1, 2002
49 Parts:			
1–99	(869–044–00197–7)	55.00	Oct. 1, 2001
100–185	(869–044–00198–5)	60.00	Oct. 1, 2001
186–199	(869–048–00199–9)	18.00	Oct. 1, 2002
200–399	(869–044–00200–1)	60.00	Oct. 1, 2001
400–999	(869–044–00201–9)	58.00	Oct. 1, 2001
1000–1199	(869–048–00202–2)	25.00	Oct. 1, 2002

Title	Stock Number	Price	Revision Date
1200–End	(869–048–00203–1)	30.00	Oct. 1, 2002
50 Parts:			
1–199	(869–044–00204–3)	63.00	Oct. 1, 2001
200–599	(869–044–00205–1)	36.00	Oct. 1, 2001
600–End	(869–044–00206–0)	55.00	Oct. 1, 2001
CFR Index and Findings Aids	(869–048–00047–0)	59.00	Jan. 1, 2002
Complete 2001 CFR set		1,195.00	2001
Microfiche CFR Edition:			
Subscription (mailed as issued)		298.00	2000
Individual copies		2.00	2000
Complete set (one-time mailing)		290.00	2000
Complete set (one-time mailing)		247.00	1999

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2001, through January 1, 2002. The CFR volume issued as of January 1, 2001 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2001. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 2001, through April 1, 2002. The CFR volume issued as of April 1, 2001 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2001. The CFR volume issued as of July 1, 2000 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2001, through July 1, 2002. The CFR volume issued as of July 1, 2001 should be retained.

[9] No amendments to this volume were promulgated during the period October 1, 2001, through October 1, 2002. The CFR volume issued as of October 1, 2001 should be retained.