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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE188, Special Condition 23–131–SC]

Special Conditions; Rockwell Collins, Incorporated on the Raytheon Model B300/B300C; Protection of Systems for High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued to Rockwell Collins, Cedar Rapids, Iowa 52498 for a Supplemental Type Certificate for the Raytheon Model B300/B300C airplanes. This airplane will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These novel and unusual design features include the installation of a ProLine 21 avionics system, which includes an electronic flight instrument system (EFIS) display for which the applicable regulations do not contain adequate or appropriate airworthiness standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to this airplane.

DATES: The effective date of these special conditions is December 18, 2002. Comments must be received on or before February 3, 2003.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. CE188, Room 506, 901 Locust, Kansas City, Missouri 64106. All comments must be marked: Docket No. CE188. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Wes Ryan, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329–4127.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. CE188.'' The postcard will be date stamped and returned to the commenter.

Background

On November 7, 2001, Rockwell Collins, Incorporated, Cedar Rapids, Iowa 52498 made an application to the FAA for a new Supplemental Type Certificate for the Raytheon Aircraft Model B300/B300C airplanes. The airplane is currently approved under TC No. A24CE. The proposed modification incorporates the installation of the Rockwell Collins ProLine 21 Display System. The ProLine 21 system will replace the EFIS originally installed on the airplane. Like the original EFIS, the new system has the potential to be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR part 21, § 21.101, Rockwell Collins must show that the Raytheon Model B300/B300C aircraft meets the following provisions, or the applicable regulations in effect on the date of application for the change to the Raytheon Model B300/B300C. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in Type Certificate Data Sheet A24CE are as follows:

Certification Basis FAR Part 23 effective February 1, 1965, as amended by Amendments 23–1 through 23–34; Federal Aviation Regulations part 36 effective December 1, 1969, as amended by Amendment 36–1 through 36–15; SFAR 27 effective February 1, 1974, as amended by Amendments 27–1 through 27–6 and Exemption No. 5077 from compliance with § 23.207(c). Federal Aviation Regulations part 23, § § 23.201, 23.203, and 23.205 through Amendment 23–45 (S/N FN–1 and up only). Effective January 20, 1994, Federal Aviation Regulations § 23.1457 as amended by Amendment 23–35. Exemption 5599 from compliance with § 23.53(c)(1), for use of ground minimum control speed (V_{MCG}) for determination of takeoff decision speed (V1), (Serials FL–111, FM–9, FN–2 and after, or prior airplanes modified by Beech Kit No. 130–3004).

Compliance with ice protection has been demonstrated in accordance with § 23.1419 when ice protection equipment is installed in accordance with the Equipment List. Equivalent Safety Findings: § 23.781(b) for shape of the propeller control knob; § 23.1305(g)

for use of fuel low pressure warning annunciators in lieu of the fuel pressure indicators; § 23.1321(d) for the basic ''T'' instrument panel arrangement.

Discussion

If the Administrator finds that the applicable airworthiness standards do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, as defined in § 11.19, are issued in accordance with § 11.38 after public notice and become part of the type certification basis in accordance with 14 CFR part 21 § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model already included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101.

Novel or Unusual Design Features

Rockwell Collins will incorporate certain novel and unusual design features into the Raytheon Model B300/B300C airplane for which the airworthiness standards do not contain adequate or appropriate safety standards for protection from the effects of HIRF. These features, including EFIS, are susceptible to the HIRF environment and were not envisaged by the existing regulations for this type of airplane.

Protection of Systems from High Intensity Radiated Fields (HIRF): Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the use of sensitive solid state advanced components in analog and digital electronics circuits, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by the HIRF. The HIRF can degrade electronic systems performance by damaging components or upsetting system functions.

Furthermore, the HIRF environment has undergone a transformation that was not foreseen when the current requirements were developed. Higher energy levels are radiated from transmitters that are used for radar, radio, and television. Also, the number of transmitters has increased significantly. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit-installed equipment through the cockpit window apertures is undefined.

The combined effect of the technological advances in airplane design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of the airplane. Effective measures against the effects of exposure to HIRF must be provided by the design and installation of these systems. The accepted maximum energy levels in which civilian airplane system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. These special conditions require that the airplane be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels, which are lower than previous required values, are believed to represent the worst case to which an airplane would be exposed in the operating environment.

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HIRF environment in paragraph 1 or, as an option to a fixed value using laboratory tests, in paragraph 2, as follows:

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HIRF environment defined below:

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz ...	50	50
100 kHz–500kHz ..	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz ...	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz ...	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz ...	2000	200
18 GHz–40 GHz ...	600	200

The field strengths are expressed in terms of peak root-mean-square (rms) values over the complete modulation period.

or,

(2) The applicant may demonstrate by a system test and analysis that the electrical and electronic systems that perform critical functions can withstand a minimum threat of 100 volts rms per meter, electrical field strength, from 10 kHz to 18 GHz. When using this test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation.

A preliminary hazard analysis must be performed by the applicant, for approval by the FAA, to identify either electrical or electronic systems that perform critical functions. The term ''critical'' means those functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HIRF requirements. A system may perform both critical and non-critical functions. Primary electronic flight display systems, and their associated components, perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements apply only to critical functions.

Compliance with HIRF requirements may be demonstrated by tests, analysis, models, similarity with existing systems, or any combination of these. Service experience alone is not acceptable since normal flight operations may not include an exposure to the HIRF environment. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

Applicability

As discussed above, these special conditions are applicable to the Raytheon Model B300/B300C airplanes. Should Rockwell Collins apply at a later date for a supplemental type certificate to modify any other model on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the

notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR part 21, § 21.16 and § 21.101; and 14 CFR 11.38 and 11.19.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Raytheon Aircraft Company Model B300/B300C airplanes modified by Rockwell Collins to add an EFIS.

1. *Protection of Electrical and Electronic Systems from High Intensity Radiated Fields (HIRF).* Each system that performs critical functions must be designed and installed to ensure that the operations, and operational capabilities of these systems to perform critical functions, are not adversely affected when the airplane is exposed to high intensity radiated electromagnetic fields external to the airplane.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions:* Functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Kansas City, Missouri on December 18, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–33126 Filed 12–31–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE193, Special Condition 23–133–SC]

Special Conditions: S–TEC Corporation; Various Airplane Models; Protection of Systems for High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued to S–TEC Corporation, One S–TEC Way Municipal Airport, Mineral Wells, TX 76067, for a Supplemental Type Certificate for the models listed under the heading ''Type Certification Basis.'' These special conditions include various airplane models to streamline the certification process as recommended from completed Safer Sky Programs. The primary objective of streamlining the certification process is to improve the safety of the airplane fleet by fostering the incorporation of both new technologies that can be certificated affordably under 14 CFR part 23.

The airplanes will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These novel and unusual design features include the installation of single or dual Meggitt Avionics Magic electronic flight instrument system (EFIS) manufactured by Meggitt Avionics, for which the applicable regulations do not contain adequate or appropriate airworthiness standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

DATES: The effective date of these special conditions is December 18, 2002. Comments must be received on or before before February 3, 2003.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. CE193, Room 506, 901 Locust, Kansas City, Missouri 64106. All comments must be marked: Docket No. CE193. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Wes Ryan, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329–4127.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the design approval and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. CE193.'' The postcard will be date stamped and returned to the commenter.

Background

On September 16, 2002, S–TEC Corporation, One S–TEC Way, Mineral Wells Airport, Mineral Wells, Texas 76067, made an application to the FAA for a new Supplemental Type Certificate for the Raytheon (Beech) 65–90, 55–A90, 65–A90–1, 65–A90–4, B90, and C90 airplane models. They have also identified future STC projects that need the special conditions. All models are currently approved under the type

certification basis listed in the paragraph headed ''Type Certification Basis.'' The proposed modification incorporates a novel or unusual design feature, such as digital avionics consisting of an EFIS that is vulnerable to HIRF external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR part 21, § 21.101, S–TEC Corporation must show that affected airplane models, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate Numbers listed below or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the original ''type certification basis'' and can be found in the Type Certificate Numbers listed below. In addition, the type certification basis of airplane models that embody this modification will include § 23.1301 of Amendment 23–20; § § 23.1309, 23.1311, and 23.1321 of Amendment 23–49; and § 23.1322 of Amendment 23–43; exemptions, if any; and the special conditions adopted by this rulemaking action.

Aircraft model	Type certificate number
Raytheon (Beech) 65–90, 65–A90, 65–A90–1, 65–A90–4, B90, C90, and E90 ...	3A20, Rev. 60, 9/10/01
Raytheon (Beech) King Air 200	A24CE, Rev. 82, 4/23/02
Twin Commander Aircraft Corporation 690C, 695, 695A, and 695B	2A4, Rev. 46, 4/3/00
Cessna 425 Conquest I	A7CE, Rev. 45, 7/12/02
Piper PA–31T Cheyenne II	A8EA, Rev. 21, 4/8/98

Discussion

If the Administrator finds that the applicable airworthiness standards do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, as defined in § 11.19, are issued in accordance with § 11.38 after public notice and become part of the type certification basis in accordance with § 21.101(b)(2) of Amendment 21–69.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model already included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101.

Novel or Unusual Design Features

S–TEC Corporation plans to incorporate certain novel and unusual design features into an airplane for which the airworthiness standards do not contain adequate or appropriate safety standards for protection from the effects of HIRF. These features include EFIS, which are susceptible to the HIRF environment, that were not envisaged by the existing regulations for this type of airplane.

Protection of Systems from HIRF: Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the use of sensitive solid state advanced components in analog and digital electronics circuits, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by the HIRF. The HIRF can degrade electronic systems performance by damaging components or upsetting system functions.

Furthermore, the HIRF environment has undergone a transformation that was not foreseen when the current requirements were developed. Higher energy levels are radiated from transmitters that are used for radar, radio, and television. Also, the number of transmitters has increased significantly. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit-installed equipment through the cockpit window apertures is undefined.

The combined effect of the technological advances in airplane design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of the airplane. Effective measures against the effects of exposure to HIRF must be provided by the design and installation of these systems. The accepted maximum energy levels in which civilian airplane system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. These special conditions require that the airplane be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels, which are lower than previous required values, are believed to represent the worst case to which an airplane would be exposed in the operating environment.

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HIRF environment in paragraph 1 or, as an option to a fixed value using laboratory tests, in paragraph 2, as follows:

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HIRF environment defined below:

Frequency	Field strength (volts per meter)*	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100

Frequency	Field strength (volts per meter)*	
	Peak	Average
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

* The field strengths are expressed in terms of peak root-mean-square (rms) values.

or,

(2) The applicant may demonstrate by a system test and analysis that the electrical and electronic systems that perform critical functions can withstand a minimum threat of 100 volts per meter peak electrical field strength from 10 kHz to 18 GHz. When using this test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation.

A preliminary hazard analysis must be performed by the applicant, for approval by the FAA, to identify either electrical or electronic systems that perform critical functions. The term ''critical'' means those functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HIRF requirements. A system may perform both critical and non-critical functions. Primary electronic flight display systems, and their associated components, perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements apply only to critical functions.

Compliance with HIRF requirements may be demonstrated by tests, analysis, models, similarity with existing systems, or by any combination of these. Service experience alone is not acceptable since normal flight operations may not include an exposure to the HIRF environment. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

Applicability

As discussed above, these special conditions are applicable to one modification to the airplane models listed under the heading ''Type Certification Basis.'' Should S–TEC Corporation apply to extend this modification to include additional airplane models, the special conditions would extend to these models as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features of one modification to several models of airplanes. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of some airplane models, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, and 44701; 14 CFR part 21, § § 21.16 and 21.101; and 14 CFR part 11, § § 11.38 and 11.19.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for airplane models listed under the ''Type Certification Basis'' heading modified by S–TEC Corporation to add an EFIS.

1. *Protection of Electrical and Electronic Systems from High Intensity Radiated Fields (HIRF).* Each system that performs critical functions must be designed and installed to ensure that the operations, and operational capabilities of these systems to perform critical functions, are not adversely affected when the airplane is exposed to high intensity radiated electromagnetic fields external to the airplane.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions:* Functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Kansas City, Missouri, on December 18, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–33131 Filed 12–31–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–216–AD; Amendment 39–12912; AD 2002–21–06]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–81 (MD–81), (DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects information in an existing airworthiness directive (AD) that applies to all McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83

(MD–83), DC–9–87 (MD–87), and MD–88 airplanes. That AD currently requires revisions to the Airplane Flight Manual; installation of inspection aids on the wing upper surfaces; and, among other actions, installation of an overwing heater blanket system or primary upper wing ice detection system, and installation of a heater protection panel or an equipment protection device on certain overwing heater blanket systems. That AD also requires disabling the anti-ice systems for the upper wing surface on certain airplanes. This document corrects incorrect paragraph references in two paragraphs. This correction is necessary to ensure that operators are aware of an incorrect reference in paragraphs (1)(2)(i) and (1)(2)(ii) of the existing AD.

DATES: Effective November 8, 2002.

In incorporation by reference of certain publications listed in the regulations was approved previously by the Director of the Federal Register as of November 8, 2002, (67 FR 65298, October 24, 2002).

The incorporation by reference of certain publications, as listed in the regulations, was approved previously by the Director of the Federal Register as January 17, 1992 (57 FR 2014, January 17, 1992).

The incorporation by reference of certain other publications, as listed in the regulations, was approved previously by the Director of the Federal Register as of May 7, 2001 (66 FR 17499, April 2, 2001).

The comment period specified for the existing rule remains December 23, 2002.

FOR FURTHER INFORMATION CONTACT: *Technical Information:* Daniel Bui, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5339; fax (562) 627–5210.

Other Information: Judy Golder, Airworthiness Directive Technical Editor/Writer; telephone (425) 687–4241, fax (425) 227p–1232, Questions or comments may also be sent via the Internet using the following address: *judy.golder@faa.gov.* Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

SUPPLEMENTARY INFORMATION: On October 9, 2002, the Federal Aviation Administration (FAA) issued AD 2002–21–06, amendment 39–12912 (67 FR 65298, October 24, 2002), which applies to all McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes. That AD requires revisions to the Airplane Flight Manual; installation of inspection aids on the wing upper surfaces; and, among actions, other actions, installation of an overwing heater blanket system or primary upper wing ice detection system, and installation of a heater protection panel or an equipment protection device on certain overwing heater blanket systems. That AD also requires disabling the anti-ice systems for the upper wing surface on certain airplanes. The actions requires by that AD are intended to prevent ice ingestion into one or both engines and consequent loss of thrust from one or both engines; and damage to the upper wing skin surface and its structure, due to prolonged short-circuit electrical arcing of certain anti-ice systems.

Need for the Correction

The FAA notes that an inadvertent transpositions of paragraph identifiers occurred in paragraphs (1)(2)(i) and (1)(2)(ii) of AD 2002–21–06. Paragraph (1) of that AD specifies information regarding alternative methods of compliance (AMOCs) for the requirements of that AD. Specifically, paragraph (1)(2)(i) states that installation of a non-skid, striped triangular symbol per Option 5 of McDonnell Douglas Service Bulletin MD80–30–059, Revision 4 through Revision 7, is approved as an AMOC with paragraphs (b) and (i)(2) of that AD. While paragraph (i)(2) of that AD is a correct reference, the reference to paragraph (b) is incorrect and should read paragraph ''(c)'' of the AD. Conversely, paragraph (1)(2)(ii) of that AD states that revision of the Configuration Deviation List (CDL) Appendix of the AFM by inserting a copy of CDL Appendix, Section I, Page 2A, dated March 10, 1993, into the AFM, is approved as an AMOC with paragraphs (c) and (i)(3) of the AD. While paragraph (i)(3) of that AD is correct reference, the reference to paragraph (c) is incorrect and should read paragraph ''(b)'' of that AD.

The FAA has determined that a correction to AD 2002–21–06 is necessary to revise incorrect paragraph references in paragraphs (1)(2)(i) and (1)(2)(ii) of that AD. This correction specifies the appropriate paragraphs for which the specified AMOCs apply.

Correction of Publication

This document corrects the errors and correctly adds the AD as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The AD is reprinted in its entirety for the convenience of affected operators. The effective date of the AD remains November 8, 2002.

Since this action only corrects two incorrect paragraph references for AMOCs, it has no adverse economic impact and imposes no additional burden on any person. Therefore, the FAA has determined that notice and public procedures are unnecessary.

List of Subjects in 14 CFR Part 39

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

Adoption of the Correction

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

PART 39–AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Corrected]

2. Section 39.13 is amended by correctly adding the following airworthiness directive (AD):

2002–21–06 McDonnell Douglas: Amendment 39–12912. Docket 2002–NM–216–AD.

Applicability: All Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

The prevent damage to the upper wing skin surface and its structure, due to prolonges short-circuit electrical arcing of the anti-ice system; accomplish the following:

Restatement of AD 2001–06–16 COR

Airplane Flight Manual Revision

(a) Within 10 days after January 17, 1992 (the effective date of AD 92–03–02,

amendment 39–8156), revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following. This may be accomplished by inserting a copy of this AD in the AFM.

''Ice on Wing Upper Surfaces

Caution

Ice shedding from the wing upper surface during takeoff can cause severe damage to one or both engines, leading to surge, vibration, and complete thrust loss. The formation of ice can occur on wing surfaces during exposure of the airplane to normal icing conditions. Clear ice can also occur on the wing upper surfaces when cold-soaked fuel is in the main wing fuel tanks, and the airplane is exposed to conditions of high humidity, rain, drizzle, or fog at ambient temperatures well above freezing. Often, the ice accumulation is clear and difficult to detect visually. The ice forms most frequently on the inboard, aft corner of the main wing tanks. [End of Cautionary Note]

The wing upper surfaces must be physically checked for ice when the airplane has been exposed to conditions conducive to ice formation. Takeoff may not be initiated unless the flight crew verifies that a visual check and a physical (hands-on) check of the wing upper surfaces have been accomplished, and that the wing is clear of ice accumulation when any of the following conditions occur:

(1) When the ambient temperature is less than 50 degrees F and high humidity or visible moisture (rain, drizzle, sleet, snow, fog, *etc.*) is present;

(2) When frost or ice is present on the lower surface of either wing;

(3) After completion of de-icing.

When inspection aids (*i.e.,* tufts, decals, mount pads, painted symbols, and paint stripes) are installed in accordance with McDonnell Douglas MD–80 Service Bulletin 30–59, the physical check may be made by assuring that all installed tufts move freely.

Note

This limitation does not relieve the requirement that aircraft surfaces are free of frost, snow, and ice accumulation, as required by Federal Aviation Regulations Sections 91.527 and 121.629. [end of Note]''

AFM Configuration Deviation List Revision

(b) Within 10 days after January 17, 1992, revise the Configuration Deviation List (CDL) Appendix of the FAA-approved AFM to include the following. This may be accomplished by inserting a copy of this AD in the AFM.

''30–80–01 Triangular Decal and Tuft Assemblies

Up to two (2) decals or tufts per side may be missing, provided:

(a) At least one decal and tuft on each side is located along the aft spar line; and

(b) The tufts are used for performing the physical check to determine that the upper wing is free of ice by observing that the tufts move freely.

Up to eight (8) decals and/or tufts may be missing, provided:

(a) Takeoff may not be initiated unless the flight crew verifies that a physical (hands-on) check is made of the upper wing in the location of the missing decals and/or tufts to assure that there is no ice on the wing when icing conditions exist; or

(b) When the ambient temperature is more than 50 degrees F.''

Installation of Inspection Aids

(c) Within 30 days after January 17, 1992, install inspection aids (*i.e.,* tufts, decals, mount pads, painted symbols, and paint stripes) on the inboard side of the wings' upper surfaces, in accordance with McDonnell Douglas Service Bulletin 30–59, dated September 18, 1989; Revision 1, dated January 5, 1990; or Revision 2, dated August 15, 1990.

Repetitive Tests and One-Time Inspection

(d) For airplanes on which an overwing heater blanket system was installed without installation of a heater protection panel (HPP) or an equipment protection device (EPD) prior to May 7, 2001 (the effective date of 2001–06–16 COR, amendment 39–12163): Within 60 days days after May 7, 2001, accomplish the actions specified in paragraph (d)(1) or (d)(2) of this AD, as applicable.

(1) For airplanes on which the overwing heater blanket system was installed in accordance with McDonnell Douglas Service Bulletin MD80–30–071, Revision 02, dated February 6, 1996; or McDonnell Douglas Service Bulletin MD80–30–078, Revision 01, dated April 8, 1997: Accomplish paragraphs (d)(1)(i) and (d)(1)(ii) of this AD.

(i) Remove secondary access covers, and perform a one-time detailed visual inspection to detect discrepancies (mechanical damage or punctures in the upper skin of the blanket, prying damage on the panel, and fuel leakage) of the overwing heater blanket, in accordance with McDonnell Douglas Alert Service Bulletin MD80–30A087, dated September 22, 1997. And,

(ii) Accomplish paragraph (d)(1)(ii)(A) or (d)(1)(ii)(B) of this AD.

(A) Perform dielectric withstanding voltage and resistance tests in accordance with McDonnell Douglas Alert Service Bulletin MD80–30A087, dated September 22, 1997. Repeat the tests thereafter at intervals not to exceed 150 days, until installation of an HPP in accordance with paragraph (f)(1)(i) or (f)(1)(ii) of this AD, as applicable.

(B) Deactivate the overwing heater blanket system until accomplishment of dielectric withstanding voltage and resistance tests specified in paragraph (d)(1)(ii)(A). If the overwing heater blanket system is deactivated as provided by this paragraph, continue to accomplish the requirements of paragraphs (a), (b), and (c) of this AD.

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

(2) For airplanes on which the overwing heater blanket system was installed in accordance with TDG Aerospace, Inc., STC SA6042NM: Accomplish paragraphs (d)(2)(i) and (d)(2)(ii) of this AD.

(i) Remove secondary access covers, and perform a one-time detailed visual inspection to detect discrepancies (mechanical damage or punctures in the upper skin of the blanket, prying damage on the panel, and fuel leakage) of the overwing heater blanket, in accordance with McDonnell Douglas Alert Service Bulletin MD80–30A087, dated September 22, 1997. And,

(ii) Accomplish paragraph (d)(2)(ii)(A) or (d)(2)(ii)(B) of this AD.

(A) Perform dielectric withstanding voltage and resistance tests in accordance with McDonnell Douglas Alert Service Bulletin MD80–30A087, dated September 22, 1997. Repeat the tests thereafter at intervals not to exceed 150 days, until installation of an EPD in accordance with paragraph (f)(2)(i) of this AD.

(B) Deactivate overwing heater blanket system until accomplishment of dielectric withstanding voltage and resistance tests specified in paragraph (d)(2)(ii)(A). If the overwing heater blanket system is deactivated as provided by this paragraph, continue to accomplish the requirements of paragraphs (a), (b), and (c) of this AD.

Corrective Action

(e) If any discrepancy is detected during any inspection or test performed in accordance with paragraph (d) of this AD, prior to further flight, repair or replace the affected heater blanket, in accordance with McDonnell Douglas Alert Service Bulletin MD80–30A087, dated September 22, 1997; except as provided in paragraph (h) of this AD.

Note 3: McDonnell Douglas Alert Service Bulletin MD80–30A087, dated September 22, 1997, references TDG Aerospace Document E95–451, Revision B, dated January 31, 1996, as an additional source of service information for accomplishment of repair or replacement of the overwing heater blanket.

Installation of Overwing Heater Blanket or Primary Upper Wing Ice Detection System

(f) Within 3 years after May 7, 2001, do the requirements of either paragraph (f)(1) or (f)(2) of this AD.

(1) Do the actions specified in paragraph (f)(1)(i) or (f)(1)(ii) of this AD, as applicable.

(i) For airplanes listed in Group 1 in McDonnell Douglas Service Bulletin MD80–30–090, dated October 19, 1999: Install n overwing heater blanket system in accordance with McDonnell Douglas Service Bulletin MD80–30–071, Revision 02, dated February 6, 1996; and modify and reidentify the existing HPP in accordance with McDonnell Douglas Service Bulletin MD80–30–090. Modification of the existing HPP in accordance with this paragraph constitutes terminating action for the repetitive inspections required by (d)(1)(ii)(A) of this AD.

(ii) For airplanes listed in Group 2 in McDonnell Douglas Service Bulletin MD80–30–090, dated October 19, 1999: Install an overwing heater blanket system in

accordance with McDonnell Douglas Service Bulletin MD80–30–078, Revision 01, dated April 8, 1997; and install an HPP and associated wiring in accordance with McDonnell Douglas Service Bulletin MD80–30–090. Installation of an HPP and associated wiring in accordance with this paragraph constitutes terminating action for the repetitive inspections required by (d)(1)(ii)(A) of this AD.

Note 4: For other airplanes, accomplishment of the requirements of paragraph (f)(1)(i) or (f)(1)(ii) of this AD may be acceptable per paragraph (i)(1) of this AD.

(2) Accomplish the actions specified in either paragraph (f)(2)(i), (f)(2)(ii), or (f)(2)(iii) of this AD.

(i) Install an overwing heater blanket system, and install an EPD that provides a circuit protection function to the overwing heater blanket, in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Installation of an EPD in accordance with this paragraph constitutes terminating action for the repetitive inspections required by (d)(2)(ii)(A) of this AD.

Note 5: Installation of an overwing heater blanket system and installation of an EPD that provides a circuit protection function to the overwing heater blanket, in accordance with TDG Aerospace, Inc., SA 6042NM, or TDG Master Drawing List (MDL) E93–104, Revision R, dated October 25, 2000; is an approved means of compliance with the requirements of paragraph (f)(2)(i) of this AD.

(ii) Install an overwing heater blanket system in accordance with a method approved by the Manager, Los Angeles ACO.

(iii) Install an FAA-approved primary upper wing ice detection system in accordance with a method approved by the Manager, Los Angeles ACO.

Note 6: Boeing (McDonnell Douglas) has received FAA approval of a primary upper wing ice detection system that is considered to be an alternative method of compliance (AMOC) with the requirements of paragraph (f)(2)(iii) of this AD. Information concerning such AMOCs may be obtained from the Los Angeles ACO.

AFM Revision

(g) Except as provided by paragraph (h) of this AD, prior to further flight after accomplishment of the installation required by paragraph (f)(1) or (f)(2) of this AD, revise the Limitations Section of the FAA-approved AFM to include the following. This may be accomplished by inserting a copy of this AD in the AFM. After accomplishment of the installation required by paragraph (f)(1) or (f)(2) of this AD and this AFM revision, the AFM revisions required by paragraphs (a) and (b) of this AD may be removed from the AFM, and the inspection aids required by paragraph (c) of this AD may be removed from the airplane.

''Ice on Wing Upper Surfaces

Caution

Ice shedding from the wing upper surface during takeoff can cause severe damage to one or both engines, leading to surge, vibration, and complete thrust loss. The formation of ice can occur on wing surfaces during exposure of the airplane to normal icing conditions. Clear ice can also occur on the wing upper surfaces when cold-soaked fuel is in the main wing fuel tanks, and the airplane is exposed to conditions of high humidity, rain, drizzle, or fog at ambient temperatures well above freezing. Often, the ice accumulation is clear and difficult to detect visually. The ice forms most frequently on the inboard, aft corner of the main wing tanks. [End of Cautionary Note]''

MMEL Provision

(h) An airplane may be operated with an inoperative overwing heater blanket or primary upper wing ice detection system for 10 days per the Master Minimum Equipment List (MMEL), provided that the actions specified in paragraphs (h)(1), (h)(2), and (h)(3) of this AD are done before further flight.

(1) Revise the Limitations Section of the FAA-approved AFM to include the following. This may be accomplished by inserting a copy of this AD in the AFM.

''Ice on Wing Upper Surfaces

Caution

The wing upper surfaces must be physically checked for ice when the airplane has been exposed to conditions conducive to ice formation. Takeoff may not be initiated unless the flight crew verifies that a visual check and a physical (hands-on) check of the wing upper surfaces have been accomplished, and that the wing is clear of ice accumulation when any of the following conditions occur:

(1) When the ambient temperature is less than 50 degrees F and high humidity or visible moisture (rain, drizzle, sleet, snow, fog, *etc.*) is present;

(2) When frost or ice is present on the lower surface of either wing;

(3) After completion of de-icing.

When inspection aids (*i.e.* tufts, decals, mount pads, painted symbols, and paint stripes) are installed in accordance with McDonnell Douglas MD–80 Service Bulletin 30–59, the physical check may be made by assuring that all installed tufts move freely.

Note

This limitation does not relieve the requirement that aircraft surfaces are free of frost, snow, and ice accumulation, as required by Federal Aviation Regulations Sections 91.527 and 121.629. [End of Note]''

(2) Revise the CDL Appendix of the FAA-approved AFM to include the following. This may be accomplished by inserting a copy of this AD in the AFM.

''30–80–01 Triangular Decal and Tuft Assemblies

Up to two (2) decals or tufts per side may be missing, provided:

(a) At least one decal and tuft on each side is located along the aft spar lien; and

(b) The tufts are used for performing the physical check to determine that the upper wing is free of ice by observing that the tufts move freely.

Up to eight (8) decals and/or tufts may be missing, provided:

(a) Takeoff may not be initiated unless the flight crew verifies that a physical (hands-on) check is made of the upper wing in the location of the missing decals and/or tufts to assure that there is no ice on the wing when icing conditions exist; or

(b) When the ambient temperature is more than 50 degrees F.''

(3) Install inspection aids (*i.e.*, tufts, decals, mount pads, painted symbols, and paint stripes) on the inboard side of the wings' upper surfaces, in accordance with McDonnell Douglas Service Bulletin 30–59, dated September 18, 1989; Revision 1, dated January 5, 1990; or Revision 2, dated August 15, 1990.

New Requirements of This Ad

Note 7: The Honeywell Anti-Ice System specified in paragraphs (i), (j), and (k) of this AD, is also known and specified as an overwing heater blanket system installed in accordance with AlliedSignal Supplemental Type Certificate (STC) STC SA6061NM.

For Airplanes Equipped With a Honeywell Anti-Ice System Installed Per STC SA6061NM

(i) For airplanes equipped with a Honeywell Anti-Ice System installed per STC SA6061NM: Accomplish the actions specified in paragraphs (i)(1), (i)(2), (i)(3), and (i)(4) of this AD, at the times specified in those paragraphs.

(1) Within 72 hours after the effective date of this AD, disable the Honeywell Anti-Ice System installed per STC SA6061NM, per Honeywell Alert Service Bulletin 109XXXX–30–38, dated August 8, 2002.

(2) Within 72 hours after the effective date of this AD, revise the Limitations Section of the FAA-approved AFM to include the following (this may be accomplished by inserting a copy of this AD in the AFM):

''Ice on Wing Upper Surfaces

Caution

Ice shedding from the wing upper surface during takeoff can cause severe damage to one or both engines, leading to surge, vibration, and complete thrust loss. The formation of ice can occur on wing surfaces during exposure of the airplane to normal icing conditions. Clear ice can also occur on the wing upper surfaces when cold-soaked fuel is in the main wing fuel tanks, and the airplane is exposed to conditions of high humidity, rain, drizzle, or fog at ambient temperatures well above freezing. Often, the ice accumulation is clear and different to detect visually. The ice forms most frequently on the inboard, aft corner of the main wing tanks. [End of Cautionary Note]

The wing upper surfaces must be physically checked for ice when the airplane has been exposed to conditions conducive to ice formation. Takeoff may not be initiated unless the flight crew verifies that a visual check and a physical (hands-on) check of the wing upper surfaces have been accomplished, and that the wing is clear of ice accumulation when any of the following conditions occur:

(1) When the ambient temperature is less than 50 degrees F and high humidity or

visible moisture (rain, drizzle, sleet, snow, fog, *etc.*) is present;

(2) When frost or ice is present on the lower surface of either wing;

(3) After completion of de-icing. When inspection aids (*i.e.* tufts, decals, mount pads, painted symbols, and paint stripes) are installed in accordance with McDonnell Douglas MD–80 Service Bulletin 30–59, the physical check may be made by assuring that all installed tufts move freely.

Note

This limitation does not relieve the requirement that aircraft surfaces are free of frost, snow, and ice accumulation, as required by Federal Aviation Regulations Sections 91.527 and 121.629. [End of Note]''

AFM Configuration Deviation List Revision

(3) Within 72 hours after the effective date of this AD, revise the CDL Appendix of the FAA-approved AFM to include the following (this may be accomplished by inserting a copy of this AD in the AFM):

''30–80–01 Triangular Decal and Tuft Assemblies

Up to two (2) decals or tufts per side may be missing, provided:

(a) At least one decal and tuft on each side is located along the aft spar line; and

(b) The tufts are used for performing the physical check to determine that the upper wing is free of ice by observing that the tufts move freely.

Up to eight (8) decals and/or tufts may be missing, provided:

(a) Takeoff may not be initiated unless the flight crew verifies that a physical (hands-on) check is made of the upper wing in the location of the missing decals and/or tufts to assure that there is no ice on the wing when icing conditions exist; or

(b) When the ambient temperature is more than 50 degrees F.''

Installation of Inspection Aids

(4) Within 30 days after the effective date of this AD, install inspection aids (*i.e.,* tufts, decals, mount pads, painted symbols, and paint stripes) on the inboard side of the wings' upper surfaces, in accordance with McDonnell Douglas Service Bulletin 30–59, dated September 18, 1989; Revision 1, dated January 5, 1990; or Revision 2, dated August 15, 1990.

Note 8: Operators should note that certain AMOCs have been approved as acceptable methods of compliance with paragraph (i)(4) of this AD. Information concerning such AMOCs may be obtained from the Manager, Los Angeles ACO.

Installation of Overwing Heater Blanket or Primary Upper Wing Ice Detection System

(j) For airplanes equipped with disabled Honeywell Anti-Ice Systems installed per STC SA6061NM: Within 3 years after May 7, 2001, accomplish the requirements of paragraph (j)(1), (j)(2), or (j)(3) of this AD.

(1) Install an overwing heater blanket system, and install an EPD that provides a circuit-protection function to the overwing heater blanket, in accordance with a method approved by the Manager, Los Angeles ACO, FAA.

Note 9: Installation of an overwing heater blanket system and installation of an EPD that provides a circuit-protection function to the overwing heater blanket, in accordance with TDG Aerospace, Inc., SA60242NM, or TDG Master Drawing List (MDL) E93–104, Revision R, dated October 25, 2000; is an approved means of compliance with the requirements of paragraph (j)(1) of this AD.

(2) Install an overwing heater blanket system in accordance with a method approved by the Manager, Los Angeles ACO.

(3) Install an FAA-approved primary upper wing ice detection system in accordance with a method approved by the Manager, Los Angeles aCO.

Note 10: Boeing (McDonnell Douglas) has received FAA approval of an acceptable primary upper wing ice detection system, which is considered to be an acceptable method of compliance with the requirements of paragraph (j)(3) of this AD when accomplished in accordance with a method approved by the Manager, Los Angeles ACO.

AFM Revision

(k)(1) For airplanes equipped with a disabled Honeywell Anti-Ice Systems installed per STC SA6061NM: Prior to further flight after accomplishment of the installation required by paragraph (j)(1), (j)(2), or (j)(3) of this AD, revise the Limitations Section of the FAA-approved AFM to include the following (this may be accomplished by inserting a copy of this AD in the AFM):

''Ice on Wing Upper Surfaces

Caution

Ice shedding from the wing upper surface during takeoff can cause severe damage to one or both engines, leading to surge, vibration, and complete thrust loss. The formation of ice can occur on wing surfaces during exposure of the airplane to normal icing conditions. Clear ice can also occur on the wing upper surfaces when cold-soaked fuel is in the main wing fuel tanks, and the airplane is exposed to conditions of high humidity, rain, drizzle, or fog at ambient temperatures well above freezing. Often, the ice accumulation is clear and difficult to detect visually. The ice forms most frequently on the inboard, aft corner of the main wing tanks. [End of Cautionary Note]''

(2) After accomplishment of the installation required by paragraph (j)(1) of this AD and this AFM revision, the AFM revisions and CDLs required by paragraphs (i)(2) and (i)(3) of this AD may be removed from the AFM, and the inspection aids required by paragraph (i)(4) of this AD may be removed from the airplane.

Alternative Methods of Compliance (AMOCs)

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

(2) The following AMOCs were approved previously per AD 92–03–02, amendment 39–8156, and are approved as AMOCs with the indicated paragraphs of this AD:

(i) Installation of a non-skid, striped triangular symbol per Option 5 of McDonnell Douglas Service Bulletin MD80–30–059, Revision 4 though Revision 7, is approved as an AMOC with paragraphs (c) and (i)(2) of this AD; and

(ii) Revision of the Configuration Deviation List (CDL) Appendix of the AFM by inserting a copy of CDL Appendix, Section I, page 2A, dated March 10, 1993, into the AFM, is approved as an AMOC with paragraphs (b) and (i)(3) of this AD.

Note 11: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

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

Incorporation by Reference

(n) Unless otherwise specified in this AD, the actions shall be done in accordance with the applicable service document identified in the following table:

Service document	Revision level	Date
Honeywell Alert Service Bulletin 109XXXX–30–38	Original	August 8, 2002.
McDonnell Douglas Alert Service Bulletin MD80–30A087	Original	September 22, 1997.
McDonnell Douglas Service Bulletin 30–59	Original	September 18, 1989.
McDonnell Douglas Service Bulletin 30–59	1	January 5, 1990.
McDonnell Douglas Service Bulletin 30–59	2	August 15, 1990.
McDonnell Douglas Service Bulletin MD80–30–071	02	February 6, 1996.
McDonnell Douglas Service Bulletin MD80-30–078	01	April 8, 1997.
McDonnell Douglas Service Bulletin MD80–30–090	Original	October 19, 1999.

(1) The incorporation by reference of Honeywell Alert Service Bulletin 109XXXX–30–38, dated August 8, 2002, was approved previously by the Director of the Federal Register as of November 8, 2002 (67 FR 65298, October 24, 2002).

(2) The incorporation by reference of McDonnell Douglas Service Bulletin 30–59, dated September 18, 1989; McDonnell Douglas Service Bulletin 30–59, Revision 1, dated January 5, 1990; and McDonnell Douglas Service Bulletin 30–59, Revision 2, dated August 15, 1990; was approved previously by the Director of the Federal Register as of January1 7, 1992 (57 FR 2014, January 17, 1992).

(3) The incorporation by reference of the remaining service bulletins listed in Table 1 of this AD, was approved previously by the Director of the Federal Register as of May 7, 2001 (66 FR 17499, April 2, 2001).

(4) Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention; Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(o) The effective date of this amendment remains November 8, 2002.

Issued in Renton, Washington, on December 23, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–32881 Filed 12–31–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

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

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects a typographical error that appeared in airworthiness directive (AD) 2002–24–05 that was published in the **Federal Register** on December 3, 2002 (67 FR 71808). The typographical error resulted in identification of certain airplanes in the applicability of the AD as having serial numbers instead of line numbers. This AD is applicable to certain Boeing Model 727 series airplanes. This AD requires detailed inspections to detect cracking and corrosion of the upper chord of the rear spar of the wing; and repair, if necessary. This action also requires detailed inspections to detect and permanently repair any cracking that has been previously repaired by stop-drilling.

DATES: Effective December 18, 2002.

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

SUPPLEMENTARY INFORMATION: Airworthiness Directive (AD) 2002–24–05, amendment 39–12970, applicable to certain Boeing Model 727 series airplanes, was published in the **Federal Register** on December 3, 2002 (67 FR 71808). That AD requires detailed inspections to detect cracking and corrosion of the upper chord of the rear spar of the wing; and repair, if necessary. That AD also requires detailed inspections to detect and permanently repair any cracking that has been previously repaired by stop-drilling.

As published, the applicability section of the AD specifies, ''Model 727 series airplanes, serial numbers 1 through 1832 inclusive; certificated in any category.'' Identification of the airplanes was inadvertently specified as ''serial numbers 1 through 1832 inclusive.'' The correct identification if ''line numbers 1 through 1832 inclusive.''

Since no other part of the regulatory information has been changed, the final rule is not being republished in the **Federal Register**.

The effective of this AD remains December 18, 2002.

§ 39.13 [Corrected]

On page 71809, in the third column, ''Applicability'' of AD 2002–24–05 is corrected to read as follows:

* * * * *

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

* * * * *

Issued in Renton, Washington, on December 23, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–32882 Filed 12–31–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–309–AD; Amendment 39–12992; AD 2002–24–51]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–600, –700, –700C, –800, and –900 Series Airplanes; Model 747 Series Airplanes; and Model 757 Series Airplanes

AGENCY: Federal Aviation Administration, (DOT).

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting airworthiness directive (AD) 2002–24–51 that was sent previously to all known U.S. owners and operators of the airplane models described previously by individual notices. This AD requires revising the Airplane Flight Manual to require the flightcrew to maintain certain minimum fuel levels in the center fuel tanks and, for certain airplanes, to prohibit the use of the horizontal stabilizer fuel tank and the certain center auxiliary fuel tanks. This action is prompted by reports indicating that two fuel tank pumps showed evidence of extreme localized overheating of parts in the priming and vapor pump section of the fuel pump; such overheating provides an ignition source in the fuel tank during dry running of the pump, which could result in fire/explosion of the fuel tank. The actions specified by this AD are intended to require the flightcrew to maintain certain minimum fuel levels in the center fuel tanks and, for certain airplanes and, for certain airplanes to prohibit the use of the horizontal stabilizer fuel tank and certain center auxiliary fuel tanks.

DATES: Effective January 7, 2003, to all persons except those persons to whom it was made immediately effective by emergency AD 2002–24–51, issued November 23, 2002, which contained the requirements of this amendment.

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

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–309–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this

location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–309–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

Information pertaining to this amendment may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Bernie Gonzalez, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2682; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: On November 23, 2002, the FAA issued emergency AD 2002–24–51, which is applicable to all Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes; Model 747 series airplanes; and Model 757 series airplanes.

The FAA has received reports indicating that two fuel tank pumps from different Model 747 series airplanes showed evidence of extreme localized overheating of parts in the priming and vapor pump section of the fuel pump. The priming and vapor pump section of the pump is open to the fuel tank via the pump inlet line and the vapor vent of the pump. The cause of this overheating is believed to be friction between the pump parts; however, the specific cause of the friction is unknown at this time.

One of the two pumps was an override/jettison pump of the inboard main tank. The pump had been removed so that X-ray inspections specified in AD 2002–19–52, amendment 39–12900 (67 FR 61253, September 30, 2002), could be performed. The pump had been installed on the airplane for 6,000 flight hours. Since scoring was found on the inducer housing of the pump, the pump was disassembled, at which time evidence of severe overheating of the priming and vapor pump section was found. The Stellite (cobalt/chrome/nickel/iron alloy) end plates of the priming and vapor section of the pump were blued and cracked from thermal stress, and the steel pump shaft in that same area was also blued. According to the pump manufacturer, bluing of the steel and/or Stellite materials is evidence of temperatures in excess of 1,100 degrees Fahrenheit. It is believed that such temperatures could only be reached during dry running of the pump. The previous operational history of this pump is under investigation to determine how dry running could have occurred. Adjacent areas of the shaft were blackened. In addition, the aluminum bearing housing adjacent to the back side of the end plate had melted.

The other pump was an override/jettison pump of the center tank, which had been removed from a Model 747–400 series airplane due to a low pressure warning received in the flight deck. The pump had been installed on the airplane for 3,500 flight hours. The pump was found with the thermal fuses of the electrical motor winding open, which indicates an overheat condition in the motor section. Such overheating may be due to the pump rotor dragging or locking. Evidence of severe overheating of the priming and vapor pump section was found. The end plates of the priming and vapor section of the pump were blued and cracked from thermal stress, and the pump shaft in that same area was blued.

Such overheating of the parts in the priming and vapor pump section of the fuel pump provides an ignition source in the fuel tank during dry running of the pump, which could result in fire/explosion of the fuel tank.

Similar Parts

The pumps involved in the two reports described previously have the same part numbers as those that were addressed in AD 2002–19–52. The fuel pumps installed on Model 737–600, –700, –700C, –800, and –900; Model 747; and Model 757 series airplanes are all potentially affected since the pumps are almost identical in design.

FAA's Determination

In light of these reports, we find that procedures must be included in the Airplane Flight Manual (AFM) to require the flightcrew to maintain certain minimum fuel levels in the center fuel tanks, and to prohibit the use of the horizontal stabilizer fuel tank (for Model 747–400 series airplanes) and certain center auxiliary fuel tanks (on Model 747 series airplanes). Those procedures specify crew monitoring of fuel levels and shutoff of center fuel tank pumps at specified levels that ensure the pump inlet remains covered during pump operation. Covering the pump inlet prevents fuel vapors from coming into contact with potentially overheated parts in the priming and vapor pump section of the fuel pump, and likely prevents the overheating condition itself. Those procedures also require deactivation of the horizontal stabilizer tank on Model 747–400 series airplanes and certain auxiliary fuel tanks of Model 747 series airplanes because the small size of the tank and the high flow rate of the pumps make it impractical to effectively apply an early shutoff procedure.

Explanation of Requirements of the Rule

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design, the FAA issued emergency AD 2002–24–51 to revising the AFM to require the flightcrew to maintain certain minimum fuel levels in the center fuel tanks, and to prohibit the use of the horizontal stabilizer fuel tank (for Model 747–400 series airplanes) and certain center auxiliary fuel tanks (on Model 747 series airplanes).

Some operators may already have accomplished the AFM revisions required by this AD since those revisions are identical to the AFM revisions required by AD 2002–19–52. However, the terminating action (*i.e.*, X-ray inspections of the fuel pumps) provided by AD 2002–19–52 allows operators to remove those AFM revisions. The unsafe condition addressed in AD 2002–19–52 was caused by chafed wiring, so the terminating action for that AD is not effective in eliminating the unsafe condition addressed in this AD. Therefore, for operators that have accomplished the terminating action specified in AD 2002–19–52, this new AD requires that those AFM revisions be reinstated.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual notices issued on November 23, 2002, to all known U.S. owners and operators of all Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes; Model 747 series airplanes; and Model 757 series airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation

Regulations (14 CFR 39.13) to make it effective to all persons.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–309–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2002–24–51 Boeing: Amendment 39–12992. Docket 2002–NM–309–AD.

Applicability: Model 737–600, –700, –700C, –800, and –900 series airplanes; Model 747 series airplanes; and Model 757 series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To require the flightcrew to maintain certain minimum fuel levels in the center fuel tanks, and to prohibit the use of the horizontal stabilizer fuel tank (for Model 747–400 series airplanes) and certain center auxiliary fuel tanks (on Model 747 series airplanes), accomplish the following:

Note 1: Accomplishment of the actions required by paragraphs (a) through (d) of AD 2002–19–52, amendment 39–12900, is acceptable for compliance with the requirements of paragraphs (b) through (e) of this AD. This AD does not require that those actions be repeated unless the terminating actions specified in paragraphs (g) and (h) of AD 2002–19–52 have been accomplished and the AFM revisions and placard(s) have been removed.

(a) Accomplishment of the terminating actions specified in paragraphs (g) and (h) of AD 2002–19–52, amendment 39–12900, does not allow removal of the AFM revisions required by paragraphs (a), (b), (c), and (d) of AD 2002–19–52, or paragraphs (b), (c), (d), and (e) of this AD.

Airplane Flight Manual (AFM) Revision: Model 737–600, –700, –700C, –800, and –900

(b) For Model 737–600, –700, –700C, –800, and –900 series airplanes: Within 4 days after receipt of this AD, revise the Limitations Section of the AFM to include the following (this may be accomplished by inserting a copy of this AD into the AFM):

''Certificate Limitations

The center tank fuel pumps must be OFF for takeoff if center tank fuel is less than 5,000 pounds (2,300 kilograms) with the airplane readied for initial taxi.

Both center tank fuel pump switches must be selected Off when center tank fuel quantity reaches approximately 1,000 pounds (500 kilograms) during climb and cruise or 3,000 pounds (1,400 kilograms) during descent and landing. The fuel pumps must be positioned Off at the first indication of fuel pump low pressure.

The CWT fuel quantity indication system must be operative to dispatch with CWT mission fuel.

Note

The CONFIG indicator will annunciate when center tank fuel exceeds 1,600 pounds (800 kilograms) and the center tank fuel pump switches are Off. Do not accomplish the CONFIG non-normal procedure prior to or during takeoff with less than 5,000 pounds (2,300 kilograms) of center tank fuel or during descent and landing with less than 3,000 pounds (1,400 kilograms) of center tank fuel.

Note

In a low fuel situation, both center tank pumps may be selected On and all center tank fuel may be used.

If the main tanks are not full, the zero fuel gross weight of the airplane plus the weight of center tank fuel may exceed the maximum zero fuel gross weight by up to 5,000 pounds (2,300 kilograms) for takeoff, climb and cruise and up to 3,000 pounds (1,400 kilograms) for descent and landing, provided that the effects of balance (CG) have been considered.

If a center tank fuel pump fails with fuel in the center tank, accomplish the Fuel Pump Low Pressure non-normal procedure.

When defueling center or main wing tanks, the Fuel Pump Low Pressure indication lights must be monitored and the fuel pumps positioned to Off at the first indication of fuel pump low pressure. Defueling with passengers on board is prohibited.

The limitations contained in this AD supersede any conflicting basic airplane flight manual limitations.''

AFM Revision: Model 747–100, –200B, –200F, –200C, –100B, –300, –100B SUD, 747SR, and 747SP

(c) For Model 747–100, –200B, –200F, –200C, –100B, –300, –100B SUD, 747SR, and 747SP series airplanes: Within 4 days after receipt of this AD, revise the Limitations Section of the AFM to include the following (this may be accomplished by inserting a copy of this AD into the AFM):

''Certificate Limitations

Fueling and use of the center auxiliary fuel tank and auxiliary fuel tanks 1 and 4 (if installed) is prohibited.

The center wing tank (CWT) must contain a minimum of 17,000 pounds (7,700 kilograms) of fuel prior to engine start, if the CWT override/jettison pumps are to be selected On during flight.

The CWT fuel quantity indication system must be operative to dispatch with CWT mission fuel.

Both CWT override/jettison pump switches must be selected Off at or before the CWT fuel quantity reaches 7,000 pounds (3,200 kilograms), if the CWT fuel quantity is less than 50,000 pounds (22,700 kilograms) prior to engine start. The CWT override pumps may be selected On during stabilized cruise conditions. Both CWT override/jettison pump switches must be selected Off at or before the CWT fuel quantity reaches 3,000 pounds (1,400 kilograms).

Both CWT override/jettison pump switches must be selected Off at or before the CWT fuel quantity reaches 3,000 pounds (1,400 kilograms), if the CWT fuel quantity is greater than or equal to 50,000 pounds (22,700 kilograms) prior to engine start.

Both CWT override/jettison pumps must be selected Off when either CWT override/jettison fuel pump low pressure light illuminates.

Warning

Do not reset a tripped fuel pump circuit breaker.

Warning

Do not cycle the CWT pump switches from On to Off to On with any continuous low pressure indication present.

Note

The CWT may be emptied normally in an emergency fuel jettison.

Note

In a low fuel situation, both CWT override/jettison pumps may be selected On and all CWT fuel may be used.

If a center wing tank pump fails with fuel in the center tank, shut off the affected fuel pump.

If the main tanks are not full, the zero fuel gross weight of the airplane plus the weight of CWT tank fuel may exceed the maximum zero fuel gross weight by up to 7,000 pounds (3,200 kilograms) for takeoff, climb, cruise, descent, and landing, provided that the effects of balance (CG) have been considered.

When defueling center or main wing tanks, the Fuel Pump Low Pressure indication lights must be monitored and the fuel pumps positioned to Off at the first indication of fuel pump low pressure. Defueling with passengers on board is prohibited.

The limitations contained in this AD supersede any conflicting basic airplane flight manual limitations.''

AFM Revision: Model 747–400, –400D, and –400F

(d) For Model 747–400, –400D, and –400F series airplanes: Within 4 days after receipt of this AD, revise the Limitations Section of the AFM to include the following (this may be accomplished by inserting a copy of this AD into the AFM):

''Certificate Limitations

Fueling and use of the horizontal stabilizer tank (if installed) is prohibited if a placard prohibiting its use is installed.

The center wing tank (CWT) must contain a minimum of 17,000 pounds (7,700 kilograms) prior to engine start, if the CWT override/jettison pumps are to be selected On during flight.

The CWT fuel quantity indication system must be operative to dispatch with CWT mission fuel.

Both CWT override/jettison pump switches must be selected Off at or before CWT fuel quantity reaches 7,000 pounds (3,200 kilograms), if CWT fuel quantity is less than 50,000 pounds (22,700 kilograms) prior to engine start. The CWT override pumps may be selected On during stabilized cruise conditions. Both CWT override/jettison pump switches must be selected Off at or before the CWT fuel quantity reaches 3,000 pounds (1,400 kilograms).

Note

With CWT override/jettison pumps selected Off and CWT fuel quantity greater than 6,000 pounds (2,800 kilograms), the Fuel OVRD CTR L & R EICAS messages will be displayed. Do not accomplish the associated non-normal procedure.

Both CWT override/jettison pump switches must be selected Off at or before CWT fuel quantity reaches 3,000 pounds (1,400 kilograms), if CWT fuel quantity is greater than or equal to 50,000 pounds (22,700 kilograms) prior to engine start.

Both CWT override/jettison pumps must be selected OFF when either CWT override/jettison fuel pump low pressure light illuminates.

Warning

Do not reset a tripped fuel pump circuit breaker.

Warning

Do not cycle CWT override/jettison pump switches from On to Off to On with any continuous low pressure indication present.

Note

The center wing tank may be emptied normally during an emergency fuel jettison.

Note

In a low fuel situation, both CWT override/jettison pumps may be selected On and all CWT fuel may be used.

If a center wing tank pump fails with fuel in the center tank, accomplish the Fuel OVRD CTR L, R non-normal procedure.

If the main tanks are not full, the zero fuel gross weight of the airplane plus the weight of CWT tank fuel may exceed the maximum zero fuel gross weight by up to 7,000 pounds (3,200 kilograms) for takeoff, climb, cruise, descent, and landing, provided that the effects of balance (CG) have been considered.

When defueling any fuel tanks, the Fuel Pump Low Pressure indication lights must be monitored and the fuel pumps positioned to Off at the first indication of fuel pump low pressure. Defueling with passengers on board is prohibited.

The limitations contained in this AD supersede any conflicting basic airplane flight manual limitations.''

AFM Revision: Model 757

(e) For Model 757 series airplanes: Within 4 days after receipt of this AD, revise the Limitations Section of the AFM to include the following (this may be accomplished by inserting a copy of this AD into the AFM):

''Certificate Limitations

The center tank fuel pumps must be Off for takeoff if center tank fuel is less than 5,000 pounds (2,300 kilograms) with the airplane readied for initial taxi.

Both center tank fuel pump switches must be selected Off when center tank fuel quantity reaches approximately 1,000 pounds (500 kilograms) during climb, cruise, or descent. The center tank fuel pumps must be positioned Off at the first indication of fuel pump low pressure.

The CWT fuel quantity indication system must be operative to dispatch with CWT mission fuel.

Warning

Do not reset a tripped fuel pump circuit breaker.

Note

The Fuel CONFIG light will illuminate when there is fuel in the center tank that exceeds 1,200 pounds (600 kilograms) and the center tank fuel pump switches are Off. Do not accomplish the associated non-normal procedure prior to or during takeoff with less than 5,000 pounds (2,300 kilograms) of center tank fuel, unless there is an imbalance between main tanks or fuel is low in either main tank. After canceling the Fuel CONFIG light, monitor fuel quantity indications and accomplish the appropriate non-normal procedure if a main tank imbalance or main tank low fuel quantity occurs.

Note

In a low fuel situation, both center tank pumps may be selected On and all center tank fuel may be used.

If the main tanks are not full, the zero fuel gross weight of the airplane plus the weight of center tank fuel may exceed the maximum zero fuel gross weight by up to 5,000 pounds (2,300 kilograms) for takeoff, climb, cruise, descent, and landing, provided that the effects of balance (CG) have been considered.

If a center tank fuel pump fails or indicates low pressure with fuel in the center tank, accomplish the Fuel Pump non-normal procedure.

When defueling center or main wing tanks, the Fuel Pump Low Pressure indication lights must be monitored and the fuel pumps positioned to Off at the first indication of fuel pump low pressure. Defueling with passengers on board is prohibited.

The limitations contained in this AD supersede any conflicting basic airplane flight manual limitations.''

Alternative Methods of Compliance

(f)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA.

Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 2002–19–52, amendment 39–12900, are not considered to be approved as alternative methods of compliance with this AD.

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

Special Flight Permits

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

Effective Date

(h) This amendment becomes effective on January 7, 2003, to all persons except those persons to whom it was made immediately effective by emergency AD 2002–24–51, issued on November 23, 2002, which contained the requirements of this amendment.

Issued in Renton, Washington, on December 23, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–32883 Filed 12–31–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–314–AD; Amendment 39–12993; AD 2002–24–52]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400, –400D, and –400F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting airworthiness directive (AD) 2002–24–52 that was sent previously to all known U.S. owners and operators of all Boeing Model 747–400, –400D, and –400F series airplanes by individual notices. This AD continues to require revising the Airplane Flight Manual to require the flightcrew to maintain certain minimum fuel levels in the center fuel tanks, and to prohibit the use of the horizontal stabilizer fuel tank. This AD also removes the reference to placards that was specified in the operating limitations required by another AD. This action is prompted by reports indicating that two fuel pumps showed evidence of extreme localized overheating of parts in the priming and vapor pump section of the fuel pump. Such overheating provides an ignition source in the fuel tank during dry running of the pump, which could result in fire/explosion of the fuel tank. The actions specified by this AD are intended to require the flightcrew to maintain certain minimum fuel levels in the center fuel tanks, and to prohibit the use of the horizontal stabilizer fuel tank.

DATES: Effective January 6, 2003, to all persons except those persons to whom it was made immediately effective by emergency AD 2002–24–52, issued November 24, 2002, which contained the requirements of this amendment.

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

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–314–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–314–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

Information pertaining to this amendment may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Bernie Gonzalez, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2682; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: On November 24, 2002, the FAA issued emergency AD 2002–24–52, which is applicable to all Boeing Model 747–400, –400D, and –400F series airplanes.

On November 23, 2002, the FAA issued emergency AD 2002–24–51, applicable to all Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes; Model 747 series airplanes; and Model 757 series airplanes. That AD was prompted by reports indicating that two fuel pumps from different Model 747 series airplanes showed evidence of extreme localized overheating of parts in the priming and vapor pump section of the fuel pump. Such overheating provides an ignition source in the fuel tank during dry running of the pump, which could result in fire/explosion of the fuel tank.

AD 2002–24–51 reinstated operating limitations originally imposed by AD 2002–19–52, amendment 39–12900 (67 FR 61253, September 30, 2002). Specifically for Model 747–400, –400D, and –400F series airplanes, AD 2002–24–51 includes a provision that prohibits fueling and use of the horizontal stabilizer tank ''* * * if a placard prohibiting its use is installed.'' (That phrase appears in the first paragraph of the required operating limitation.)

Actions Since Issuance of Previous Rule

Since the issuance of that AD, we have become aware that the reference to placards in the Airplane Flight Manual (AFM) revision for Model 747–400, –400D, and –400F series airplanes should not have been restated because, unlike AD 2002–19–52, AD 2002–24–51 does not require installation of placards. Therefore, if an operator has done the terminating actions specified in AD 2002–19–52 and removed the placards required by that AD, the limitation imposed by AD 2002–24–51 would not prohibit fueling and use of the horizontal stabilizer tank. This would be contrary to the intent of AD 2002–24–51.

Explanation of Requirements of the Rule

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design, the FAA issued emergency AD 2002–24–52 to continue to require revising the AFM to require the flightcrew to maintain certain minimum fuel levels in the center fuel tanks, and to prohibit the use of the horizontal stabilizer fuel tank. However, this AD removes the reference to placards that was specified in the operating limitations required by AD 2002–24–51.

The compliance time of this AD remains the same as that specified in AD 2002–24–51 (''within 4 days after receipt'' of AD 2002–24–51). In addition, paragraph (b) of this AD states that, if an operator has already complied with AD 2002–24–51, it can comply

with this AD simply by deleting the phrase ''if a placard prohibiting its use is installed'' from the first paragraph of the operating limitation required by AD 2002–24–51.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual notices issued on November 24, 2002, to all known U.S. owners and operators of all Boeing Model 747–400, –400D, and –400F series airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–314–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2002–24–52 Boeing: Amendment 39–12993. Docket 2002–NM–314–AD.

Applicability: All Model 747–400, –400D, and –400F series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To require the flightcrew to maintain certain minimum fuel levels in the center fuel tanks, and to prohibit the use of the horizontal stabilizer fuel tank, accomplish the following:

Airplane Flight Manual (AFM) Revision: Model 747–400, –400D, and –400F

(a) For Model 747–400, –400D, and –400F series airplanes: Within 4 days after receipt of emergency AD 2002–24–51, instead of complying with the requirements of paragraph (d) of AD 2002–24–51, revise the Limitations Section of the AFM to include the following (this may be accomplished by inserting a copy of this AD into the AFM):

Certificate Limitations

Fueling and use of the horizontal stabilizer tank (if installed) is prohibited.

The center wing tank (CWT) must contain a minimum of 17,000 pounds (7,700 kilograms) prior to engine start, if the CWT override/jettison pumps are to be selected On during flight.

The CWT fuel quantity indication system must be operative to dispatch with CWT mission fuel.

Both CWT override/jettison pump switches must be selected Off at or before CWT fuel quantity reaches 7,000 pounds (3,200 kilograms), if CWT fuel quantity is less than 50,000 pounds (22,700 kilograms) prior to engine start. The CWT override pumps may be selected ON during stabilized cruise conditions. Both CWT override/jettison pump switches must be selected Off at or before the CWT fuel quantity reaches 3,000 pounds (1,400 kilograms).

Note

With CWT override/jettison pumps selected Off and CWT fuel quantity greater than 6,000 pounds (2,800 kilograms), the FUEL OVRD CTR L & R EICAS messages will be displayed. Do not accomplish the associated non-normal procedure.

Both CWT override/jettison pump switches must be selected Off at or before CWT fuel quantity reaches 3,000 pounds (1,400 kilograms), if CWT fuel quantity is greater than or equal to 50,000 pounds (22,700 kilograms) prior to engine start.

Both CWT override/jettison pumps must be selected Off when either CWT override/jettison fuel pump low pressure light illuminates.

Warning

Do not reset a tripped fuel pump circuit breaker.

Warning

Do not cycle CWT override/jettison pump switches from On to Off to On with any continuous low pressure indication present.

Note

The center wing tank may be emptied normally during an emergency fuel jettison.

Note

In a low fuel situation, both CWT override/jettison pumps may be selected On and all CWT fuel may be used.

If a center wing tank pump fails with fuel in the center tank, accomplish the FUEL OVRD CTR L, R non-normal procedure.

If the main tanks are not full, the zero fuel gross weight of the airplane plus the weight

of CWT tank fuel may exceed the maximum zero fuel gross weight by up to 7,000 pounds (3,200 kilograms) for takeoff, climb, cruise, descent, and landing, provided that the effects of balance (CG) have been considered.

When defueling any fuel tanks, the Fuel Pump Low Pressure indication lights must be monitored and the fuel pumps positioned to Off at the first indication of fuel pump low pressure. Defueling with passengers on board is prohibited.

The limitations contained in this AD supersede any conflicting basic airplane flight manual limitations.''

(b) If an operator has already complied with AD 2002–24–51, it can comply with this AD by deleting the phrase ''if a placard prohibiting its use is installed'' from the first paragraph of the AFM revision required by paragraph (d) of AD 2002–24–51.

Alternative Methods of Compliance

(c)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 2002–19–52, amendment 39–12900, are not considered to be approved as alternative methods of compliance with this AD.

Note 1: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

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

Effective Date

(e) This amendment becomes effective on January 6, 2003, to all persons except those persons to whom it was made immediately effective by emergency AD 2002–24–52, issued on November 24, 2002, which contained the requirements of this amendment.

Issued in Renton, Washington, on December 23, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–32884 Filed 12–31–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–67–AD; Amendment 39–12999; AD 2002–26–11]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330 and A340 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Airbus Model A330 and A340 series airplanes, that currently requires an inspection of the parking brake operated valve (PBOV) of the main landing gear to identify the part and serial numbers, and follow-on actions if necessary. That AD also provides for optional terminating action for the requirements of that AD. This amendment requires accomplishment of the previously optional terminating action. The actions specified by this AD are intended to prevent leakage of the PBOV and consequent failure of the ''blue'' hydraulic system and alternate parking brake and emergency braking systems, which could affect elements of the hydraulics for flaps, stabilizer, certain spoilers, elevator, rudder, and aileron. This action is intended to address the identified unsafe condition.

DATES: Effective February 6, 2003.

The incorporation by reference of the publications listed in the regulations was approved previously by the Director of the Federal Register as of May 8, 2002 (67 FR 19650, April 23, 2002).

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056, telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2002–08–12, amendment 39–12720 (67 FR 19650, April 23, 2002), which is applicable to certain Airbus Model A330 and A340 series airplanes, was published in the **Federal Register** on August 16, 2002 (67 FR 53523). The action proposed to continue to require an inspection of the parking brake operated valve (PBOV) of the main landing gear to identify the part and serial numbers, and follow-on actions if necessary. That action also proposed to require accomplishment of the previously optional terminating action.

Comments

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

Conclusion

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

Cost Impact

There are approximately 9 airplanes of U.S. registry that are affected by this AD.

The inspection that is currently required by AD 2002–08–12, and retained in this AD, takes approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions is estimated to be $120 per airplane.

The new modification/replacement required by this AD will take approximately 4 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the new requirements of this AD on U.S. operators is estimated to be $2,160, or $240 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–12720 (67 FR 19650, April 23, 2002), and by adding a new airworthiness directive (AD), amendment 39–12999, to read as follows:

2002–26–11 Airbus: Amendment 39–12999. Docket 2002NM–67–AD. Supersedes AD 2002–08–12, Amendment 39–12720.

Applicability: Model A330 and A340 series airplanes as listed in Airbus Service Bulletin A330–32A3139 or A340–32A4176, both Revision 01, dated November 23, 2001; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously. To prevent leakage of the parking brake operated valve (PBOV) and consequent failure of the ''blue'' hydraulic system and alternate parking brake and emergency braking systems, which could affect elements of the hydraulics for flaps, stabilizer, certain spoilers, elevator, rudder, and aileron, accomplish the following:

Restatement of Requirements of AD 2002–08–12, Amendment 39–12720

Inspections/Follow-On Actions

(a) Within 7 days after May 8, 2002 (the effective date of AD 2002–08–12): Do a one-time detailed inspection to determine the part number (P/N) and serial number (S/N) of the PBOV of the main landing gear, according to Airbus Service Bulletin A330–32A3139 (for Model A330 series airplanes) or A340–32A4176 (for Model A340 series airplanes), both Revision 01, dated November 23, 2001; as applicable.

(1) If no P/N or S/N is identified as affected equipment according to the applicable service bulletin, no further action is required by this AD.

(2) If any P/N or S/N is identified as affected equipment according to the applicable service bulletin: Before further flight, perform the follow-on actions (which may include a visual inspection for hydraulic fluid leakage at the PBOV, repair or replacement of the PBOV with a new or serviceable part if leakage is found, and an operational test) according to the applicable service bulletin. If the affected PBOV is not replaced, or if the PBOV is replaced with a part having the same P/N or S/N, repeat the inspection thereafter at the time specified by and according to the service bulletin, as applicable, until the part is replaced.

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

New Requirements of This AD

PBOV Modification/Replacement

(b) Within 10 months after the effective date of this AD: Modify affected PBOVs, or replace them with new PBOVs, according to Airbus Service Bulletin A330–32A3139 (for Model A330 series airplanes) or A340–32A4176 (for Model A340 series airplanes), both Revision 01, dated November 23, 2001, as applicable. This modification terminates the requirements of this AD.

Actions Accomplished Per Previous Issue of Service Bulletins

(c) Accomplishment of the actions before the effective date of this AD according to Airbus Service Bulletin A330–32A3139 or A340–32A4176, dated September 14, 2001, as applicable, is acceptable for compliance with the requirements of paragraphs (a) and (b) of this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Incorporation by Reference

(f) Unless otherwise specified in this AD, the actions shall be done in accordance with Airbus Service Bulletin A330–32A3139, Revision 01, including Appendix 01, dated November 23, 2001; or Airbus Service Bulletin A340–32A4176, Revision 01, including Appendix 01, dated November 23, 2001; as applicable. (Although the service bulletins reference a reporting requirement in Appendix 01 of the service bulletin, such reporting is not required by this AD). This incorporation by reference was approved previously by the Director of the Federal Register as of May 8, 2002 (67 FR 19650, April 23, 2002). Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in French airworthiness directives 2001–516(B) R1 and 2001–517(B) R1, both dated February 6, 2002.

Effective Date

(g) This amendment becomes effective on February 6, 2003.

Issued in Renton, Washington, on December 23, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–32880 Filed 12–31–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–54–AD; Amendment 39–12991; AD 2002–26–05]

RIN 2120–AA64

Airworthiness Directives; Air Tractor, Inc. Models AT–502, AT–502A, AT–502B, and AT–503A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 2002–11–03, which applies to certain Air Tractor, Inc. (Air Tractor) Models AT–502, AT–502A, AT–502B, and AT–503A airplanes. AD 2002–11–03 lowered the safe life for the wing lower spar cap and further reduced the safe life for airplanes that incorporate or have incorporated Marburger Enterprises, Inc. winglets. AD 2002–11–03 also currently requires you to eddy-current inspect the wing lower spar cap immediately prior to the replacement/modification to detect and correct any crack in a bolthole before it extends to the modified center section of the wing and report the results of this inspection to the Federal Aviation Administration (FAA). Field inspections on the affected airplanes have revealed wings with cracks below the currently established safe life. This AD would further reduce the safe life of the Models AT502, AT–502B, and AT–503A airplanes and would add airplanes recently manufactured to the Applicability of the AD. The actions specified by this AD are intended to prevent fatigue cracks from occurring in the wing lower spar cap before the established safe life is reached. Fatigue cracks in the wing lower spar cap, if not detected and corrected, could result in the wing separating from the airplane during flight.

DATES: This AD becomes effective on January 15, 2003.

The Director of the Federal Register previously approved the incorporation by reference of certain publications listed in the regulation as of June 8, 2001 (66 FR 27014, May 16, 2001).

The FAA must receive any comments on this rule on or before February 14, 2003.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–54–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9-ACE-7-Docket@faa.gov.* Comments sent electronically must contain ''Docket No. 2002–CE–54–AD'' in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get the service information referenced in this AD from Air Tractor, Incorporated, P.O. Box 485, Olney, Texas 76374; or Marburger Enterprises, Inc., 1227 Hillcourt, Williston, North Dakota 58801; telephone: (800) 893–1420 or (701) 774–0230; facsimile: (701) 572–2602. You may view this information at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–54–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Direct all questions to:

—For the airplanes that do not incorporate and never have incorporated Marburger Enterprises, Inc. winglets: Rob Romero, Aerospace Engineer, FAA, Fort Worth Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone: (817) 222–5102; facsimile: (817) 222–5960; and

—For airplanes that incorporate or have incorporated Marburger Enterprises, Inc. winglets: John Cecil, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, 3960 Paramount Boulevard, Lakewood, California 90712; telephone: (562) 627–5228; facsimile: (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Discussion

Has FAA taken any action to this point? On December 17, 2001, FAA issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Air Tractor, Inc. (Air Tractor) AT–400, AT–500, and AT–800 series airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on December 27, 2001 (66 FR 66823). The NPRM proposed to supersede AD 2001–10–04 R1 with a new AD that would retain the safe life for the wing lower spar cap and require you to eddy-current inspect the wing lower spar cap immediately prior to the replacement/modification to detect and correct any crack in a bolthole before it extends to the modified center section of the wing. The NPRM also proposed to further reduce the safe life for those AT–400 and AT–500 series airplanes that incorporate or have incorporated Marburger Enterprises, Inc. winglets.

After issuing that NPRM, we received reports of several cracks originating in the outboard 3/8-inch hole of the main spar lower cap on Air Tractor Models AT—502, AT–502A, and AT–502B airplanes at hours time-in-service (TIS) lower than the established safe life. This caused us to issue AD 2002–11–03, Amendment 39–12764 (67 FR 38371, June 4, 2002). AD 2002–11–03 lowers the safe life for the wing lower spar cap established in AD 2001–10–04 R1 on Air Tractor Models AT–502, AT–502A, AT–502B, and AT–503A airplanes and further reduces the safe life for airplanes that incorporate or have incorporated Marburger Enterprises, Inc. winglets.

We issued a separate AD for the Air Tractor AT–400 and AT–800 series airplanes.

What has happened since AD 2002–11–03 to initiate This action? Field inspections have revealed wings with cracks below the currently established safe life on Air Tractor Models AT 502, AT–502B, and AT–503A airplanes.

In addition, the Applicability of AD 2002–11–03 only covered serial number airplanes of the Models AT–502A and AT–502B that were already manufactured. The Applicability did not account for airplanes manufactured after the issuance of the AD.

The FAA's Determination and an Explanation of the Provisions of This AD

What has FAA decided? The FAA has reviewed all available information and determined that:

—The unsafe condition referenced in this document exists or could develop on other Air Tractor Models AT–502, AT–502A, AT–502B, and AT–503A airplanes of the same type design;

—The safe life on the Models AT–502, AT–502B, and AT–503A airplanes should be further reduced;

—The serial number range of the Models AT–502A and AT–502B airplanes should be expanded to

include future manufactured airplanes; and

—Final rule; request for comments (immediately adopted rule) AD action should be taken to address this condition.

What does this AD require? This AD will supersede AD 2002–11–03 and will:

—Maintain the requirements of a lowered safe life, inspection, replacement/modification, and reporting the results to FAA;

—Further lower the safe life for the wing lower spar cap established in AD 2002–11–03 for the Models AT–502, AT–502B, and AT–503A airplanes; and

—Expand the applicability of the Models AT–502A and AT–502B airplanes to account for future manufactured airplanes.

You must accomplish these actions in accordance with Snow Engineering Service Letter ı197 or ı205, both Revised March 26, 2001, as applicable.

In preparation of this rule, we contacted type clubs and aircraft operators to obtain technical information and information on operational and economic impacts. We did not receive any information through these contacts. If received, we would have included, in the rulemaking docket, a discussion of any information that may have influenced this action.

Will I have the opportunity to comment prior to the issuance of the rule? Because the unsafe condition described in this document could result in the wing separating from the airplane during flight, we find that notice and opportunity for public prior comment are impracticable. Therefore, good cause exists for making this amendment effective in less than 30 days.

Comments Invited

How do I comment on this AD? Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, FAA invites your comments on the rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date specified above. We may amend this rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether we need to take additional rulemaking action.

Are there any specific portions of the AD I should pay attention to? We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of this AD.

How can I be sure FAA receives my comment? If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 2002-CE–54-AD.'' We will date stamp and mail the postcard back to you.

Regulatory Impact

Does this AD impact various entities? These regulations will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, FAA has determined that this final rule does not have federalism implications under Executive Order 13132.

Does this AD involve a significant rule or regulatory action? We have determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a significant regulatory action under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. FAA amends § 39.13 by removing Airworthiness Directive (AD) 2002–11–03, Amendment 39–12764 (67 FR 38371, June 4, 2002), and by adding a new AD to read as follows:

2002–26–05 Air Tractor, Inc.: Amendment 39–12991; Docket No. 2002–CE–54–AD. Supersedes AD 2002–11–03, Amendment 39–12764.

(a) *What airplanes are affected by this AD?* This AD applies to certain Models AT–502, AT–502A, AT–502B, and AT–503A airplanes. Use paragraph (a)(1) of this AD for airplanes that do not incorporate and never have incorporated winglets. Use paragraph (a)(3) of this AD for certain AT–500 series airplanes that incorporate or have incorporated Marburger Enterprises, Inc. winglets.

(1) The following presents airplanes (certificated in any category) that are affected by this AD, along with the new safe life (presented in hours time-in-service (TIS)) of the wing lower spar cap for all affected airplane models and serial numbers:

Model	Serial Nos.	Safe life
AT–502	0003 through 0236	1,650 hours TIS
AT–502A	All serial numbers beginning with 0158	1,650 hours TIS
AT–502B	All serial numbers beginning with 0187	1,650 hours TIS
AT–503A	All serial numbers beginning with 0067	1,650 hours TIS

(2) If piston powered aircraft have been converted to turbine power, you must use the limits for the corresponding serial number turbine-powered aircraft.

(3) The following presents airplanes (certificated in any category) that could incorporate or could have incorporated Marburger Enterprises, Inc. winglets. These winglets are installed in accordance with Supplemental Type Certificate (STC) SA00490LA. Use the winglet usage factor in the table below, the safe life specified in paragraph (a)(1) of this AD, and the instructions included in the Appendix to this AD to determine the new safe life of these airplanes:

Model	Serial Nos.	Winglet usage factor
AT–502	0003 through 0236	1.6
AT–502A	0158 through 0238	1.6
AT–502A	All serial numbers beginning with 0239	1.2
AT–502B	All serial numbers beginning with 0187	1.2

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent fatigue cracks from occurring in the wing lower spar cap before the established safe life is reached. Fatigue cracks in the wing lower spar cap, if not detected and corrected, could result in the wing separating from the airplane during flight.

(d) *What must I do to address this problem?* To address this problem, you must accomplish the following actions:

Actions	Compliance	Procedures
(1) Modify the applicable aircraft records (logbook) as follows to show the reduced safe life for the wing lower spar cap (use the information from paragraphs (a)(1) and (a)(3) of this AD and the Appendix to this AD, as applicable):.	Accomplish the logbook entry within the next 10 hours TIS after January 15, 2003 (the effective date of this AD).	The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may modify the aircraft records as specified in paragraphs (d)(1)(i) and (d)(1)(ii) of this AD. Make an entry into the aircraft records showing compliance with this portion of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9). Accomplish the actual replacement/modification in accordance with Snow Engineering Service Letter ı197 or ı205, both Revised March 26, 2001, as applicable. The owner/operator may not accomplish the replacement/modification, unless he/she holds the proper mechanic authorization.
(i) Incorporate the following into the Aircraft Logbook ''In accordance with AD 2002–26–05, the wing lower spar cap is life limited to —.'' Insert the applicable safe life number from the applicable tables in paragraphs (a)(1) and (a)(3) of this AD and the Appendix to this AD..		
(ii) If, as of the time of the logbook entry requirement of paragraph (d)(1)(i) of this AD, your airplane is over or within 50 hours of the safe life, an additional 50 hours TIS is allowed to accomplish the replacement/modification..		
(2) You may eddy-current inspect the wing lower spar cap instead of accomplishing the replacement/modification provided you have ordered parts from the factory and scheduled a replacement/modification date when it is time to replace the wing lower spar cap (as required when you reach the established safe life). These inspections are allowed until one of the following occurs, at which time the replacement/modification must be accomplished:.	Inspect prior to further flight after ordering the parts and scheduling a replacement/modification date, and inspect thereafter at intervals not to exceed 400 hours TIS until one of the criteria in paragraphs (d)(2)(i) and (d)(2)(ii) of this AD is met.	In accordance with the procedures in Snow Engineering Service Letter ı197 or ı205, both Revised March 26, 2001, as applicable.
(i) Crack(s) is/are found; or		
(ii) Not more than three inspections or 1,200 hours TIS go by: the first inspection would have to be accomplished upon accumulating the safe life; the second inspection would have to be accomplished within 400 hours TIS after accumulating the safe life; the third inspection would have to be accomplished 400 hours TIS after the second inspection; and the replacement/modification would have to be accomplished within 400 hours TIS after the third inspection (maximum elapsed time would be 1,200 hours TIS)..		

Actions	Compliance	Procedures
(3) Eddy-current inspect the wing lower spar cap in order to detect any crack before it extends to the modified center section of the wing and repair any crack or replace the wing section. The inspection must be accomplished by one of the following:. (i) A Level 2 or Level 3 inspector that is certified for eddy-current inspection using the guidelines established by the American Society for Nondestructive Testing or MIL–STD–410; or. (ii) A person authorized to perform AD work who has completed and passed the Air Tractor, Inc. training course on Eddy Current Inspection on wing lower spar caps..	Immediately prior to the replacement/modification required when you reach the new safe life. For airplanes that had this replacement/modification accomplished in accordance with either AD 2001–10–04 or AD 2001–10–04 R1, accomplish this inspection and any necessary corrective action within the next 400 hours TIS after June 14, 2002 (the effective date of AD 2002–11–03), unless already accomplished (have the mechanic who accomplished the work mark the logbooks accordingly).	In accordance with the procedures in Snow Engineering Service Letter ι197 or ι205, both Revised March 26, 2001, as applicable.
(4) Report to FAA the results of each inspection required by paragraph (d)(3) of this AD. The Office of Management and Budget (OMB) approved the information collection requirements contained in this regulation under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and assigned OMB Control Number 2120–0056.	Within 10 days after the inspection required in paragraph (d)(3) of this AD or within 10 days after June 14, 2002 (the effective date of AD 2002–11–03), whichever occurs later.	Submit the form (Figure 1 of this AD) to FAA, Fort Worth Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone: (817) 222–5102; facsimile: (817) 222–5960.

Note 1: Upon completion of the replacement/modification required by this AD, the safe life of the new/modified wing spar is limited to the applicable hours listed in paragraph (a)(1) of this AD. This new life limit starts at the time of the replacement/modification.

AD 2002–26–05 INSPECTION REPORT

1. Inspection Performed By: 3. Aircraft Model	2. Phone: 4. Aircraft Serial Number:
5. Engine Model Number:	6. Aircraft Total TIS:
7. Wing Total TIS:	8. Lower Spar Cap TIS:
9. Has the lower spar cap been inspected before? (Eddy-current, Dye penetrant, magnetic particle, ultrasound) [ballot]Yes [ballot]No	9a. If yes, Date: ——————— Inspection Method: ——————— Lower Spar Cap TIS: ——————— Cracks found? [ballot] [ballot]No
10. Has there been any major repair or alteration performed to the spar cap? [ballot]Yes [ballot]No	10a. If yes, specify (Description and TIS)
11. Date of AD inspection: ———————————————————	
12. Inspection Results: Note: Indicate even if no cracks are found.	12a. [ballot]Left Hand [ballot]Right Hand
12b. Crack Length: ———————————	12c. Does drilling hole to next larger size remove all traces of the crack(s)? [ballot]Yes [ballot]No
12d. Corrective Action Taken:	

Figure 1 of paragraph (d)(4) of this AD

(e) *Can I comply with this AD in any other way?*

(1)You may use an alternative method of compliance or adjust the compliance time if:

(i) Your alternative method of compliance provides an equivalent level of safety; and

(ii) The Manager, Fort Worth or Los Angeles Airplane Certification Office (ACO), as applicable, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector. The inspector may add comments before sending it to the Manager, Fort Worth or Los Angeles ACO.

(2) Alternative methods of compliance approved for AD 2001–10–04 and/or AD 2000–14–51 are not considered approved for this AD.

(3) Alternative methods of compliance approved for AD 2001–10–04 R1 or AD 2002–11–03 are considered approved for this AD.

Note 2: This AD applies to each airplane identified in paragraphs (a)(1) and (a)(3) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For

airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Who can I contact with questions about this AD?* For more information about the subject matter specified in this AD, contact:

(i) For the airplanes that do not incorporate and never have incorporated Marburger Enterprises, Inc. winglets: Rob Romero, Aerospace Engineer, FAA, Fort Worth Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone: (817) 222–5102; facsimile: (817) 222–5960; and

(ii) For the airplanes that incorporate or have incorporated winglets: John Cecil, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, 3960 Paramount Boulevard, Lakewood, California 90712; telephone: (562) 627–5228; facsimile: (562) 627–5210.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD provided that the following is adhered to:

(1) Only operate in day visual flight rules (VFR) only.

(2) Ensure that the hopper is empty.

(3) Limit airspeed to 135 miles per hour (mph) indicated airspeed (IAS).

(4) Avoid any unnecessary g-forces.

(5) Avoid areas of turbulence.

(6) Plan the flight to follow the most direct route.

(h) *Are any service bulletins incorporated into this AD by reference?* Replacement and inspection actions required by this AD must be done in accordance with Snow Engineering Service Letter ι197 or ι205, both Revised March 26, 2001, as applicable. The Director of the Federal Register previously approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51, as of June 8, 2001 (66 FR 27014, May 16, 2001). You can get copies from Air Tractor, Incorporated, P.O. Box 485, Olney, Texas 76374; or Marburger Enterprises, Inc., 1227 Hillcourt, Williston, North Dakota 58801. You may view copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on January 15, 2003.

Appendix to AD 2002–26–05

The following provides procedures for determining the safe life for Models AT–502, AT–502A, and AT–502B airplanes that incorporate or have incorporated Marburger Enterprises, Inc. winglets. These winglets are installed in accordance with Supplemental Type Certificate (STC) SA00490LA.

What If I Removed the Marburger Winglets Prior to Further Flight After the Effective Date of This AD or Prior to the Effective Date of This AD?

1. Review your airplane's logbook to determine your airplane's time-in-service (TIS) with winglets installed per Marburger Enterprises STC SA00490LA. This includes all time spent with the winglets currently installed and any previous installations where the winglet was installed and later removed.

Example: A review of your airplane's logbook shows that you have accumulated 350 hours TIS since incorporating the Marburger STC. Further review of the airplane's logbook shows that a previous owner had installed the STC and later removed the winglets after accumulating 150 hours TIS. Therefore, your airplane's TIS with the winglets installed is 500 hours.

If you determine that the winglet STC has never been incorporated on your airplane, then your safe life is presented in paragraph (a)(1) of this AD. Any future winglet installation will be subject to a reduced safe life per these instructions.

2. Determine your airplane's unmodified safe life from paragraph (a)(1) of this AD.

Example: Your airplane is a Model AT–502B, serial number 0292. From paragraph (a)(1) of this AD, the safe life of your airplane is 1,650 hours TIS.

All examples from hereon will be based on the Model AT–502B, serial number 0292 airplane.

3. Determine the winglet usage factor from paragraph (a)(3) of this AD.

Example: Again, your airplane is a Model AT–502B, serial number 0292. From paragraph (a)(3) of this AD, your winglet usage factor is 1.2.

4. Adjust the winglet TIS to account for the winglet usage factor. Multiply the winglet TIS (result of Step 1 above) by the winglet usage factor (result of Step 3 above).

Example: Winglet TIS is 500 hours X a winglet usage factor of 1.2. The adjusted winglet TIS is 600 hours.

5. Calculate the winglet usage penalty. Subtract the winglet TIS (result of Step 1 above) from the adjusted winglet TIS (result of Step 4 above).

Example:
Adjusted winglet TIS—the winglet TIS = winglet usage penalty.
(600 hours) — (500 hours TIS) =(100 hours TIS).

6. Adjust the safe life of your airplane to account for winglet usage. Subtract the winglet usage penalty (result of Step 5 above) result from the unmodified safe life from paragraph (a)(1) of this AD (result of Step 2 above).

Example:
Unmodified safe life—winglet usage penalty = adjusted safe life.
(1,650 hours TIS)—(100 hours TIS) = (1,550 hours TIS).

7. If you remove the winglets from your airplane prior to further flight or no longer have the winglets installed on your airplane, the safe life of your airplane is the adjusted safe life (result of Step 6 above). Enter this number in paragraph (d)(1)(i) of this AD and the airplane logbook.

What If I have the Marburger Winglet Installed as of the Effective Date of This AD and Plan To Operate My Airplane Without Removing the Winglet?

1. Review your airplane's logbook to determine your airplane's TIS without the winglets installed.

Example:

A review of your airplane's logbook shows that you have accumulated 1,500 hours TIS, including 500 hours with the Marburger winglets installed. Therefore, your airplane's TIS without the winglets installed is 1,000 hours.

2. Determine your airplane's unmodified safe life from paragraph (a)(1) of this AD.

Example: Your airplane is a Model AT–502B, serial number 0292. From paragraph (a)(1) of this AD, the safe life of your airplane is 1,650 hours TIS.

All examples from hereon will be based on the Model AT–502B, serial number 0292 airplane.

3. Determine the winglet usage factor from paragraph (a)(3) of this AD.

Example: Again, your airplane is a Model AT–502B, serial number 0292. From paragraph (a)(3) of this AD, your winglet usage factor is 1.2.

4. Determine the potential winglet TIS. Subtract the TIS without the winglets installed (result of Step 1 above) from the unmodified safe life (result of Step 2 above).

Example:
Unmodified safe life—TIS without winglets = Potential winglet TIS.
(1,650 hours TIS) '' (1,000 hours TIS) = (650 hours TIS).

5. Adjust the potential winglet TIS to account for the winglet usage factor. Divide the potential winglet TIS (result of Step 4 above) by the winglet usage factor (result of Step 3 above).

Example:
Potential winglet TIS divided by usage factor = Adjusted potential winglet TIS.
(650 hours TIS) / (1.2) = (542 hours TIS).

6. Calculate the winglet usage penalty. Subtract the adjusted potential winglet TIS (result of Step 5 above) from the potential winglet TIS (result of Step 4 above).

Example:
Potential winglet TIS—Adjusted potential winglet TIS = Winglet usage penalty.
(650 hours TIS) — (542 hours TIS) = (108 hours TIS).

7. Adjust the safe life of your airplane to account for the winglet installation. Subtract the winglet usage penalty (result of Step 6 above) from the unmodified safe life from paragraph (a)(1) of this AD (result of Step 2 above).

Example:
Unmodified safe life—Winglet usage penalty = Adjusted safe life.

(1,650 hours TIS)—(108 hours TIS) = (1,542 hours TIS).

8. Enter the adjusted safe life (result of Step 7 above) in paragraph (d)(1)(i) of this AD and the airplane logbook.

What If I Install or Remove the Marburger Winglet From My Airplane in the Future?

If, at anytime in the future, you install or remove the Marburger winglet STC from your airplane, you must repeat the procedures in this Appendix to determine the airplane's safe life.

Issued in Kansas City, Missouri, on December 20, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–32684 Filed 12–31–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–29–AD; Amendment 39–12990; AD 2002–26–04]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Limited., Aero Division-Bristol, S.N.E.C.M.A. Olympus 593 Mk. 610–14–28 Turbojet Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain serial number (SN) Rolls-Royce Limited, Aero Division-Bristol, S.N.E.C.M.A. (RR) Olympus 593 Mk. 610–14–28 turbojet engines, installed in BAe/SNIAS Concorde Type 1 airplanes. This action requires second stage fuel pump endurance bench-testing if the pump has not yet accumulated 50 flight hours since last installed and the bearing assembly and or the rotating assembly were removed or re-fitted during last pump removal. This amendment is prompted by a report of second stage fuel pumps that were not endurance bench-tested after having the bearing assembly and or the rotating assembly removed or re-fitted, and then installed on engines in service. The actions specified in this AD are intended to prevent a fuel leak resulting in a sustained engine fire.

DATES: Effective January 17, 2003. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of January 17, 2003.

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

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–29–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: *''9-ane-adcomment@faa.gov''.* Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from Rolls-Royce Defence (Europe) Technical Publications Department, P.O. Box 3, Filton, Bristol BS34 7QE, England, telephone 011 7979 6060; fax 011 7979 7234. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Glorianne Niebuhr, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7132; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom (UK), notified the FAA that an unsafe condition may exist on certain SN Olympus 593 Mk. 610–14–28 turbojet engines, installed in SN BAe/SNIAS Concorde Type 1 airplanes. The CAA advises that some Lucas second stage fuel pumps that were not endurance bench-tested after having the bearing assembly and or the rotating assembly removed or re-fitted, were installed on engines in service. The manufacturer states that a fuel leak can occur within the first 10 hours of pump operation after having the bearing assembly and or the rotating assembly removed or re-fitted, and that endurance bench-testing is required on those pumps that have not yet accumulated 50 flight hours. That condition, if not corrected, could cause a fuel leak resulting in a sustained engine fire.

Manufacturer's Service Information

RR has issued Olympus 593 Mandatory Service Bulletin (MSB) No. OL.593–73–9075–103, dated November 17, 2000, that specifies instructions for endurance bench-testing of Lucas second stage pumps Types 105, 105M, 106, and 106M that are installed on Olympus 593 Mk. 610–14–28 turbojet engines, SN's CBE . 021 to CBE . 094 inclusive, and CBX . 101 and above. The endurance bench-testing is to be done if the second stage pump bearing assembly and or the rotating assembly were removed or re-fitted and the pump has not yet accumulated 50 flight hours-since-last-installed. The CAA classified this service bulletin as mandatory and issued AD 005–11–2000 in order to ensure the airworthiness of these RR engines in the UK.

Bilateral Airworthiness Agreement

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

FAA's Determination of an Unsafe Condition and Required Actions

Although none of these affected engines are used on any airplanes that are registered in the United States, the possibility exists that these engines could be used on airplanes that are registered in the United States in the future. Since an unsafe condition has been identified that is likely to exist or develop on other RR Olympus 593 Mk. 610–14–28 turbojet engines of the same type design, this AD is being issued to prevent a fuel leak, resulting in a sustained engine fire. This AD requires endurance bench-testing if the pump has not yet accumulated 50 flight hours since last installed and the second stage pump bearing assembly and or the rotating assembly was removed or re-fitted during last pump removal. The actions must be done in accordance with the service bulletin described previously.

Immediate Adoption of This AD

Since there are currently no domestic operators of this engine model, notice and opportunity for prior public comment are unnecessary. Therefore, a situation exists that allows the immediate adoption of this regulation.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NE–29–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Analysis

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2002–26–04 Rolls-Royce Limited Aero Division-Bristol, S.N.E.C.M.A.: Amendment 39–12990. Docket No. 2002–NE–29–AD.

Applicability

This airworthiness directive (AD) is applicable to Rolls-Royce Limited, Aero Division-Bristol, S.N.E.C.M.A. (RR) Olympus 593 Mk. 610–14–28 turbojet engines, serial numbers (SN's) CBE . 021 to CBE . 094 inclusive, and CBX . 101 and above. These engines are installed on, but not limited to BAe/SNIAS Concorde Type 1 airplanes.

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

Compliance

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

To prevent a fuel leak, resulting in a sustained engine fire, do the following:

(a) Perform endurance bench-testing of Lucas Types 105, 105M, 106, and 106M second stage pumps if the pump has not yet accumulated 50 flight hours since last installed and the bearing assembly and or the rotating assembly was removed or re-fitted during last pump removal. Do this in accordance with paragraph 2.A. of the Accomplishment Instructions of RR Mandatory Service Bulletin OL.593–73–9075–103, dated November 17, 2000.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Documents That Have Been Incorporated by Reference

(d) The endurance testing must be done in accordance with Rolls-Royce Olympus 593 Mandatory Service Bulletin OL.593–73–9075–103, dated November 17, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Rolls-Royce Defence (Europe) Technical Publications Department, P.O. Box 3, Filton, Bristol BS34 7QE, England, telephone 011 7979 6060; fax 011 7979 7234. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in CAA airworthiness directive 005–11–2000, dated November 2000.

Effective Date

(e) This amendment becomes effective on January 17, 2003.

Issued in Burlington, Massachusetts, on December 20, 2002.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–32660 Filed 12–31–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–28–AD; Amendment 39–12956; AD 2002–23–12]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Limited, Aero Division-Bristol, S.N.E.C.M.A. Olympus 593 Mk. 610–14–28 Turbojet Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Rolls-Royce Limited, Aero Division-Bristol, S.N.E.C.M.A (RR) Olympus 593 Mk. 610–14–28 turbojet engines. This action requires a one-time fluorescent penetrant inspection (FPI) of certain rebroached stage 5 high pressure compressor (HPC) disks, inspecting for cracks, and if necessary, removing cracked disks from service. This amendment is prompted by a manufacturer's analysis that concluded that the rebroaching process failed to achieve the anticipated life before being rejected for cracks and that the original cracks are not being removed. The actions specified in this AD are intended to prevent failure of the HPC stage 5 disk which could result in an uncontained engine failure and damage to the airplane.

DATES: Effective January 17, 2003. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of January 17, 2003.

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

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–28–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: *9-ane-adcomment@faa.gov.* Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from Rolls-Royce Defence (Europe) Technical Publications Department, P.O. Box 3, Filton, Bristol BS34 7QE, England; telephone 011 7979 6060; Fax 011 7979 7234. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Glorianne Niebuhr, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7132; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom (UK), notified the FAA that an unsafe condition may exist on Bae/SNIAS Concorde Type 1 airplanes with RR Olympus 593 Mk. 610–14–28 turbojet engines. The CAA advises that if the disks were not rebroached correctly, certain HPC stage 5 disks may fail to achieve their anticipated cyclic life limit before cracking. Service experience with HPC stage 6 disks that were rebroached using a similar process demonstrated that the disks failed to achieve the anticipated life limit before being rejected for cracks. Further investigation revealed that original cracks were not being removed by the rebroaching. Therefore, a review of the HPC stage 5 disks was done. The analysis indicated that certain HPC stage 5 disks needed to be inspected between specific cyclic intervals to ensure that they have no cracks and that they can then achieve their previously anticipated life. At the time the CAA AD was originally written, there were a number of uninspected disks. Currently, there are only two HPC stage 5 disks that have not been inspected.

Manufacturer's Service Information

RR has issued Olympus 593 MSB No. OL.593–72–8951–364, Revision 7, dated November 23, 2001, that specifies the inspection requirements for certain HPC stage 5 disks. The CAA classified this service bulletin as mandatory and issued AD 006–07–98 in order to ensure the airworthiness of these RR engines in the UK.

Differences Between the Manufacturers Service Information and This AD

RR has issued Olympus 593 MSB No. OL.593–72–9051–428, Revision 1, dated November 16, 2001, that requires disk P/N B510911, SN J14CA, to be inspected within 200 to 958 cycles-in-service (CIS) after rebroaching and disk P/N B510909, SN JZJ66, to be inspected within 200 to 931 CIS after rebroaching. However, since none of these engines are installed on airplanes of the U.S. registry, the FAA requires that they be inspected before further flight.

Bilateral Airworthiness Agreement

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

FAA's Determination of an Unsafe Condition and Required Actions

Although none of these affected engine models are used on any airplanes that are registered in the United States, the possibility exists that the engine models could be used on airplanes that are registered in the United States in the future. Since an unsafe condition has been identified that is likely to exist or develop on other RR Olympus 593 Mk. 610–14–28 turbojet engines of the same type design, this AD is being issued to prevent failure of the HPC stage 5 disk, which could result in an uncontained engine failure and damage to the airplane. This AD requires a one-time fluorescent penetrant inspection (FPI) of certain rebroached HPC stage 5 disks, inspecting for cracks, and if necessary, removing cracked disks from service. The actions must be done in accordance with the service bulletin described previously.

Immediate Adoption of This AD

Since there are currently no domestic operators of this engine model, notice and opportunity for prior public comment are unnecessary. Therefore, a situation exists that allows the immediate adoption of this regulation.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire.

Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NE–28–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Analysis

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2002–23–12 Rolls-Royce Limited Aero Division-Bristol, S.N.E.C.M.A.: Amendment 39–12956. Docket No. 2002–NE–28–AD.

Applicability: This airworthiness directive (AD) is applicable to Rolls-Royce Limited, Aero Division-Bristol, S.N.E.C.M.A. (RR) Olympus 593 Mk. 610–14–28 turbojet engines with high pressure compressor (HPC) stage 5 disk part number (P/N) B510911, serial number (SN) J14CA and P/N B510909, SN JZJ66. These engines are installed on, but not limited to, BAe/SNIAS Concorde Type 1 airplanes.

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

Compliance: Compliance with this AD is required before further flight after the effective date of this AD, unless already done.

To prevent failure of the HPC stage 5 disk due to cracking, which could result in an uncontained engine failure and damage to the airplane, do the following:

(a) Before further flight, inspect HPC stage 5 disks P/N B510911, SN J14CA and P/N B510909, SN JZJ66, in accordance with Accomplishment Instructions 2.A.(1) through 2.A.(2) of Rolls-Royce (RR) Olympus 593 Mandatory Service Bulletin (MSB) OL.593–72–8951–364, Revision 7, dated November 23, 2001.

(b) If the stage 5 HPC disk is found cracked, it must be removed and replaced with a serviceable part.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Documents That Have Been Incorporated by Reference

(e) The inspection must be done in accordance with Rolls-Royce Olympus 593 Mandatory Service Bulletin (MSB) OL.593–72–8951–364, Revision 7, dated November 23, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Rolls-Royce Defence (Europe) Technical Publications Department, P.O. Box 3, Filton, Bristol BS34 7QE, England; telephone 011 7979 6060; Fax 011 7979 7234. Copies may be inspected, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in CAA airworthiness directive 006–07–98.

Effective Date

(f) This amendment becomes effective on January 17, 2003.

Issued in Burlington, Massachusetts, on November 15, 2002.

Mark C. Fulmer,

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

[FR Doc. 02–32888 Filed 12–31–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–293–AD; Amendment 39–12994; AD 2002–26–06]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–300 Series Airplanes

AGENCY: Federal Aviation Administration, (DOT).
ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Dornier Model 328–300 series airplanes. This action requires revising the Airplane Flight Manual to incorporate revised performance data for certain operations. This action is necessary to prevent operation in weight/altitude/temperature conditions that exceed the performance capabilities of the airplane, which could result in impact with terrain during engine out performance-limited operations. This action is intended to address the identified unsafe condition.

DATES: Effective January 17, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 17, 2003.

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

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–293–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–293–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Fairchild Dornier, Dornier Luftfahrt GmbH, PO Box 1103, D–82230 Wessling, Germany. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the *Office of the Federal Register,* 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tom Groves, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1503; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified the FAA that an unsafe condition may exist on all Dornier Model 328–300 series airplanes. The LBA advises that the engine performance data has been revised by the engine manufacturer, Pratt & Whitney Canada. The engine thrust has been reduced for certain operations at pressure altitudes in excess of 5,000 feet. Operation in conditions that exceed the performance capabilities of the airplane, if not corrected, could result in impact with terrain during engine out performance-limited operations.

Explanation of Relevant Service Information

The manufacturer has issued Dornier 328 J All Operators Telefax (AOT) AOT–328J–00–006, dated October 1, 2002, which describes procedures for revising the Performance Section of the Airplane Flight Manual (AFM) to incorporate revised performance data for certain operations. The LBA classified the AOT as mandatory and issued German airworthiness directive 2002–355, dated November 14, 2002, in order to assure the continued airworthiness of these airplanes in Germany.

FAA's Conclusions

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

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent operation in weight/altitude/temperature conditions that exceed the performance capabilities of the airplane, which could result in impact with terrain during engine out performance-limited operations. This AD requires revising the Performance Section of the AFM to incorporate revised performance data for certain operations.

Determination of Rule's Effective Date

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

Comments Invited

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

Submit comments using the following format:

[sbull] Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.

[sbull] For each issue, state what specific change to the AD is being requested.

[sbull] Include justification (*e.g.*, reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–293–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2002–26–06 Dornier Luftfahrt GMBH: Amendment 39–12994. Docket 2002–NM–293–AD.

Applicability: All Model 328–300 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent operation in weight/altitude/temperature conditions that exceed the performance capabilities of the airplane, which could result in impact with terrain during engine out performance-limited operations; accomplish the following:

Airplane Flight Manual Revision

(a) Within 7 days after the effective date of this AD: Revise the Performance Section of the Dornier 328–300 Airplane Flight Manual (AFM) to incorporate revised performance data for certain operations; as specified in Dornier 328 J All Operators Telefax (AOT) AOT–328J–00–006, dated October 1, 2002. This may be accomplished by inserting a copy of the AOT into the AFM.

(b) The AOT may be removed from the AFM when the revised performance data in the AOT specified in paragraph (a) of this AD has been incorporated into a general revision of the AFM.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 1: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Incorporation by Reference

(e) The AFM revision required by paragraph (a) of this AD shall be done in accordance with Dornier 328 J All Operators Telefax AOT–328J–00–006, dated October 1, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fairchild Dornier, Dornier Luftfahrt GmbH, PO Box 1103, D–82230 Wessling, Germany. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the *Office of the Federal Register,* 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 2: The subject of this AD is addressed in German airworthiness directive 2002–355, dated November 14, 2002.

Effective Date

(f) This amendment becomes effective on January 17, 2003.

Issued in Renton, Washington, on December 23, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–32879 Filed 12–31–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–ANE–44–AD; Amendment 39–12989; AD 2000–16–02R1]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney PW4164, PW4168, and PW4168A Series Turbofan Engines

AGENCY: Federal Aviation Administration, (DOT).

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), that is applicable to Pratt & Whitney PW4164, PW4168, and PW4168A series turbofan engines. That AD currently requires initial and repetitive torque checks for loose or broken front pylon mount bolts made from INCO 718 material and MP159 material. That AD also requires initial and repetitive visual inspections of the primary mount thrust load path. This amendment requires extension of the cycles accumulated before performing the initial inspection, reduces the frequency of repetitive inspections for MP159 material bolts, and adds a terminating action to the primary mount thrust load path inspections by introducing a new increased durability forward engine mount bearing housing. This amendment is prompted by component testing to assess the low cycle fatigue (LCF) life of the MP159 material bolts and the development of a new design forward engine mount bearing housing that meets the 8,000 flight cycle design intent for inspection. The actions specified by this AD are intended to prevent front pylon mount bolt and primary mount thrust load path failure, which could result in an engine separating from the airplane.

DATES: Effective February 6, 2003. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 6, 2003. The incorporation by reference of certain other publications, as listed in the regulations, was approved previously by the Director of the Federal Register as of

October 16, 2002 (65 FR 49730; August 15, 2002).

ADDRESSES: The service information referenced in this AD may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–8860; fax (860) 565–4503. This information may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Diane Cook, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 239–7133; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by revising AD 2000–16–02, Amendment 39–11856 (65 FR 49730, August 15, 2000), which is applicable to Pratt & Whitney PW4164, PW4168, and PW4168A series turbofan engines was published in the **Federal Register** on September 13, 2002 (67 FR 57987). That action proposed to require an extension of the cycles accumulated before performing the initial inspection for the MP 159 material bolts, reduce the frequency of repetitive inspections for MP159 material bolts, and add a terminating action to the primary mount thrust load path inspections by introducing a new increased durability forward engine mount bearing housing in accordance with Pratt & Whitney alert service bulletins (ASB's) PW4G–100–A71–9, Revision 1, dated November 24, 1997; ASB PW4G–100–A71–20, Revision 1, dated January 15, 2002; ASB PW4G–100–A71–18, Revision 2, dated January 15, 2002; and service bulletin (SB) PW4G–100–A71–22, dated January 15, 2002.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comment received.

One commenter concurs with the proposed AD and states that the proposed AD is consistent with all appropriate PW service bulletins. The FAA agrees.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Economic Analysis

There are approximately 226 engines of the affected design in the worldwide fleet. The FAA estimates that 21 engines installed on aircraft of U.S. registry would be affected by this AD. The FAA also estimates that it would take approximately 3 work hours per engine to perform the actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $19,000 per engine. Based on these figures, the total cost of the AD to U.S. operators is estimated to be $402,780.

Regulatory Analysis

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–11856 (65 FR 49730, August 15, 2000) and by adding a new airworthiness directive, Amendment 39–12989, to read as follows:

2000–16–02R1 Pratt & Whitney: Amendment 39–12989. Docket No. 97–ANE–44–AD. Revises AD 2000–16–02, Amendment 39–11856.

Applicability: This airworthiness directive (AD) is applicable to Pratt & Whitney PW4164, PW4168, and PW4168A series turbofan engines, with front pylon mount bolts, part numbers (P/N's) 54T670 or 51U615, installed. These engines are installed on but not limited to Airbus Industrie A330 series airplanes.

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

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

To prevent front pylon mount bolt and primary mount thrust load path failure, which could result in engine separation from the airplane, do the following:

INCO 718 Material Bolts Torque Checks

(a) Perform initial and repetitive torque checks of INCO 718 material front pylon mount bolts, P/N 54T670, and replace, if necessary, with new bolts, in accordance with the Accomplishment Instructions of PW Alert Service Bulletin (ASB) No. PW4G–100–A71–9, Revision 1, dated November 24, 1997, as follows:

(1) For front pylon mount bolts, P/N 54T670, with fewer than 1,000 cycles-in-service-since-new (CSN) on the effective date of this AD, accomplish the following in accordance with Part (A) of the Accomplishment Instructions of the ASB:

(i) Perform an initial torque check prior to accumulating 1,250 CSN or at the next engine removal for cause, whichever occurs first.

(ii) Thereafter, perform torque checks at intervals of not less than 750 or greater than 1,250 cycles in service (CIS) since last torque check, not to exceed 11,000 CSN.

(2) For front pylon mount bolts, P/N 54T670, with 1,000 or more CSN but less than 5,750 CSN on the effective date of this AD, accomplish the following in accordance with Part (A) of the Accomplishment Instructions of the ASB:

(i) Perform an initial torque check within 250 CIS after the effective date of this AD, or

at the next engine removal for any cause, whichever occurs first.

(ii) Thereafter, perform torque checks at intervals of not less than 750 or greater than 1,250 CIS since last torque check, not to exceed 11,000 CSN.

(3) For front pylon mount bolts, P/N 54T670, with 5,750 or more CSN on the effective date of this AD, accomplish the following in accordance with Part (B) of the Accomplishment Instructions of the ASB:

(i) Perform an initial torque check within 250 CIS after the effective date of this AD, or prior to the next engine removal for any cause, whichever occurs first.

(ii) Thereafter, perform torque checks at intervals of not less than 750 or greater than 1,250 CIS since last torque check, not to exceed 11,000 CSN.

(4) Prior to further flight, replace all four bolts in accordance with Part (A), Paragraph 1(D) of the Accomplishment Instructions of the ASB, if any of the bolts are loose or broken.

INCO 718 Material Bolts Life Limit

(b) This AD establishes a new life limit of 11,000 CSN for front pylon mount bolts, P/N 54T670. Except as provided in paragraph (f) of this AD, no front pylon mount bolts, P/N 54T670, may exceed this new life limit after the effective date of this AD.

MP159 Material Bolts Inspections

(c) Perform initial and repetitive torque inspections of front pylon mount bolts, P/N 51U615, in accordance with the Accomplishment Instructions of Pratt & Whitney ASB PW4G–100–A71–20, Revision 1, dated January 15, 2002, as follows:

(1) For front pylon mount bolts with less than 4,100 CSN on the effective date of this AD, perform the initial torque inspection at the earlier of the following:

(i) Before accumulating 4,350 CSN; or

(ii) The next engine removal for any cause.

(2) For front pylon mount bolts with 4,100 or more CSN on the effective date of this AD, perform the initial torque check at the earlier of the following:

(i) Within 250 CIS after the effective date of this AD; or

(ii) The next engine removal for any cause.

(3) Thereafter, perform torque inspections at intervals not to exceed 4,350 CIS since last torque inspection.

(4) Prior to further flight, replace all four bolts, in accordance with Paragraph 1(D) of the Accomplishment Instructions of the ASB, if any are loose or broken.

Primary Mount Thrust Load Path Inspections

(d) Perform initial and repetitive visual inspections of the primary mount thrust load path, in accordance with the Accomplishment Instructions of PW ASB PW4G–100–A71–18, Revision 2, dated January 15, 2002, as follows:

(1) For forward engine mount assemblies with fewer than 1,000 CSN on the effective date of this AD, perform the initial visual inspection at the earlier of the following:

(i) Before accumulating 1,250 CSN; or

(ii) The next engine removal for any cause.

(2) For forward engine mount assemblies with 1,000 or more CSN on the effective date of this AD, perform the initial visual inspection at the earlier of the following:

(i) Within 250 CIS after the effective date of this AD; or

(ii) The next engine removal for any cause.

(3) Thereafter, perform visual inspections at intervals of not less than 750 or greater than 1,250 CIS since last visual inspection.

(4) Prior to further flight, replace all cracked parts with serviceable parts and inspect the primary thrust load path components in accordance with Paragraph 4 of the accomplishment instructions of the SB.

Terminating Action

(e) Replacement of the forward engine mount bearing housing, P/N 59T794 or P/N 54T659 with P/N 52U420 in accordance with Service Bulletin (SB) PW 4G–100–71–22, dated January 15, 2002, constitutes terminating action to the inspection requirements of paragraph (d) of this AD.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Documents That Have Been Incorporated By Reference

(h) The inspections must be done in accordance with the following Pratt & Whitney (PW) alert service bulletins (ASB's) and service bulletin (SB):

Document No.	Pages	Revision	Date
ASB PW4G–100–A71–9	1	1	Nov. 24, 1997.
	2	Original	July 31, 1997.
	3	1	Nov. 24, 1997.
	4–7	Original	July 31, 1997.
	8–9	1	Nov. 24, 1997.
	10–11	Original	July 31, 1997.
Total Pages: 11			
ASB PW4G–100–A71–20	1	1	Jan. 15, 2002.
	2	Original	Dec. 9, 1999.
	3–5	1	Jan. 15, 2002.
	6–7	Original	Dec. 9, 1999.
	8	1	Jan. 15, 2002.
	9	Original	Dec. 9, 1999.
	10	1	Jan. 15, 2002.
Total Pages: 10			
ASB PW4G–100–A71–18	1–2	2	Jan. 15, 2002.
	3	1	Dec. 9, 1990.
	4	2	Jan. 15, 2002.
	5–6	Original	Sept. 15, 1999.
	7	2	Jan. 15, 2002.
	8–12	Original	Sept. 15, 1999.
Total Pages: 12			
SB PW4G–100–71–22	All	Original	Jan. 15, 2002.
Total Pages: 8			

This incorporation by reference of certain publications was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The incorporation by reference of PW ASB PW4G–100–A71–9, Revision 1, dated November 24, 1997, was approved by the Director of the Federal Register on October 16, 2000 (65 FR 49730; August 15, 2002).

Copies may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–8860; fax (860) 565–4503. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(i) This amendment becomes effective on February 6, 2003.

Issued in Burlington, Massachusetts, on December 19, 2002.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–32664 Filed 12–31–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–269–AD; Amendment 39–12995; AD 2002–26–07]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2C10 (Regional Jet Series 700 & 701) Series Airplanes

AGENCY: Federal Aviation Administration, (DOT).

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Bombardier Model CL–600–2C10 (Regional Jet Series 700 & 701) series airplanes. This action requires revising the airplane flight manual (AFM) to advise the flightcrew to limit use of the auxiliary power unit (APU) to ground operation only, except for those in-flight emergencies described in the AFM when use of the APU is specified. This action also provides for optional terminating action for the requirements of this AD. This action is necessary to prevent fuel from being sprayed throughout the APU compartment and drawn out of the APU exhaust duct due to a cracked APU fuel nozzle, which could result in a fire or explosion in the APU compartment during flight. This action is intended to address the identified unsafe condition.

DATES: Effective January 17, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 17, 2003.

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

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–269–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov*. Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–269–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Bombardier, Inc., Canadair, Aerospace Group, PO Box 6087, Station Centreville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the *Office of the Federal Register*, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: For questions regarding the AFM revision, contact James Delisio, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7521; fax (516) 568–2716. For questions regarding the APU replacement, contact Roger Pesuit, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5251; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on certain Model CL–600–2C10 (Regional Jet Series 700 & 701) series airplanes. TCCA advises that fuel nozzles installed on the auxiliary power unit (APU) on these airplanes may crack and leak fuel into the APU compartment. According to the APU manufacturer, the cracks develop during APU start. Cracks are not readily detectable when the APU is installed in the airplane. An APU fuel nozzle can crack due to fatigue, and the resulting leak could cause fuel to spray throughout the APU compartment and be drawn out of the APU exhaust duct. This condition, if not corrected, could result in a fire or explosion in the APU compartment during flight.

Explanation of Relevant Service Information

Bombardier has issued Temporary Revision (TR) RJ 700/28–2, dated November 5, 2002, to the Canadair Regional Jet Series 700 Airplane Flight Manual. The TR advises the flightcrew to limit use of the APU to ground operation only, except for those in-flight emergencies described in the AFM when use of the APU is specified. TCCA has approved the TR for these airplanes in Canada. By approving the TR, TCCA also mandates its immediate incorporation into the AFM; therefore, TCCA did not issue a Canadian airworthiness directive to specifically mandate incorporation of the TR.

The FAA has reviewed Honeywell Alert Service Bulletin RE220–49–A7714, dated November 4, 2002, which describes procedures for replacing all APU fuel nozzles with new fuel nozzles (including installing new seals and washers; reidentifying the APU; and torqueing the bolts and fuel manifold connector within specified ranges). The service bulletin specifically cautions against intermixing fuel nozzle part numbers on an APU or interchanging the subject (''–2'') fuel nozzles on a modified APU.

U.S. Type Certification of the Airplane

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept the FAA informed of the situation described above. The FAA has reviewed all available information and determined that AD action is necessary for products of this type design that are certificated for operation in the United States. TCCA fully agrees with the requirements and compliance time specified in this AD.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United

States, this AD is being issued to prevent fuel from being sprayed throughout the APU compartment and drawn out of the APU exhaust duct due to a cracked APU fuel nozzle, which could result in a fire or explosion in the APU compartment during flight. This AD requires revising the AFM to advise the flightcrew to limit use of the APU to ground operation only, except for those in-flight emergencies described in the AFM when use of the APU is specified.

This AD also provides for optional terminating action for the actions required by this AD. In accord with TCCA's findings, the FAA has determined that the operating limitations imposed by this AD can remain in place in lieu of accomplishment of a terminating action. In making this determination, the FAA considers that, in this case, implementing the AFM limitations will adequately ensure long-term continued operational safety before the unsafe condition could present a safety risk to the airplane.

Difference Between AD and Service Bulletin

Although the service bulletin recommends that operators send all removed fuel nozzles to Honeywell, this AD does not require operators to do so.

Interim Action

This is considered to be interim action. The FAA may consider requiring eventual replacement of the APU fuel nozzles, which would allow operators to remove the AFM limitation required by this AD. However, the planned compliance time for APU fuel nozzle replacement, if required, would be long enough to practicably provide notice and opportunity for public comment before the final rule is issued.

Determination of Rule's Effective Date

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

Comments Invited

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

Submit comments using the following format:

[sbull] Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.

[sbull] For each issue, state what specific change to the AD is being requested.

[sbull] Include justification (*e.g.*, reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–269–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2002–26–07 Bombardier, Inc. (Formerly Canadair): Amendment 39–12995. Docket 2002–NM–269–AD.

Applicability: Model CL–600–2C10 (Regional Jet Series 700 & 701) series airplanes, certificated in any category, on which auxiliary power unit (APU) Model RE220(RJ), part number WE3800770–2, is installed.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent fuel from being sprayed throughout the APU compartment and drawn out of the APU exhaust duct due to a cracked APU fuel nozzle, which could result in a fire or explosion in the APU compartment during flight, accomplish the following:

Revision of Airplane Flight Manual (AFM)

(a) Within 1 day after the effective date of this AD, revise the ''Limitations—Power Plant'' section of the FAA-approved Canadair Regional Jet Series 700 (AFM) to include the information specified in Temporary Revision RJ 700/28–2, dated November 5, 2002, which advises the flightcrew to limit use of the APU to ground operation only, except for those in-flight emergencies described in the AFM when use of the APU is specified. This may be accomplished by inserting a copy of Temporary Revision RJ 700/28–2 into the AFM.

Optional Terminating Action

(b) Replacement of all APU fuel nozzles with new fuel nozzles (including installing new seals and washers; torqueing the bolts and fuel manifold connector within specified ranges; and then reidentifying the APU) in accordance with Honeywell Alert Service Bulletin RE220–49–A7714, dated November 4, 2002, terminates the requirements of paragraph (a) of this AD. After the replacement, the limitations required by paragraph (a) of this AD may be removed from the AFM.

Note 2: The ''Limitations—Power Plant'' procedures specified by paragraph (a) of this AD are required to be implemented only on affected airplanes, *i.e.,* those with APU Model RE220(RJ), part number WE3800770–2, installed. However, individual pilots may operate other airplanes that do not have the subject APU installed, and that are not subject to those limitations and procedures. Therefore, to avoid any confusion or misunderstanding, it is important that airlines have communication mechanisms in place to ensure that pilots are aware, for each flight, whether the limitations apply.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Incorporation by Reference

(e) The required actions shall be done in accordance with Canadair Regional Jet Series 700 Airplane Flight Manual Temporary Revision RJ 700/28–2, dated November 5, 2002. The replacement, if accomplished, shall be done in accordance with Honeywell Alert Service Bulletin RE220–49–A7714, dated November 4, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Canadair, Aerospace Group, PO Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the *Office of the Federal Register,* 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on January 17, 2003.

Issued in Renton, Washington, on December 23, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–32878 Filed 12–31–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–90–AD; Amendment 39–13001; AD 2002–26–13]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–11, –12, –13, –14, –15, and –15F Airplanes; Model DC–9–21 Airplanes; Model DC–9–31, –32, –32 (VC–9C), –32F, –32F (C–9A, C–9B), –33F, –34, and –34F Airplanes; Model DC–9–41 Airplanes; Model DC–9–51 Airplanes; Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) Airplanes; and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas airplanes, that requires replacement of certain power relays, and subsequent repetitive cleaning, inspecting, repairing, and testing of certain replaced power relays. This amendment is prompted by reports indicating that the alternating current (AC) cross-tie relay shorted out internally, which caused severe smoke and burn damage to the relay, aircraft wiring, and adjacent panels. The actions specified by this AD are intended to prevent internal arcing of the left and right generator power relays, auxiliary power relays, and external power relays, and consequent smoke and/or fire in the cockpit and cabin.

DATES: Effective February 6, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 6, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Elvin Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas airplanes was published as a second supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on July 1, 2002 (67 FR 44119). That action proposed to require replacement of certain power relays, and subsequent repetitive cleaning, inspecting, repairing, and testing of certain replaced power relays.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comment received.

Request To Reduce the Compliance Time

One commenter, the National Transportation Safety Board (NTSB), agrees with the proposed replacement and repetitive maintenance requirements. However, the commenter does not agree with the proposed 24-month compliance time, because it ''is a longer compliance time than is either necessary or prudent.'' The commenter states that it was informed by the FAA that the originally proposed 12-month compliance time was extended to 24 months because of the limited supply of replacement relays and the absence of any reports of failure of the power relays having part number (P/N) 914F567–3 in the six positions (left and right generator power, auxiliary power, and external power). The commenter notes that the power relay manufacturer has recommended replacement of P/N 914F567–3 power relays in those six positions and the cross-tie position (total of seven positions) since 1976.

From this comment, we infer that the commenter requests that the compliance time be reduced from the proposed 24 months to 12 months. We do not agree. Concerning the power relay manufacturer's 1976 recommendation, Sundstrand (Westinghouse) has re-reviewed all field data for power relays having P/N 914F567–3. It concluded that, in its opinion, the identified unsafe condition exists in the cross-tie position only. The power relays installed at the AC cross-tie position are more susceptible to phase-to-phase short than the other six positions (left and right generator power, auxiliary power, and external power) due to the installation orientation in an airplane. Its horizontal orientation allows for the buildup of conductive particle material between phase-to-phase circuits. Sundstrand (Westinghouse) also recommended that we not issue an AD for power relays having P/N 914F567–3 that are in the left and right generator power, auxiliary power, and external power positions. Due to the lower likelihood of a short circuit resulting in internal arcing, we have determined that a 24-month compliance time is appropriate to address the identified unsafe condition.

However, as discussed in the preamble of the second supplemental NPRM, we have determined that the potential for an electrical short still exists when a power relay, Sundstrand (Westinghouse) P/N 914F567–3, is installed in those six positions, though not as likely as in the cross-tie position. The accumulation of conductive particle material on any power relays, Sundstrand (Westinghouse) P/N 914F567–3, can build an electrical path to its adjacent terminal and cause a phase-to-phase short circuit. Such a short circuit will result in internal arcing of the power relays and consequent smoke and/or fire in the cockpit and cabin. This final rule addresses that potential unsafe condition by replacing the generator power relays, auxiliary power relays, and external power relays having Sundstrand (Westinghouse) P/N 914F567–3 with a Sundstrand (Westinghouse) P/N 9008D09 series or 914F567–4, and periodically removing the build-up of conductive particle material from the generator power relays, auxiliary power relays, and external power relays, having Sundstrand (Westinghouse) P/N 914F567–4.

Explanation of Change to Applicability

We have revised the applicability of the existing AD to identify model designations as published in the most recent type certificate data sheet for the affected models.

Conclusion

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

Cost Impact

There are approximately 1,991 Model DC–9–11, –12, –13, –14, –15, and –15F airplanes; Model DC–9–21 airplanes; Model DC–9–31, –32, –32 (VC–9C), –32F, –32F (C–9A, C–9B), –33F, –34, and –34F airplanes; Model DC–9–41 airplanes; Model DC–9–51 airplanes; Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) airplanes; and Model MD–88 airplanes; of the affected design in the worldwide fleet. The FAA estimates that 1,219 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $146,280, or $120 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2002–26–13 McDonnell Douglas: Amendment 39–13001. Docket 99–NM–90–AD.

Applicability: This AD applies to the following airplanes, certificated in any category, as listed in Boeing Alert Service Bulletin DC9–24A191, Revision 01, dated January 9, 2002:

McDonnell Douglas Model

DC–9–11, DC–9–12, DC–9–13, DC–9–14, DC–9–15, and DC–9–15F airplanes
DC–9–21 airplanes
DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–32F (C–9A, C–9B), DC–9–33F, DC–9–34, and DC–9–34F airplanes
DC–9–41 airplanes
DC–9–51 airplanes
DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) airplanes
MD–88 airplanes

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

Compliance: Required as indicated, unless accomplished previously.

To prevent internal arcing of the left and right generator power relays, auxiliary power relays, and external power relays, and consequent smoke and/or fire in the cockpit and cabin, accomplish the following:

Inspection

(a) Within 24 months after the effective date of this AD, perform a one-time inspection of the left and right generator power relays, auxiliary power relays, and external power relays, to determine if Sundstrand (Westinghouse) part number (P/N) 914F567–3 or –4 is installed, per Boeing Alert Service Bulletin DC9–24A191, Revision 01, dated January 9, 2002.

Replacement or Modification/Reidentification of Any Generator Power Relay, Auxiliary Power Relay, or External Power Relay, P/N 914F567–3

(b) If any generator power relay, auxiliary power relay, or external power relay, Sundstrand (Westinghouse) P/N 914F567–3, is found installed during the inspection required by paragraph (a) of this AD, within 24 months after the effective date of this AD, do either action specified in paragraph (b)(1) or (b)(2) of this AD per the Accomplishment Instructions of Boeing Alert Service Bulletin DC9–24A191, Revision 01, dated January 9, 2002.

(1) Replace power relay having Sundstrand (Westinghouse) P/N 914F567–3 with either a serviceable power relay having Sundstrand (Westinghouse) P/N 9008D09 series or 914F567–4.

(2) Modify the power relay, Sundstrand (Westinghouse) P/N 914F567–3, to a –4 configuration.

Maintenance or Replacement of Any Generator Power Relay, Auxiliary Power Relay, or External Power Relay, P/N 914F567–4

(c) If any generator power relay, auxiliary power relay, or external power relay, Sundstrand (Westinghouse) P/N 914F567–4, is found installed during the inspection required by paragraph (a) of this AD, clean, inspect, repair, and test the relay, or replace the power relay with a serviceable power relay having Sundstrand (Westinghouse) P/N 9008D09 series or 914F567–4; per Boeing Alert Service Bulletin DC9–24A191, Revision 01, dated January 9, 2002; at the time specified in paragraph (c)(1) of this AD, except as provided by paragraph (c)(2) of this AD.

(1) Within 7,000 flight hours after installation of the generator power relay, auxiliary power relay, or external power relay, Sundstrand (Westinghouse) P/N 914F567–4, or within 24 months after the effective date of this AD, whichever occurs later.

(2) For airplanes on which the flight hours since installation of any generator power relay, auxiliary power relay, or external power relay, Sundstrand (Westinghouse) P/N 914F567–4, cannot be determined: Within 24 months after the effective date of this AD.

Repetitive Maintenance of Generator Power Relay, Auxiliary Power Relay, or External Power Relay, Sundstrand (Westinghouse) P/N 914F567–4

(d) Before or upon the accumulation of 7,000 flight hours on any generator power relay, auxiliary power relay, or external power relay, Sundstrand (Westinghouse) P/N 914F567–4 since accomplishing the action(s) required by either paragraph (b) or (c) of this AD, as applicable, clean, inspect, repair, and test; per Boeing Alert Service Bulletin DC9–24A191, Revision 01, dated January 9, 2002. Thereafter, repeat these actions at intervals not to exceed the accumulation of 7,000 flight hours on the power relay.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Incorporation by Reference

(g) The actions shall be done in accordance with Boeing Alert Service Bulletin DC9–24A191, Revision 01, dated January 9, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(h) This amendment becomes effective on February 6, 2003.

Issued in Renton, Washington, on December 23, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–32865 Filed 12–31–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–CE–45–AD; Amendment 39–12987; AD 2002–26–02]

RIN 2120–AA64

Airworthiness Directives; Univair Aircraft Corporation Models Alon A–2 and A2–A; ERCO 415–C, 415–CD, 415–D, 415–E, and 415–G; Forney F–1 and F–1A; and Mooney M10 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Univair Aircraft Corporation (Univair) Models Alon A–2 and A2–A; ERCO 415–C, 415–CD, 415–D, 415–E, and 415–G; Forney F–1 and F–1A, and Mooney M10 airplanes. This AD requires you to repetitively inspect the wing center section for evidence of corrosion through the installation of

inspection openings, through the use of a specified scope and light source, or through the removal of the outer wing panels. This AD also requires you to repair or replace any parts where corrosion or corrosion damage is found, install cover plates if inspection openings were made, and send inspection results to Federal Aviation Administration (FAA). This AD is the result of several reports of corrosion being found throughout the wing center section structure. The actions specified by this AD are intended to detect and correct corrosion in the wing center section which could result in failure of the wing center section structure during flight. Such failure could lead to loss of control of the airplane.

DATES: This AD becomes effective on February 14, 2003.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of February 14, 2003.

ADDRESSES: You may get the service information referenced in this AD from Univair Aircraft Corporation, 2500 Himalaya Road, Aurora, Colorado 80011, telephone: (303) 375–8882; facsimile: (303) 375–8888. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–CE–45–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Roger Caldwell, Aerospace Engineer, FAA, Denver Aircraft Certification Office, 26805 East 68th Avenue, Room 214, Denver, Colorado 80249–6361; telephone: (303) 342–1086; facsimile: (303) 342–1088.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The FAA has received several reports of severe corrosion being found throughout the wing center section of Univair Models Alon A–2 and A2–A; ERCO 415–C, 415–CD, 415–D, 415–E, and 415–G; Forney F–1 and F–1A, and Mooney M10 airplanes. We have determined that the original design configuration of these airplanes does not provide adequate means for routine visual inspection of the wing center section wing walkway boxes. The inability to inspect this area has resulted in corrosion being undetected on these airplanes.

What is the potential impact if FAA took no action? If corrosion is not detected and corrected, the wing center section structure could fail during flight. Such failure could lead to loss of control of the airplane.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Univair Models Alon A–2 and A2–A; ERCO 415–C, 415–CD, 415–D, 415–E, and 415–G; Forney F–1 and F–1A; and Mooney M10 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on April 3, 2002 (67 FR 15763). The NPRM proposed to require the following:

—Repetitively inspect the wing center section for evidence of corrosion through the installation of inspection openings, through the use of a specified scope and light source, or through the removal of the outer wing panels;

—Install cover plate assemblies if inspection openings were made; and

—Repair or replace any parts where corrosion or corrosion damage was found.

Was the public invited to comment? The FAA encouraged interested persons to participate in the making of this amendment. The following presents the comments received on the proposal and FAA's response to each comment:

Comment Issue No. 1: Add Additional Method for Accomplishing the Inspection

What is the commenter's concern? Several commenters state that the two methods specified in the NPRM are an economic burden, impact the aesthetic and structural appearance of the airplane, and/or reduce the structural integrity of the wings. Several of the commenters state that the cost of the scope and light source necessary to perform the inspection is much more expensive than that stated in the NPRM, and that installing inspection openings in the wings will reduce the structural integrity of the wings.

The commenters request to have a third method added to the AD that allows for removing the outer wing panels from the airplane to accomplish the inspections. The commenters also state that this method is less of an economic burden and feel it is more effective than the two methods proposed in the NPRM.

What is FAA's response to the concern? We concur that a third inspection method option should be added to the AD.

The manufacturer has revised the service bulletin to incorporate this additional method, and we will incorporate the new service bulletin into the final rule AD action.

We also have verified that the Olympus OSF Endoscope (sigmoidoscope) with a Fujinon FIL–150 light source, as specified in Note 1 of the NPRM, is available for the cost stated in the NPRM.

We will change the final rule AD action to incorporate Revision 1 of Univair Service Bulletin 31.

Comment Issue No. 2: Change the Repetitive Inspection Compliance Time

What is the commenter's concern? Several commenters state that the majority of the airplanes affected by this AD are over 40 years old with no history of corrosion problems in the wing center section. Therefore, once the initial inspection has been performed and no corrosion is found, the commenters do not believe that corrosion would become an unsafe condition within the next 12 months or 100 hours time-in-service (TIS). The commenters suggest that a 3 year or a 5 year repetitive interval will be more than adequate.

What is FAA's response to the concern? We agree with the commenters. The initial inspection compliance time will remain the same; however, we will change the repetitive inspection intervals to be every 3 years.

We will change the final rule AD action to incorporate this change.

Comment Issue No. 3: Service Bulletin Unavailable

What is the commenter's concern? Several commenters state that Univair was unable to provide them with a copy of the service bulletin referenced in the NPRM. Therefore, the commenters were unable to provide comments related to the actions required by the service bulletin as stated in the NPRM. We infer that the commenters want the NPRM withdrawn because they could not obtain the service bulletin.

What is FAA's response to the concern? We do not concur. We understand the concerns of the commenters. However, we cannot require accomplishment of any action in accordance with a supplemental document, *i.e.*, manufacturer's service bulletin, unless we have an approved original copy submitted to FAA from the manufacturer. The service bulletin referenced in the NPRM is an official part of the rules docket and was available during the comment period at the offices specified in the **ADDRESSES** paragraph in the NPRM.

We are not changing the final rule AD action based on this comment.

Comment Issue No. 4: Remove the Mooney Model M10 Airplanes From the Applicability

What is the commenter's concern? The commenter states that the Mooney rear spar can be readily inspected after the seats and baggage compartment floor are removed. This makes it is unnecessary to install inspection holes in the skin on this airplane. The commenter wants Mooney Model M10 airplanes removed from the applicability section of the final rule AD action.

What is FAA's response to the concern? We do not concur. Corrosion or corrosion damage can occur on the Mooney Model M10 airplanes, and owners/operators of the affected airplanes have two other methods to use for accomplishing the inspection requirements of this AD without installing inspection holes.

We are not changing the final rule AD action based on this comment.

Comment Issue No. 5: AD Is Not Warranted

What is the commenter's concern? Several commenters state that, as long as the airplane has been properly maintained (using existing procedures) and properly stored, there should not be a problem with corrosion build-up in the wing center section. Also, the commenters state that the NPRM was issued based on an isolated case of corrosion being found on an airplane that was improperly maintained and stored. The commenters don't believe there is enough evidence to warrant AD action against the entire fleet. Therefore, the commenters recommend that FAA withdraw the NPRM.

What is FAA's response to the concern? We do not concur that the NPRM should be withdrawn. We have 27 documented cases, from 1974 to the present, of corrosion found throughout the wing components and other parts of the airframe. Our analysis indicates that normal maintenance procedures and methods do not allow for the detection of corrosion in the wing center section of the affected airplanes.

We are not changing the final rule AD based on these comments.

FAA's Determination

What is FAA's final determination on this issue? After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for the addition of another method to be used for accomplishing the inspection, changing the compliance time for the repetitive inspection intervals, and minor editorial corrections. We have determined that these changes and minor corrections:

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

Cost Impact

How many airplanes does this AD impact? We estimate that this AD affects 2,600 airplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affect airplanes? We estimate the following costs to accomplish the installation of the inspection openings:

Labor cost	Parts cost	Total cost per airplane
10 workhours x $60 per hour = $600	$175	$775

We estimate the following costs to accomplish the inspection using a scope and light source:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
2 workhours x $60 per hour = $120.	$450 for purchase of a borescope or an endoscope, if applicable.	$120 or $570	$120 x 2,600 = $312,000 or $570 x 2,600 = $1,482,000.

We estimate the following costs to accomplish the inspection by removing the outer wing panel:

Labor cost	Parts cost	Total Cost per airplane	Total Cost on U.S. operators
5 workhours x $60 per hour = $300	Not applicable	$300	$300 x 2,600 = $780,000.

The FAA has no method of determining the number of repetitive inspections each owner/operator will incur over the life of each of the affected airplanes so the cost impact is based on the initial inspection.

The FAA has no method of determining the number of repairs or replacements each owner/operator will incur over the life of each of the affected airplanes based on the results of the inspections. We have no way of determining the number of airplanes that may need such repair. The extent of damage may vary on each airplane.

Compliance Time of This AD

What would be the compliance time of this AD? The compliance time of this AD is ''within the next 12 calendar months after the effective date of this AD and thereafter at intervals not to exceed 3 years.''

Why is the compliance time presented in calendar time instead of hours time-in-service (TIS)? The unsafe condition specified by this AD is caused by corrosion. Corrosion can occur regardless of whether the airplane is in operation or is in storage. Therefore, to assure that the unsafe condition specified in this AD does not go

undetected for a long period of time, the compliance is presented in calendar time instead of hours TIS.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new AD to read as follows:

2002–26–02 Univair Aircraft Corporation: Amendment 39–12987; Docket No. 2001–CE–45–AD.

(a) *What airplanes are affected by this AD?* This AD affects the following airplane models and serial numbers that are certificated in any category:

Models	Serial Numbers
Alon A–2 and A2–A	All.
ERCO 415–C, 415–CD, 415–D, 415–E, and 415–G.	All.
Forney F–1 and F–1A	All.
Mooney M10	All.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct corrosion in the wing center section which could result in failure of the wing center section structure during flight. Such failure could lead to loss of control of the airplane.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Inspect the wing center section for corrosion or corrosion damage by accomplishing one of the following: (i) Install inspection openings to gain access to the wing walkway box structure and inspect the wing center structure for corrosion or corrosion damage;. (ii) Use a scope and light source, *e.g.*, fiberscope borescope or an endoscope (as specified in paragraph (e) of this AD) to inspect the wing center structure for corrosion or corrosion damage); or. (iii) Remove the outer wing panels to gain visual access to the wing walkway box structure for corrosion or corrosion damage..	Within the next 12 calendar months after February 14, 2003 (the effective date of this AD) and thereafter at intervals not to exceed 3 years.	In accordance with the Procedures section of Univair Aircraft Corporation Service Bulletin No. 31, dated January 29, 2002; or Univair Aircraft Corporation Service Bulletin No. 31, Revision 1, dated June 14, 2002; and Advisory Circular 43–4A, Corrosion Control for Aircraft.
(2) If corrosion or corrosion damage is found during any inspection required in paragraph (d)(1) of this AD, repair or replace damaged components of the wing center section.	Prior to further flight after any inspection in which the corrosion or corrosion damage is found.	In accordance with the Procedures section of Univair Aircraft Corporation Service Bulletin No. 31, dated January 29, 2002; or Univair Aircraft Corporation Service Bulletin No. 31, Revision 1, dated June 14, 2002; the applicable maintenance manual; and Advisory Circular 43–4A, Corrosion Control for Aircraft.
(3) If inspection openings are installed in accordance with paragraph (d)(1)(i) of this AD, install cover plate assemblies.	Prior to further flight after each inspection or repair required in paragraphs (d)(1) and (d)(2) of this AD.	In accordance with the Procedures section of Univair Aircraft Corporation Service Bulletin No. 31, dated January 29, 2002; or Univair Aircraft Corporation Service Bulletin No. 31, Revision 1, dated June 14, 2002.

Actions	Compliance	Procedures
(4) If any damage is found during any inspection required by this AD, submit a Malfunction or Defect Report (M or D), FAA Form 8010–4, to the FAA. (i) Include the airplane model and serial number, the extent of the damage (location and type), and the total number of hours TIS on the damaged area.. (ii) You may submit M or D reports electronically by accessing the FAA AFS–600 Web page at *http://av-info.faa.gov/isdr*. You will lose access to the report once electronically submitted. We recommend you print two copies prior to submitting the report. Forward one copy to the Denver Aircraft Certification Office (ACO) and keep the one copy for your records. The Office of Management and Budget (OMB) approved the information collection requirements contained in this regulation under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and assigned OMB Control Nubmer 2120–0056..	Within 10 days after the inspection in which the corrosion or damage was found or within 10 days after February 14, 2003 (the effective date of this AD), whichever occurs later.	Send the report to Roger Caldwell, FAA, at the address in paragraph (g) of this AD. You may also file electronically as discussed in this AD.

(e) *What kind of scope or light source must I use to accomplish the inspection required in paragraph (d)(1)(ii) of this AD?* We have determined that Olympus OSF Endoscope (sigmoidoscope) with a Fujinon FIL–150 light source is acceptable for the inspections option chosen in paragraph (d)(1)(ii) of this AD. Other scopes and light sources are acceptable and must meet the following minimum characteristics:

(1) Must be a remote high intensity light source of 150 Watts halogen or better.

(2) The optical system must be of a quality such that it remains constantly in focus from about 4 millimeters (0.16 inch) to infinity.

(3) When the tip is approximately 4 millimeters from the inspected surface, a magnification of about 10X must be achieved.

(4) The image guide and protective sheath length must be at least 2 feet for more, and the distal tip diameter must be 0.450 inch or larger.

(5) There must be control handles for four-way tip articulation of the last 4 to 5 inches for a minimum of 100 degrees for each direction.

(f) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Denver Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Denver ACO.

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

(g) *Where can I get information about any already-approved alternative methods of compliance?* Contact Roger Caldwell, Aerospace Engineer, FAA, Denver Aircraft Certification Office, 26805 East 68th Avenue, Room 214, Denver, Colorado 80249–6361; telephone: (303) 342–1086; facsimile: (303) 342–1088.

(h) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(i) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Univair Aircraft Corporation Service Bulletin No. 31, dated January 29, 2002; or Univair Aircraft Corporation Service Bulletin No. 31, Revision 1, dated June 14, 2002. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from Univair Aircraft Corporation, 2500 Himalaya Road, Aurora, Colorado 80011. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(j) *When does this amendment become effective?* This amendment becomes effective on February 14, 2003.

Issued in Kansas City, Missouri, on December 23, 2002.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–32885 Filed 12–31–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 61

[Docket No. FAA–2002–13744; SFAR No. 73–1]

RIN: 2120–AH94

Robinson R–22/R–44 Special Training And Experience Requirements

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule extends the expiration date of Special Federal Aviation Regulation (SFAR) 73. SFAR 73 requires special training and experience for pilots operating the Robinson model R–22 or R–44 helicopters in order to maintain the safe operation of Robinson helicopters. It also requires special training and experience for certified flight instructors conducting student instruction or flight reviews in R–22 or R–44 helicopters.

EFFECTIVE DATE: December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Robert J. O'Haver, Operations Branch, AFS–820, General Aviation and Commercial Division, 800

Independence Ave. SW., Washington, DC 20591; Telephone: (202) 267–7031.

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) Web page *(http://dms.dot.gov/search)*.

(2) On the search page type in the last five digits (13744) of the Docket number shown at the beginning of this notice. Click on ''search.''

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the document number of the item you wish to view. 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 DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

You can also get an electronic copy using the Internet through the Office of Rulemaking's Web page at *http://www.faa.gov/avr/armhome.htm* or the *Government Printing Office's* Web page at *http://www.access.gpo.gov/su—docs/aces/aces140.html.*

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any entity that has a question regarding this document may contact a local FAA office, or the person listed under **FOR FURTHER INFORMATION CONTACT**. You can find out more about SBREFA on the Internet at our Web page, *www.gov/avr/arm/sbrefa.htm.* If you have questions, send us an e-mail at *9-AWA-SBREFA@faa.gov.*

Background

Part 61 of Title 14 of the Code of Federal Regulations (14 CFR part 61) details the certification requirements for pilots and flight instructors. Particular requirements for pilots and flight instructors in rotorcraft are found in Subparts C through G, and Appendix B of part 61. These requirements do not address any specific type or model of rotorcraft. However, in 1995 the Federal Aviation Administration (referred to as ''we'') determined that specific training and experience requirements are necessary for the safe operation of Robinson R–22 and R–44 model helicopters.

The R–22 is a 2-seat, reciprocating engine powered helicopter that is frequently used as a low-cost initial student training aircraft. The R–44 is a 4-seat helicopter with operating characteristics and design features that are similar to the R–22. The R–22 is the smallest helicopter in its class and incorporates a unique cyclic control and rotor system. Certain aerodynamic and design features of the aircraft cause specific flight characteristics that require particular pilot awareness and responsiveness.

We found that the R–22 met 14 CFR part 27 certification requirements and issued a type certificate in 1979. The small size and relatively low operating costs of this helicopter made it popular as a training or small utility aircraft. Thus, a significant number of the pilots operating R–22 helicopters were relatively inexperienced. Prior to issuance of SFAR 73, the Robinson R–22 experienced a higher number of fatal accidents due to main rotor/airframe contact than other piston-powered helicopters. Many of these accidents were caused by low rotor revolutions per minute (RPM) or low ''G'' conditions that resulted in mast bumping or main rotor-airframe contact accidents. Aviation safety authorities attributed this to pilot error by inexperienced pilots.

In our analysis of accident data, we found that apparently qualified pilots may not be properly prepared to safely operate the R–22 and R–44 helicopters in certain flight conditions. We determined that additional pilot training, originally established by SFAR 73, as modified in SFAR 73–1, continues to be needed for the safe operation of these helicopters.

Previous Regulatory Action

To address the safety issues, on March 1, 1995, we published SFAR 73 (60 FR 11256). This SFAR required certain experience and training to perform pilot-in-command (PIC) and/or certified flight instructor (CFI) duties. SFAR 73 was issued on an emergency basis, with an expiration date of December 31, 1997. On November 21, 1997 (62 FR 62486), we published an NPRM to extend SFAR 73 to December 31, 2002, with a minor amendment. The final rule extending SFAR 73 to December 31, 2002 was published on January 7, 1998 (63 FR 660). On November 14, 2002, we published an NPRM proposing to extend SFAR 73 an additional 5 years to December 31, 2007 (67 FR 69106). This final rule responds to the comments received on the most recent NPRM and extends SFAR 73 to March 31, 2008.

FAA response to comments on the NPRM that proposed extension of SFAR 73

We received six comments in response to the NPRM that was published in the **Federal Register** on November 14, 2002. Two of the comments were from the Robinson Helicopter Company. The other four comments were from three individuals. Several of the commenters addressed similar issues. Our response to the comments follows.

1. Should We Exclude the Robinson R44 Helicopter From the Requirements of SFAR 73?

Mr. Frank Robinson, President of the Robinson Helicopter Company; Mr. Sherwood A. Bresler, Chief Accident Investigator for the Robinson Helicopter Company; Mr. Timothy C. Tucker, an FAA Designated Pilot Examiner for helicopters; and Mr. Martin E. Weaver requested the FAA to remove the R44 helicopter from SFAR 73. The principal arguments in favor of removing the R44 helicopter are:

[sbull] The Robinson Helicopter Company has made significant changes to the R44 helicopter since 1995 that reduce its vulnerability to low-G mast bumping and low-RPM rotor stall.

[sbull] The flight and handling characteristics of the R44 are closer to the Bell 206 Jetranger helicopter than the smaller R22.

[sbull] The FAA revised the Helicopter Practical Test Standards for private, commercial and flight instructor certificates to include ''Low RPM Recovery'' and ''Low G'' conditions.

Response: Since the issuance of SFAR 73, there has been a drop in the accident rate of Robinson helicopters associated with low ''G'' maneuvers (low rotor RPM) resulting in main rotor/tailboom contact. Between the publication of SFAR 73 in 1995 and the first extension of the SFAR in 1997 no accidents occurred in the R–22 or R–44 that were

related to low rotor RPM and tailboom/main rotor contact. There have been two accidents since the first extension in 1997. Design changes in the R–44 have improved the aircraft performance and handling characteristics of recently manufactured R–44 helicopters but these changes were not applied to older R–44s. The Robinson R–44 helicopter is generally of the same design as the R–22, and although larger uses a teetering rotor system with a high mounted tail rotor. These design characteristics make the rotorcraft susceptible to mast bumping and fuselage rolling tendencies under low-G conditions. Since the design characteristics of the R–44 are similar to the R–22, we believe that SFAR 73 should apply to both models. We further believe that SFAR 73 has been effective in improving the safe operation of these helicopters. SFAR 73 will continue to apply to the R–22 and the R–44.

2. Should We Modify SFAR 73 To Allow Flight Training for Student Pilots in the R–22 and R–44 Before Requiring the Specific Training Called for in SFAR 73?

Mr. Martin E. Weaver asked us to change the wording in Section 2, paragraph (a)(1) from ''* * * no person may manipulate the controls of a Robinson * * *'' to ''* * * no person may solo or perform duties as pilot-in-command of a Robinson * * *'' and paragraph (a)(2) from ''* * * may not manipulate the controls of a Robinson * * *'' to '' * * * may not solo or perform duties as pilot-in-command of a Robinson * * *''. Mr. Weaver states that the current rule does not consider the effectiveness of providing the special training to someone with no experience in helicopters. He believes it would be better to wait until the student pilot has some flight experience with helicopter flight controls and basic understanding of aerodynamic principles before learning the specific limitations established in SFAR 73.

Response: We reviewed this issue after the initial release of SFAR 73 and found that continuous awareness training was preferable to changing the fundamental requirement of the rule. Flight instructors who routinely provide initial flight training in the R–22 begin discussing mast bumping preventive procedures and hazards of low-G maneuvers early in the training program. Qualified instructors have found that continuing education throughout the training program reinforces the precautions that need to be learned. Early training on these skills and knowledge can begin on a very basic level and increase in detail and difficulty as the student develops the appropriate knowledge, skill, and experience. We will therefore continue to require continuous awareness training on mast bumping preventive procedures and hazards of low-G maneuvers.

3. Should We Extend the Flight Review Requirements From 12 to 24 Months for the R22 and the R44?

Mr. Weaver believes that extending the flight review required by paragraphs 2(b)(1)(ii) and 2(b)(2)(ii) of the SFAR to 24 months would not increase the accident rate.

Response: We believe requiring an annual flight review improves the safe operation of these helicopters. The requirements for the flight review in the R–22 helicopter were established by the R–22 Flight Standardization Board (FSB) Report dated February 15, 1995. This report states in paragraph 8.2, ''All pilots who wish to act as pilot in command of a Robinson R–22 aircraft should complete a flight review as required by FAR part 61.56 in a Robinson R–22 model helicopter.'' We believe that an annual review of the areas addressed by SFAR 73 is necessary.

4. Should We Reduce the Required Hours in Helicopters From 200 to 150?

Mr. Martin Thysell believes that 200 hours of helicopter experience required by paragraph 2(b)(1)(i) of the SFAR may not be required if a substantial part of the flying has been in the Robinson R–22. He recommends changing the language that states ''* * * has had at least 200 flight hours in helicopters, at least 50 flight hours of which were in the Robinson R–22 * * *'' to '' * * * has had at least 200 flight hours in helicopters, at least 50 flight hours of which were in the Robinson R–22 or at least 150 hours in helicopters, at least 100 flight hours of which were in the Robinson R–22 * * *''

Response: The recommended change, if adopted, would reduce the total number of required flight hours for a qualified R–22 flight instructor from 200 flight hours to 150 flight hours if 100 hours were acquired in a Robinson R–22. The commenter does not state any safety benefit that would result from the proposed change. We believe a clear relationship exists between pilot inexperience in helicopters and main rotor to airframe contact accidents. In 23 of the 30 fatal accidents originally investigated that led to the implementation of SFAR 73, the pilots apparently manipulating the controls had less than 200 flight hours in helicopters. We have determined that 200 flight hours are needed for the safe operation of either helicopter.

5. Should We Reduce the Extension of SFAR 73 From 5 years to 2 years?

Mr. Sherwood A. Bresler of the Robinson Helicopter Company believes that 2 years is sufficient time to permanently address regulations and policies about helicopter pilot and flight instructor training and experience requirements.

Response: We are working on regulations and policies to govern pilot and certified flight instructor training and experience, based on experience gained from SFAR 73. We intend to implement these in 2007 or before. Considering the time needed to complete the public rulemaking process, other agency priorities and available resources, we believe the 5-year extension to coincide with new rules is appropriate. Also, we are adding 3 months so the expiration of the SFAR does not coincide with the end of the year.

6. Should Helicopter Pilots and Flight Instructors Be Allowed to Use Fixed Wing Time in Meeting Requirements for Helicopter Ratings?

Mr. Bresler believes we should harmonize our rules with international standards that do not allow fixed wing time in meeting requirements for helicopter ratings. He believes this change would eliminate the need for SFAR 73.

Response: Mr. Bresler's suggestion would require a substantial change to FAA qualification standards for all helicopter training. Such a suggestion is beyond the scope of this rulemaking. As discussed above, we are working on a separate project dealing with the regulations and policies governing pilot and certified flight instructor training and experience. We will evaluate Mr. Bresler's comment in that project.

Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that a Federal agency may propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires

agencies to consider international standards and, where appropriate, that they be the basis for U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 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 final rule: (1) Will generate benefits that exceed costs, is not a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, and is not ''significant'' as defined in DOT's Regulatory Policies and Procedures; (2) will not have a significant economic impact on a substantial number of small entities; (3) will not constitute a barrier to international trade; and does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector.

This final rule will extend the requirements of SFAR 73–1, which will expire on December 31, 2002, for an additional 5 years. It will impose costs on those receiving instruction in Robinson model R–22 and R–44 helicopters. Affected individuals will be required to receive additional model-specific training and experience for each model of Robinson helicopter before they can be certificated. The individuals affected include flight instructors and students seeking to be certified to operate Robinson model helicopters. These individuals can avoid the costs of this final rule by receiving their instruction in a helicopter other than a Robinson model. However, they will not be certificated for Robinson model helicopters.

Regarding benefits, this final rule will continue the observed reduction in the number of fatal accidents that occur in Robinson helicopters associated with low ''G'' maneuvers that can result in main rotor contact with the airframe. Prior to the issuance of SFAR 73 there were 15 accidents and 24 fatalities due to main rotor contact with the airframe. Since the SFAR was issued in 1995, however, there have been only two accidents and only one fatality involving R–22 or R–44 aircraft associated with low ''G'' operations and main rotor contact with the airframe.

Even though two accidents involving low ''G'' operations have occurred since SFAR 73 was extended in 1997, we find that the potential safety benefits still exceed costs and justify the adoption of this final rule.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This final rule will require students and rated pilots seeking to conduct student instructions or flight reviews in a Robinson helicopter to incur added costs. Thus, the requirements of the SFAR impact individuals rather than entities. For these reasons, the FAA certifies that the rule will not have a significant economic impact on a substantial number of small operators.

Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

The final rule imposes costs on those receiving instruction on Robinson helicopters. These costs have been in effect for almost 7 years and apparently have not affected sales of the aircraft. The FAA has assessed the potential effect of the final rule and determined that it will have a neutral impact on foreign trade and, therefore, create no obstacles to the foreign commerce of the United States.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.''

This final rule does not contain such a mandate. The requirements of Title II do not apply.

Federalism Implications

This final rule will not have substantial direct effects on the states, on the relationship between the Federal government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12866, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

International Civil Aviation Organization (ICAO) and Joint Aviation Regulations

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with ICAO Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that this final rule does not conflict with any international agreement of the United States.

Paperwork Reduction Act

The OMB control number assigned to the collection of information for this final rule is 2120–0021.

Conclusion

For the reasons previously discussed in the preamble, the FAA has determined that this SFAR is not significant under Executive Order 12866. Based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA certifies that this final rule will not have a significant

economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This SFAR is not considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Plain Language

In response to the June 1, 1998 Presidential Memorandum regarding the use of plain language, the FAA re-examined the writing style currently used in the development of regulations. The memorandum requires federal agencies to communicate clearly with the public. We are interested in your comments on whether the style of this document is clear, and in any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at *http:www.plainlanguage.gov.*

List of Subjects in 14 CFR Part 61

Aircraft, Aircraft pilots, Airmen, Airplanes, Air safety, Air transportation, Aviation safety, Balloons, Helicopters, Rotorcraft, Students.

The Final Rule

In consideration of the foregoing, the Federal Aviation Administration amends part 61 of Title 14 of the Code of Federal Regulations (14 CFR part 61) as follows:

PART 61—CERTIFICATION: PILOTS, FLIGHT INSTRUCTORS, AND GROUND INSTRUCTORS

1. The authority citation for part 61 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

2. Revise section 3 of SFAR No. 73 to read as follows:

Special Federal Aviation Regulations

* * * * *

Special Federal Aviation Regulation No. 73—Robinson R–22/R–44 Special Training and Experience Requirements

* * * * *

3. *Expiration date.* This SFAR terminates on March 31, 2008, unless sooner superceded or rescinded.

Issued in Washington, DC on December 27, 2002.

Marion C. Blakey,

Administrator.

[FR Doc. 02–33143 Filed 12–30–02; 1:47 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2002–14076; Airspace Docket No. 02–AAL–6]

Revision of Class E Airspace; Point Hope, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises Class E airspace extending upward from 1,200 feet above the surface at Point Hope, AK. The FAA has developed two new Standard Instrument Approach Procedures (SIAP) for the Point Hope Airport. Class E airspace upward from 1,200 feet above the surface is necessary to ensure that Instrument Flight Rules (IFR) operations remain within controlled airspace when executing the new SIAPs. The current Class E airspace is not sufficient to contain the two new SIAPs. The intended effect of this rule is to create additional controlled Class E airspace necessary to contain the new SIAPs.

EFFECTIVE DATE: 0901 UTC, March 20, 2003.

FOR FURTHER INFORMATION CONTACT: Derril Bergt, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–2796; fax: (907) 271–2850; email: *Derril.CTR.Bergt@faa.gov*. Internet address: *http://www.alaska.faa.gov/at* or at address *http://162.58.28.41/at.*

SUPPLEMENTARY INFORMATION:

History

On September 27, 2002, a proposal to revise part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise Class E airspace at Point Hope, AK, was published in the **Federal Register** (67 FR 61046–61047). The proposal was necessary because two new SIAPs have been developed to the Point Hope Airport and current Class E airspace is not sufficient to contain the new SIAPs. The new SIAPs are the *Area Navigation (Global Positioning System) (RNAV/GPS) Runway 1 and the RNAV (GPS) Runway 19* approaches. This action will extend Class E airspace, upward from 1,200 feet above the surface, to contain the new SIAPs. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments have been received, thus, the rule is adopted as written.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9K, *Airspace Designations and Reporting Points*, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be revised subsequently in the Order.

The Rule

This revision to 14 CFR part 71 adds additional Class E airspace upward from 1,200 feet above the surface at Point Hope, Alaska. Additional Class E airspace is being created to contain aircraft executing two new SIAPs and will be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide adequate controlled airspace for IFR operations at Point Hope Airport, Point Hope, Alaska.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

* * * * *

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

* * * * *

AAL AK E5 Point Hope, AK [Revised]

Point Hope Airport, AK
(Lat. 68[deg] 20' 56'' N, long. 166[deg] 47' 58'' W)
Point Hope NDB
(Lat. 68 20' 41'' N, long. 166 47' 51'' W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Point Hope Airport and within 3 miles each side of the 207 bearing of the Point Hope NDB extending from the 6.4-mile radius to 10.3 miles southwest of the airport and within 3 miles either side of the Point Hope NDB 017 bearing extending from the 6.4-mile radius to 9.9 miles northeast of the airport; and that airspace extending upward from 1,200 feet above the surface within lat. 68[deg]45'00'' N, long. 166[deg]00'00'' W; to lat. 68[deg]15'00'' N, long. 165[deg]53'00'' W; to lat. 67[deg]55'00'' N, long. 166deg;03'00'' W; to lat. 68 deg;01'30'' N, long. 167 deg;65'00'' W; to lat. 68[deg]45'00'' N, long. 166[deg]52'30'' W to the point of beginning.

* * * * *

Issued in Anchorage, AK, on December 20, 2002.

Trent S. Cummings,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 02–33128 Filed 12–31–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2002–14075; Airspace Docket No. 02–AAL–07]

Establishment of Class E Airspace; Wasilla, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes new Class E airspace extending upward from 700 feet above the surface at Wasilla, AK. The FAA has developed a new Standard Instrument Approach Procedure (SIAP) for the Wasilla Airport. Class E airspace upward from 700 feet above the surface is necessary to ensure that Instrument Flight Rules (IFR) operations remain within controlled airspace when executing the new SIAP. The intended effect of this rule is to provide adequate controlled airspace for IFR operations at Wasilla Airport, Wasilla, AK.

EFFECTIVE DATE: 0901 UTC, March 20, 2003.

FOR FURTHER INFORMATION CONTACT: Derril Bergt, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–2796; fax: (907) 271–2850; email: *Derril.CTR.Bergt@faa.gov.* Internet address: *http://www.alaska.faa.gov/at* or at address *http://162.58.28.41/at.*

SUPPLEMENTARY INFORMATION:

History

On October 7, 2002, a proposal to revise part 71 of the Federal Aviation Regulations (14 CFR part 71) to add Class E airspace at Wasilla, AK, was published in the **Federal Register** (67 FR 62410–62412) on October 7, 2002. The FAA has developed a new Standard Instrument Approach Procedure (SIAP) for the Wasilla Airport. The approach is designated *Area Navigation (Goblal Positioning System) (RNAV GPS) Runway 3, original.* The new Class E airspace is necessary to contain aircraft executing the *RNAV (GPS) Runway 3* approach within controlled airspace. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments have been received, thus, the rule is adopted as written.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be added to the Order.

The Rule

This revision to 14 CFR part 71 establishes new Class E airspace upward from 700 feet above the surface at Wasilla, Alaska. Additional Class E airspace is established to contain aircraft executing a new SIAP and will be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide adequate controlled airspace for IFR operations at Wasilla Airport, Wasilla, Alaska.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

* * * * *

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

* * * * *

AAL AK E5 Wasilla, AK [NEW]

Wasilla Airport, AK
(Lat. 61[deg] 34' 08'' N, long. 149[deg] 32' 25'' W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Wasilla Airport excluding Big Lake Class E Airspace.

* * * * *

Issued in Anchorage, AK, on December 24, 2002.

Trent S. Cummings,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 02–33129 Filed 12–31–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Chapter I

[Docket No. RM02–9–001; Order No. 626]

Electronic Filing of Form 1, and Elimination of Certain Designated Schedules in FERC Form Nos. 1 and 1–F

December 26, 2002.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; correction.

SUMMARY: In this correction, the Federal Energy Regulatory Commission is correcting its Final Rule and identifying what designated lines and schedules in Form No. 1–F should be retained or eliminated.

EFFECTIVE DATE: Effective on January 2, 2003.

FOR FURTHER INFORMATION CONTACT:
Kevin A. Jones (Technical Information), Office of Markets, Tariffs and Rates, FERC, 888 First Street, NE., Washington, DC 20426, (202) 502–6185, *Kevin.Jones@ferc.gov.*
Bolton Pierce (Electronic System), Office of Markets Tariffs and Rates, FERC, 888 First Street, NE., Washington, DC 20426, (202) 502–8803, *bolton.pierce@ferc.gov.*
Julia Lake (Legal Information), Office of General Counsel, FERC, 888 First Street, NE., Washington, DC 20426, (202) 502–8370, *julia.lake@ferc.gov.*

SUPPLEMENTARY INFORMATION:
Before Commissioners: Pat Wood, III, Chairman; William L. Massey, and Nora Mead Brownell.

Correction of Final Rule

On May 16, 2002, the Commission issued Order No. 626, a Final Rule that provided for electronic filing of FERC Form No. 1 and the elimination of certain designated schedules in FERC Form Nos. 1 and 1–F.[1] In this correction, the Commission is correcting its Final Rule and identifying what designated lines and schedules in Form No. 1–F (Form 1–F), principally in the Comparative Balance Sheet and the Statement of Income for the Year, should be retained or eliminated.

The following schedules or parts of schedules are eliminated from Form 1–F:

[sbull] Data on Security Holders and Voting Powers (Part X, P. 18). (Nonmajor utilities should continue to report Data on Officers and Directors (Part XI, P. 18), however.)

[sbull] Number of Electric Department Employees (P. 323).

The Commission corrects the Final Rule by not eliminating the following from the Form 1–F: Nonutility Property (121, P. 110); Capital Stock Subscribed, Capital Stock Liability for Conversion, Premium on Capital Stock, and Installments Received on Capital Stock (252, P. 112); Discount on Capital Stock (254, P. 112); Particulars Concerning Certain Income Deduction and Interest Charges (340, P. 117); Electric Distribution Meters and Line Transformers (429, lines 63 & 65, P. 206); and Allowance for Borrowed Funds Used During Construction in Construction Overheads—Electric (217, P. 8). These line items contain accounts reflected in the Commission's Uniform System of Accounts that are needed to provide an accurate and complete reporting of a utility's accounting for transactions and events, and to provide relevant non-financial information related to its operations.

By the Commission.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–33091 Filed 12–31–02; 8:45 am]

BILLING CODE 6717–01–M

[1] 67 FR 36093 (May 23, 2002), III FERC Stats. & Regs. ¶ 31,130 (May 16, 2002).

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010–AC93

Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Document Incorporated by Reference—API RP 14C

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Corrections to final regulations.

SUMMARY: This document contains corrections to the final regulations published on August 9, 2002 (67 FR 51757). The final rule related to updating one document incorporated by reference in regulations governing oil, gas, and sulphur operations in the Outer Continental Shelf (OCS). The final rule updated the American Petroleum Institute (API) Recommended Practice (RP) 14C document to the Seventh Edition, March 2001. The new edition allows lessees to use updated industry standard technologies while operating in the OCS. The corrections being made are non-substantive and are necessary for clarification purposes only.

EFFECTIVE DATE: September 9, 2002.

FOR FURTHER INFORMATION CONTACT: Wilbon A. Rhome, (703) 787–1587.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections revised the incorporated-by-reference API document RP 14C, for Analysis, Design, Installation and Testing of Basic Surface Safety Systems for Offshore Production Platforms, to incorporate the new Seventh Edition of API RP 14C. MMS determined that:

[sbull] Incorporating into regulations the Seventh Edition that specifies a reduced testing frequency will not jeopardize the use of the best and safest technologies.

[sbull] The changes between the old and new editions represent new industry standard technology and will not impose undue cost on the offshore oil and gas industry.

[sbull] The changes to our regulations will eliminate the need for industry to request certain departures from the regulations.

Based on the determinations, the final rulemaking incorporated the new Seventh Edition of API RP 14C. The final rule also made corresponding revisions to the appropriate regulatory sections that reference API RP 14C.

The 30 CFR part 250 regulations incorporate many industry standards. Section 250.198 describes our documents incorporated by reference policy and procedures, and meets the **Federal Register** (FR) legal requirements for incorporating documents by reference. Section 250.198 also provides a complete list of all incorporated documents and the corresponding regulatory cites.

The legal department of the FR reviews all Final Rulemaking actions when they incorporate documents by reference into agencies' regulations. Upon review of the final rule that is the subject of this correction, the FR legal department advised us that whenever our regulations cite a document incorporated by reference, the regulation must refer readers to § 250.198. The FR specified that the statement ''incorporated by reference as specified in § 250.198'' be inserted

following the cited document. The FR allowed that we could revise our regulations to incorporate this insertion as part of final rulemaking actions that affect specific documents incorporated by reference. In this case, a final rulemaking action affected API 14C.

Need for Correction

On page 51760 of the FR publication of the final rule, ''instruction number 5.C'' redesignated the previously designated § § 250.804(a)(4) through (a)(11) to § § 250.804 (a)(5) through (a)(12). To accommodate the FR requirements previously discussed, the subsequent instruction number 5.E specified that the second sentence in the newly redesignated paragraph (a)(5) be revised. This instruction contained a typographical error in that the revision should have been made to the newly redesignated paragraph (a)(6) instead. Consequently the redesignated paragraph (a)(5) was incorrectly revised and the redesignated paragraph (a)(6) did not contain the FR required reference to § 250.198.

On page 51759 of the FR publication of the final rule, the revision to the table in § 250.198(e) also incorrectly cited § 250.804(a)(5) instead of (a)(6).

Correction of Publication

PART 250—[CORRECTED]

Part 250 is corrected by making the following correcting amendments:

1. In § 250.198, in the table in paragraph (e), the entry for ''API RP 14C'' is corrected by revising citation ''(a)(5)'' in the second column to read ''(a)(6)''.

2. Section 250.804 is corrected by revising the second sentence in paragraphs (a)(5) and (a)(6) as follows:

§ 250.804 Production safety-system testing and records.

(a) * * *

(5) * * * The SSV's and USV's must be tested in accordance with the test procedures specified in API RP 14H (incorporated by reference as specified in § 250.198). * * *

(6) * * * The FSV's must be tested for leakage in accordance with the test procedures specified in API RP 14C, Appendix D, section D4, table D2, subsection D (incorporated by reference as specified in § 250.198). * * *

* * * * *

Dated: December 10, 2002.

Rebecca W. Watson,

Assistant Secretary, Land and Minerals Management.

[FR Doc. 02–32937 Filed 12–31–02; 8:45 am]

BILLING CODE 4310–MR–P

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket No. RM2003–2; Order No. 1357]

Electronic Filing

AGENCY: Postal Rate Commission.

ACTION: Final rule.

SUMMARY: This rule identifies certain categories of documents that may be filed using temporary, rather than permanent, Filing Online accounts. This provides a filing option for situations that may not warrant obtaining permanent account holder status and risking the potential delay or other consequences that may be associated with that effort.

DATES: This change takes effect January 7, 2003.

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

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–780–6818.

SUPPLEMENTARY INFORMATION:

Regulatory History

See 66 FR 33034 (June 20, 2001).
See 67 FR 35766 (May 21, 2002).
See 67 FR 67552 (November 6, 2002).

Introduction

On October 21, 2002, the Commission issued order no. 1349 amending its rules of practice. This order made submitting documents via the Internet using the Commission's Filing Online system the standard method for filing documents in Commission proceedings. The effective date of the new filing system is January 7, 2003.

Under this new filing system, each person intending to participate in Commission proceedings is required to set up a Filing Online account prior to using the Filing Online system to file documents. In order to become an account holder in the Filing Online system, a person must complete, sign, and mail to the Secretary, a hardcopy application. This process requires a modest amount of effort by the applicant, and involves a modest amount of delay. The effort and delay is necessary to effectively link documents with those that file them, to allow principal, agent, and client relationships to be tracked in an orderly way, to ensure that documents are authorized and authentic, and to provide adequate security for the system.

Application and Approval Process

Obtaining a permanent Filing Online account requires the applicant to undertake a number of commitments, and usually takes several days. In addition to providing identifying and contact information, the applicant must request status as a principal account holder or an agent account holder. A person applying to become a principal account holder must assume a contractual duty to ensure that each document that he or she files online is authentic, accurate, and authorized by the participant that the account holder purports to represent. A principal account holder is obligated to notify the Commission when there are changes in his or her authority to file documents on behalf of another participant.

After a person has completed and signed the account holder application, he or she must mail it to the Commission. When the Commission accepts the application, it e-mails the applicant his or her user name and a temporary password. Both are required to log in to Filing Online. After logging in, the account holder selects a permanent password. Several days may elapse between the time that a person applies to become an account holder and the receipt of his permanent password.

The Commission recognizes that this amount of effort and delay might not be necessary or appropriate for certain categories of documents that are filed with the Commission. It has decided to allow such documents to be filed under temporary Filing Online accounts which people may obtain through a simplified and expedited procedure.

Temporary Account Option Available for Certain Documents

The Commission has added rule 9(e) to its rules of practice [39 CFR 3001.9(e)]. This rule allows two categories of documents to be filed under temporary Filing Online accounts. The first category is notices of intervention. A notice of intervention is typically the first document submitted by a participant in a formal hearing. The Commission is aware that those who have not applied for permanent Filing Online accounts might assume that they will be able to apply for a permanent account, gain access to Filing Online, and file a notice of intervention all on the day that notices of intervention are due. First-time participants in a Commission hearing and first-time users of Filing Online may not realize that it could take several days for their signed, hardcopy application for a permanent Filing Online account to be delivered to

the Secretary and processed. If they are not aware of this requirement, they risk missing the deadline for filing their notice of intervention. In order to reduce this risk, the Commission has designated notices of intervention as a category of document that a prospective participant may file under a temporary account. This dispenses with the requirement to complete and sign a hardcopy application and undertake the duties inherent in the subscription requirement. In deciding to dispense with this requirement for notices of intervention, the Commission has considered that the representations of affected interests that are provided in notices of intervention are not the kind that require the safeguards of the subscription requirement. If there were material misrepresentations of fact in a notice of intervention, the Commission is aware that such misrepresentations may be brought to its attention by others in a motion to deny intervention.

The second category of documents that may be filed under a temporary Filing Online account is comments that have been solicited by the Commission. This includes comments that the Commission solicits in informal inquiries, such as its inquiry in the Petition for Review of Unclassified Services, instituted on November 21, 2002, and comments that the Commission solicits in rulemaking proceedings. As with notices of intervention, there may be first-time users of Filing Online who wish to file comments in a rulemaking or other Commission proceeding who assume that they may apply for a permanent account, gain access to Filing Online, and file comments, all on the day that comments are due. If they are not aware that a signed, hardcopy application must be delivered to the Commission and processed before they become permanent account holders, they risk missing the deadline for comments. In order to reduce this risk, the Commission allows comments that it solicits to be filed under a temporary Filing Online account.

The Commission has not included statements of views submitted under rule 20b among the categories of documents that may be filed online under temporary accounts. Rule 20b is designed to allow the public to submit unsolicited comments on issues raised in formal record hearings that have been noticed under rule 17 of the Commission's rules of practice. Rule 20b provides an even less formal procedure for communicating with the Commission than the temporary Filing Online account provides. Statements submitted under rule 20b may be mailed or e-mailed to the Commission. The preferred method is using the form provided under the ''Contact Us'' link on the Commission's Web site, at *http://www.prc.gov.* The language of rule 20b has been revised to clarify the procedural options that are available to filers of rule 20b comments.

Under new rule 9(e), the Commission will entertain motions to allow other categories of documents to be filed under temporary Filing Online accounts under extraordinary circumstances for good cause shown.

Temporary Account Procedures

The procedure required to obtain a temporary account is determined by the Secretary. Currently, an applicant for a temporary account may submit a form online that contains the applicant's identity and contact information, and the identity of the participant on whose behalf the document is submitted. After providing this information, the applicant for a temporary account will choose a User Name and a password that will allow him or her to log in to Filing Online and file a document of the type that the Commission has designated. This will establish the temporary account. The applicant need not mail a signed hardcopy form to the Secretary. The applicant will not be asked to undertake the obligations that accompany the subscription requirement, or to request status as a principal account holder or an agent account holder. The user name and password that the applicant selects will be valid for a limited time that the Commission determines. Currently a temporary account is valid for ten days. Since a temporary account cannot be renewed, a temporary account holder who wishes to file a series of documents in a proceeding will need to obtain a permanent Filing Online account. Because the revisions made in this order to rules 9 and 20b of the Commission's rules of practice simplify the procedures for filing some documents with the Commission, they are presumed not to be prejudicial to the interests of any prospective participant in Commission proceedings. For this reason, the Commission considers it appropriate to make these revisions without first issuing a notice of proposed rulemaking. These revisions to rules 9 and 20b of the Commission rules of practice will take effect on January 7, 2003, concurrently with the implementation of the rules governing Filing Online adopted in order no. 1349.

Ordering Paragraphs

It is ordered:

1. The addition of § 3001.9(e) and the revision of § 3001.20b of the Commission's rules of practice, as set forth below, shall take effect on January 7, 2003.

2. The Secretary shall cause this to be published in the **Federal Register**.

Authority: 39 U.S.C. 3603.

By the Commission.

Order No. 1357 issued December 23, 2002; errata issued December 27, 2002.

Garry J. Sikora,

Acting Secretary.

List of Subjects in 39 CFR Part 3001

Administrative practice and procedure, Postal Service.

For the reasons stated in the accompanying Order, the Commission adopts the following amendments to 39 CFR part 3001.

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 A—Rules of General Applicability

2. Amend § 3001.9 by adding paragraph (e) to read as follows:

§ 3001.9 Filing of Documents.

* * * * *

(e) *Account holder exemptions.* Notices of intervention and comments solicited by the Commission may be filed under temporary Filing Online accounts. Temporary Filing Online accounts may be obtained without meeting all of the requirements of paragraphs (b) and (c) of this section, and the subscription requirements of § 11. Other categories of documents may be filed under temporary Filing Online accounts under extraordinary circumstances, for good cause shown.

3. Revise § 3001.20b by redesignating paragraphs 3001.20b(a), (b) and (c) as paragraphs 3001.20b(b), (c) and (d), and adding new paragraph 3001.20b(a) to read as follows:

§ 3001.20b. Informal expression of views by persons not parties or limited participators (commenters).

* * * * *

(a) *Form of statement.* A statement filed pursuant to this section may be submitted as a hardcopy letter mailed to the Secretary or an electronic message entered on the form provided for this purpose under the ''Contact Us'' link on

the Commission's Web site, *http://www.prc.gov*.

[FR Doc. 02–33142 Filed 12–31–02; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[DC051–7004a; DE068–7004a; PA186–7004a; FRL–7434–3]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; Delaware, the District of Columbia, and Philadelphia, Pennsylvania; Control of Emissions From Existing Commercial/Industrial Solid Waste (CISWI) Incinerator Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve the section 111(d)/129 negative declarations submitted by the District of Columbia, the State of Delaware, and the City of Philadelphia, Pennsylvania. Each negative declaration certifies that commercial/industrial solid waste incinerator (CISWI) units, subject to the requirements of sections 111(d) and 129 of the Clean Air Act (CAA), do not exist within its air pollution control jurisdiction.

DATES: This final rule is effective March 3, 2003 unless within February 3, 2003 adverse or critical comments are received. If adverse comments are 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: Written comments should be mailed to Walter Wilkie, Deputy Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: James B. Topsale at (215) 814–2190, or by e-mail at *topsale.jim@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Sections 111(d) and 129 of the CAA requires states to submit plans to control certain pollutants (designated pollutants) at existing solid waste combustor facilities (designated facilities) whenever standards of performance have been established under section 111(b) for new sources of the same type, and EPA has established emission guidelines (EG) for such existing sources. A designated pollutant is any pollutant for which no air quality criteria have been issued, and which is not included on a list published under section 108(a) or section 112(b)(1)(A) of the CAA, but emissions of which are subject to a standard of performance for new stationary sources. However, section 129 of the CAA, also requires EPA to promulgate EG for CISWI units that emit a mixture of air pollutants. These pollutants include organics (dioxins/furans), carbon monoxide, metals (cadmium, lead, mercury), acid gases (hydrogen chloride, sulfur dioxide, and nitrogen oxides) and particulate matter (including opacity).

On December 1, 2000 (65 FR 75338), EPA promulgated CISWI unit new source performance standards and EG, 40 CFR part 60, subparts CCCC and DDDD, respectively.

The designated facility to which the EG apply is each existing CISWI unit, as defined in subpart DDDD, that commenced construction on or before November 30, 1999.

Subpart B of 40 CFR part 60 establishes procedures to be followed and requirements to be met in the development and submission of state plans for controlling designated pollutants. Also, 40 CFR part 62 provides the procedural framework for the submission of these plans. When designated facilities are located in a state, the state must then develop and submit a plan for the control of the designated pollutant. However, 40 CFR 60.23(b) and 62.06 provide that if there are no existing sources of the designated pollutant in the state, the state may submit a letter of certification to that effect (*i.e.*, negative declaration) in lieu of a plan. The negative declaration exempts the state from the requirements of subpart B that require the submittal of a 111(d)/129 plan.

II. Final EPA Action

The District of Columbia, the State of Delaware, and the City of Philadelphia, Pennsylvania have determined that there are no designated facilities, subject to the CISWI unit EG requirements, in their respective air pollution control jurisdiction. Accordingly, each air pollution control agency has submitted to EPA a negative declaration letter certifying this fact. The submittal dates of these letters are November 27, November 16, and February 9, 2001, respectively.

Therefore, EPA is amending part 62 to reflect the receipt of these negative declaration letters from the noted air pollution control agencies. Amendments are being made to 40 CFR part 62, subparts J (District of Columbia), I (Delaware), and NN (Pennsylvania). With respect to subpart NN, this action is only applicable to the City of Philadelphia air pollution control agency's jurisdiction; it does not include the remaining geographical areas of Pennsylvania.

After publication of this **Federal Register** notice, if a CISWI facility is later found within either one of the three noted jurisdictions, then the overlooked facility will become subject to the requirements of the Federal CISWI 111(d)/129 plan, including the compliance schedule, when promulgated. The Federal plan would no longer apply if EPA subsequently receives and approves a 111(d)/129 plan from the jurisdiction with the overlooked CISWI facility.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action simply reflects already existing Federal requirement for state air pollution control agencies under 40 CFR parts 60 and 62. In the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve each negative declaration should relevant adverse or critical comments be filed.

This rule will be effective March 3, 2003 without further notice unless the Agency receives relevant adverse comments by February 3, 2003. If EPA receives such comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule did not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely 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 111(d)/129 plan 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 111(d)/129 plan submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a 111(d)/129 plan submission, to use VCS in place of a 111(d)/129 plan submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 3, 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 approving the section 111(d)/129 negative declarations submitted by the District of Columbia, the State of Delaware, and the City of Philadelphia, Pennsylvania may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Aluminum, Fertilizers, Fluoride, Intergovernmental relations, Paper and paper products industry, Phosphate, Reporting and recordkeeping requirements, Sulfur oxides, Sulfur acid plants, Waste treatment and disposal.

Dated: December 20, 2002.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

40 CFR part 62 is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart I—Delaware

2. Subpart I is amended by adding an undesignated center heading and § 62.1985 to read as follows:

Emissions From Existing Commercial/Industrial Solid Waste Incineration Units

§ 62.1985 Identification of plan—negative declaration.

Letter from the Delaware Department of Natural Resources and Environmental Control submitted November 16, 2001, certifying that there are no existing commercial/industrial solid waste incineration units within the State of Delaware that are subject to 40 CFR part 60, subpart DDDD.

Subpart J—District of Columbia

3. Subpart J is amended by adding an undesignated center heading and § 62.2155 to read as follows:

Emissions From Existing Commercial/Industrial Solid Waste Incineration Units

§ 62.2155 Identification of plan—negative declaration.

Letter from the District of Columbia Department of Health, Environmental Health Administration, submitted November 27, 2001, certifying that there are no existing commercial/industrial solid waste incineration units within the District of Columbia that are subject to 40 CFR part 60, subpart DDDD.

Subpart NN—Pennsylvania

4. Subpart NN is amended by adding an undesignated center heading and § 62.9670 to read as follows:

Emissions From Existing Commercial/Industrial Solid Waste Incineration Units

§ 62.9670 Identification of plan—negative declaration.

Letter from the City of Philadelphia, Department of Public Health, submitted February 9, 2001, certifying that there are no existing commercial/industrial

solid waste incineration units within the City of Philadelphia, Pennsylvania that are subject to 40 CFR part 60, subpart DDDD.

[FR Doc. 02–33094 Filed 12–31–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[DC051–7003a; DE068–7003a; PA187–7003a, PA186–7003a ; FRL–7434–5]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; Delaware, the District of Columbia, Allegheny County and Philadelphia, Pennsylvania; Control of Emissions From Existing Small Municipal Waste Combustion Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve the section 111(d)/129 negative declarations submitted by the District of Columbia, the State of Delaware, Allegheny County and the City of Philadelphia, Pennsylvania. Each negative declaration certifies that small municipal waste combustion (MWC) units, subject to the requirements of sections 111(d) and 129 of the Clean Air Act (CAA), do not exist within its air pollution control jurisdiction.

DATES: This final rule is effective March 3, 2003 unless within February 3, 2003 adverse or critical comments are received. If adverse comments are 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: Written comments should be mailed to Walter Wilkie, Deputy Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: James B. Topsale at (215) 814–2190, or by e-mail at *topsale.jim@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 111(d) and 129 of the CAA requires states to submit plans to control certain pollutants (designated pollutants) at existing solid waste combustor facilities (designated facilities) whenever standards of performance have been established under section 111(b) for new sources of the same type, and EPA has established emission guidelines (EG) for such existing sources. A designated pollutant is any pollutant for which no air quality criteria have been issued, and which is not included on a list published under section 108(a) or section 112(b)(1)(A) of the CAA, but emissions of which are subject to a standard of performance for new stationary sources. However, section 129 of the CAA, also requires EPA to promulgate EG for small MWC units that emit a mixture of air pollutants. These pollutants include organics (dioxins/furans), carbon monoxide, metals (cadmium, lead, mercury), acid gases (hydrogen chloride, sulfur dioxide, and nitrogen oxides) and particulate matter (including opacity).

On December 6, 2000 (65 FR 76350, and 76378), EPA promulgated small municipal waste combustion unit new source performance standards, 40 CFR part 60, subparts AAAA, and emission guidelines (EG), subpart BBBB, respectively.

The designated facility to which the EG apply is each existing small MWC unit that has a design combustion capacity of 35 to 250 tons per day of municipal solid waste (MSW) and commenced construction on or before August 30, 1999.

Subpart B of 40 CFR part 60 establishes procedures to be followed and requirements to be met in the development and submission of state plans for controlling designated pollutants. Also, 40 CFR part 62 provides the procedural framework for the submission of these plans. When designated facilities are located in a state, the state must then develop and submit a plan for the control of the designated pollutant. However, 40 CFR 60.23(b) and 62.06 provide that if there are no existing sources of the designated pollutant in the state, the state may submit a letter of certification to that effect (*i.e.*, negative declaration) in lieu of a plan. The negative declaration exempts the state from the requirements of subpart B that require the submittal of a 111(d)/129 plan.

II. Final EPA Action

The District of Columbia, the State of Delaware, Allegheny County and the City of Philadelphia, Pennsylvania have determined that there are no designated facilities, subject to the small MWC unit EG requirements, in their respective air pollution control jurisdiction. Accordingly, each air pollution control agency has submitted to EPA a negative declaration letter certifying this fact.

The submittal dates of these letters are November 27, November 16, November 21, and February 9, 2001, respectively.

Therefore, EPA is amending part 62 to reflect the receipt of these negative declaration letters from the noted air pollution control agencies. Amendments are being made to 40 CFR part 62, subparts J (District of Columbia), I (Delaware), and NN (Pennsylvania). With respect to subpart NN, this action is only applicable to Allegheny County and the City of Philadelphia air pollution control agency jurisdictions, and does not include the remaining geographical areas of Pennsylvania which will be covered in the future by either a Pennsylvania or Federal plan.

After publication of this **Federal Register** notice, if a small MWC facility is later found within either one of the four noted jurisdictions, then the overlooked facility will become subject to the requirements of the Federal small MWC 111(d)/129 plan, including the compliance schedule, when promulgated. The Federal plan would no longer apply if EPA subsequently receives and approves a 111(d)/129 plan from the jurisdiction with the overlooked facility.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action simply reflects already existing Federal requirement for state air pollution control agencies under 40 CFR parts 60 and 62. In the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve each negative declaration should relevant adverse or critical comments be filed.

This rule will be effective March 3, 2003 without further notice unless the Agency receives relevant adverse comments by February 3, 2003. If EPA receives such comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule did not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph,

or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing 111(d)/129 plan 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 111(d)/129 plan submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a 111(d)/129 plan submission, to use VCS in place of a 111(d)/129 plan submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*.).

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 3, 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 approving the section 111(d)/129 negative declarations submitted by the District of Columbia, the State of Delaware, Allegheny County and the City of Philadelphia, Pennsylvania may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Aluminum, Fertilizers, Fluoride, Intergovernmental relations, Paper and paper products industry, Phosphate, Reporting and recordkeeping requirements, Sulfur oxides, Sulfur acid plants, Waste treatment and disposal.

Dated: December 20, 2002.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

40 CFR Part 62 is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart I—Delaware

2. Subpart I is amended by adding an undesignated center heading and § 62.1980 to read as follows:

Emissions From Existing Small Municipal Waste Combustion Units

§ 62.1980 Identification of plan—negative declaration.

Letter from the Delaware Department of Natural Resources and Environmental Control submitted November 16, 2001, certifying that there are no existing small municipal waste combustion units within the State of Delaware that are subject to 40 CFR part 60, subpart BBBB.

Subpart J—District of Columbia

3. Subpart J is amended by adding an undesignated center heading and § 62.2145 to read as follows:

Emissions From Existing Small Municipal Waste Combustion Units

§ 62.2145 Identification of plan—negative declaration.

Letter from the District of Columbia Department of Health, Environmental Health Administration, submitted November 27, 2001, certifying that there are no existing small municipal waste combustion units within the District of Columbia that are subject to 40 CFR part 60, subpart BBBB.

Subpart NN—Pennsylvania

4. Subpart NN is amended by adding an undesignated center heading and § § 62.9645 and 62.9646 to read as follows:

Emissions From Existing Small Municipal Waste Combustion Units

§ 62.9645 Identification of plan—negative declaration.

Letter from the Allegheny County Health Department submitted November 21, 2001, certifying that there are no existing small municipal waste combustion units within Allegheny County, Pennsylvania that are subject to 40 CFR part 60, subpart BBBB.

§ 62.9646 Identification of plan—negative declaration.

Letter from the City of Philadelphia, Department of Public Health, submitted February 9, 2001, certifying that there are no existing small municipal waste combustion units within the City of Philadelphia, Pennsylvania that are subject to 40 CFR part 60, subpart BBBB.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[DC051–7002a; FRL–7434–7]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; the District of Columbia; Control of Emissions From Existing Hospital/Medical/ Infectious Waste Incinerator (HMIWI) Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve the section 111(d)/129 negative declaration submitted by the District of Columbia Department of Health, Environmental Health Administration. The negative declaration certifies that HMIWI units, subject to the requirements of sections 111(d) and 129 of the Clean Air Act (CAA), do not exist within the District of Columbia.

DATES: This final rule is effective March 3, 2003 unless within February 3, 2003 adverse or critical comments are received. If adverse comments are 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: Written comments should be mailed to Walter Wilkie, Deputy Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: James B. Topsale at (215) 814–2190, or by e-mail at *topsale.jim@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Sections 111(d) and 129 of the CAA requires states to submit plans to control certain pollutants (designated pollutants) at existing solid waste combustor facilities (designated facilities) whenever standards of performance have been established under section 111(b) for new sources of the same type, and EPA has established emission guidelines (EG) for such existing sources. A designated pollutant is any pollutant for which no air quality criteria have been issued, and which is not included on a list published under section 108(a) or section 112(b)(1)(A) of the CAA, but emissions of which are subject to a standard of performance for new stationary sources. However, section 129 of the CAA, also requires EPA to promulgate EG for HMIWI units that emit a mixture of air pollutants. These pollutants include organics (dioxins/furans), carbon monoxide, metals (cadmium, lead, mercury), acid gases (hydrogen chloride, sulfur dioxide, and nitrogen oxides) and particulate matter (including opacity).

On September 15, 1997 (62 FR 48348), EPA promulgated EG, subpart Ce, that are applicable to all existing HMIWI units (*i.e.*, the designated facilities). An existing HMIWI unit is one which construction commenced on or before June 20, 1996.

Subpart B of 40 CFR part 60 establishes procedures to be followed and requirements to be met in the development and submission of state plans for controlling designated pollutants. Also, 40 CFR part 62 provides the procedural framework for the submission of these plans. When designated facilities are located in a state, the state must then develop and submit a plan for the control of the designated pollutant. However, 40 CFR 60.23(b) and 62.06 provide that if there are no existing sources of the designated pollutant in the state, the state may submit a letter of certification to that effect (*i.e.*, negative declaration) in lieu of a plan. The negative declaration exempts the state from the requirements of subpart B that require the submittal of a 111(d)/129 plan.

II. Final EPA Action

On June 25, 1999, the District of Columbia Department of Health, Environmental Health Administration, submitted to EPA a negative declaration letter certifying that there are no known HMIWI units within its jurisdiction.

Therefore, EPA is amending part 62 to reflect the receipt of the negative declaration letter from the District of Columbia Department of Health, Environmental Health Administration. After publication of this **Federal Register** notice, if a HMIWI facility is later found within the District of Columbia, then the overlooked facility is subject to the Federal HMIWI 111(d)/ 129 plan (65 FR 49868), including the compliance schedule, promulgated on August 15, 2000. The Federal plan would no longer apply if EPA subsequently receives and approves a 111(d)/129 plan from the District of Columbia.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action simply reflects already existing Federal requirement for state air pollution control agencies under 40 CFR parts 60 and 62. 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 negative declaration should relevant adverse or critical comments be filed.

This rule will be effective March 3, 2003 without further notice unless the Agency receives relevant adverse comments by February 3, 2003. If EPA receives such comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule did not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is

not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely 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 111(d)/129 plan 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 111(d)/129 plan submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a 111(d)/129 plan submission, to use VCS in place of a 111(d)/129 plan submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 3, 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 approving the District of Columbia Department of Health, Environmental Health Administration, negative declaration for HMIWI units may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Aluminum, Fertilizers, Fluoride, Intergovernmental relations, Paper and paper products industry, Phosphate, Reporting and recordkeeping requirements, Sulfur oxides, Sulfur acid plants, Waste treatment and disposal.

Dated: December 20, 2002.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

40 CFR part 62 is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

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

Subpart J—District of Columbia

2. Subpart J is amended by adding an undesignated center heading and § 62.2150 to read as follows:

Emissions From Existing Hospital/Medical/Infectious Waste Incinerator (HMIWI) Units

§ 62.2150 Identification of plan—negative declaration.

Letter from the Department of Health, Environmental Health Administration, submitted to EPA on June 25, 1999, certifying that there are no known existing HMIWI units in the District of Columbia.

[FR Doc. 02–33098 Filed 12–31–02; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[DC051–7001a; PA186–7001a; FRL–7434–9]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; the District of Columbia, and the City of Philadelphia, Pennsylvania; Control of Emissions From Existing Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve the section 111(d) negative declarations submitted by the District of Columbia, and the City of Philadelphia, Pennsylvania. Each negative declaration certifies that municipal solid waste (MSW) landfills, subject to the requirements of section 111(d) of the Clean Air Act (CAA), do not exist within its air pollution control agency's jurisdiction.

DATES: This final rule is effective March 3, 2003 unless within February 3, 2003 adverse or critical comments are received. If adverse comments are 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: Written comments should be mailed to Walter Wilkie, Deputy Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: James B. Topsale at (215) 814–2190, or by e-mail at *topsale.jim@epa.gov.*

SUPPLEMENTARY INFORMATION

I. Background

Section 111(d) of the CAA requires states to submit plans to control certain pollutants (designated pollutants) at existing facilities (designated facilities) whenever standards of performance have been established under section 111(b) for new sources of the same type, and EPA has established emission guidelines (EG) for such existing sources. A designated pollutant is any pollutant for which no air quality criteria have been issued, and which is not included on a list published under section 108(a) or section 112(b)(1)(A) of the CAA, but emissions of which are subject to a standard of performance for new stationary sources.

On March 12, 1996 (61 FR 9905), EPA promulgated MSW landfill new source performance standards and emission guidelines (EG). Later, EPA promulgated landfill rule amendments on June 16, 1998 (63 FR 32743), February 24, 1999 (64 FR 9258), April 10, 2000 (65 FR 18906), and proposed amendments on May 23, 2002 (67 FR 36476). The EG are applicable to existing municipal solid waste (MSW) landfills (*i.e.*, the designated facilities) that emit landfill gas (LFG), which consists primarily of carbon dioxide, methane, and nonmethane organic compounds (NMOC). MSW landfills are the largest manmade source of methane emissions in the United States. The designated pollutant, NMOC, is a mixture of more than 100 different compounds, including volatile organic compounds (VOC), and hazardous pollutants (HAPs), such as vinyl chloride, toluene, and benzene. A collateral benefit in the control of NMOC is the control of methane.

The designated facility to which the EG apply is each existing MSW landfill for which construction, reconstruction or modification was commenced before May 30, 1991, and has accepted municipal solid waste at any time since November 8, 1987, or has additional design capacity available for future waste deposition. Landfill emission controls are not required, unless the designated facility has a capacity greater than or equal to 2.5 million megagrams (Mg) and 2.5 million cubic meters, and a calculated NMOC emissions rate of 50 Mg/Yr, or greater.

Subpart B of 40 CFR part 60 establishes procedures to be followed and requirements to be met in the development and submission of state plans to EPA for controlling designated pollutants. Also, 40 CFR part 62 provides the procedural framework for the submission of these plans. When designated facilities are located in a state, the state must develop and submit a plan for the control of the designated pollutant. However, 40 CFR 60.23(b) and 62.06 provide that if there are no existing sources of the designated pollutant in the state, the state may then submit a letter of certification to that effect (*i.e.*, negative declaration) in lieu of a plan. The negative declaration exempts the state from the requirements of subpart B that require the submittal of a 111(d) plan.

II. Final EPA Action

The District of Columbia, and the City of Philadelphia, Pennsylvania have determined that there are no existing designated facilities (MSW landfills), in their respective air pollution control jurisdiction. Each agency has submitted to EPA a negative declaration letter certifying this fact. The letters are dated September 11, 1997, and February 27, 1996, respectively.

Therefore, EPA is amending 40 CFR part 62 to reflect the receipt of these negative declaration letters from both air pollution control agencies. Amendments are being made to 40 CFR part 62, subparts J (District of Columbia), and NN (Pennsylvania). With respect to subpart NN, this action is only applicable to the City of Philadelphia air pollution control agency's jurisdiction. Allegheny County, Pennsylvania is covered by its own EPA approved plan (64 FR 13075), while the remainder of the state is covered by a Federal plan (64 FR 60689) until such time as EPA approves the submitted state plan from the Pennsylvania Department of Environmental Protection.

After publication of this **Federal Register** document, if a designated facility is found within either one of the two noted jurisdictions, then the overlooked landfill is subject to the requirements of the Federal landfill 111(d) plan, including the compliance schedule, which was promulgated on November 8, 1999 (64 FR 60689). The Federal plan would no longer apply if EPA subsequently receives and approves a 111(d) plan from the jurisdiction with the overlooked designated landfill.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action simply reflects already existing Federal requirement for state air pollution control agencies under 40 CFR parts 60 and 62. In the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve each negative declaration should relevant adverse or critical comments be filed.

This rule will be effective March 3, 2003 without further notice unless the Agency receives relevant adverse comments by February 3, 2002. If EPA receives such comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule did not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Administrative Requirements

A. General Requirements

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

any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely 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 111(d)/129 plan 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 111(d)/129 plan submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a 111(d)/129 plan submission, to use VCS in place of a 111(d)/129 plan submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 3, 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 approving the District of Columbia and City of Philadelphia, Pennsylvania negative declarations for municipal solid waste landfills may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Aluminum, Fertilizers, Fluoride, Intergovernmental relations, Paper and paper products industry, Phosphate, Reporting and recordkeeping requirements, Sulfur oxides, Sulfuric acid plants, Waste treatment and disposal.

Dated: December 20, 2002.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

40 CFR part 62 is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

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

Subpart J—District of Columbia

2. Subpart J is amended by adding an undesignated center heading and § 62.2140 to read as follows:

Landfill Gas Emissions From Existing Municipal Solid Waste Landfills

§ 62.2140 Identification of plan—negative declaration.

Letter from the Department of Consumer and Regulatory Affairs submitted September 11, 1997, certifying that there are no existing municipal solid waste landfills in the District of Columbia that are subject to 40 CFR part 60, subpart Cc.

Subpart NN—Pennsylvania

3. Section 62.9633 is added to Subpart NN, ''Landfill Gas Emissions From Existing Municipal Solid Waste Landfills'' to read as follows:

§ 62.9633 Identification of plan—negative declaration.

Letter from the City of Philadelphia, Department of Public Health, submitted February 27, 1996, certifying that there are no existing municipal solid waste landfills in the City of Philadelphia that are subject to 40 CFR part 60, subpart Cc.

[FR Doc. 02–33100 Filed 12–31–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF ENERGY

48 CFR Parts 904, 952, and 970

RIN 1991–AB42

Acquisition Regulation: Security Amendments To Implement Executive Order 12829, National Industrial Security Program

AGENCY: Department of Energy (DOE).

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is adopting as final without change an Interim Final Rule amending the Department of Energy Acquisition Regulation (DEAR) to ensure a uniform and simplified security system for contractors and others requiring access authorization for classified national security or restricted atomic energy information. The Final Rule also adopts the provision in the Interim Final Rule which allows the Secretary of Energy to waive the prohibition on award of a national security contract to an entity controlled by a foreign government if an environmental restoration requirement is involved.

DATES: This rule was effective May 28, 2002 pursuant to the interim final rule published March 28, 2002.

FOR FURTHER INFORMATION CONTACT: Richard B. Langston, Office of Procurement and Assistance Policy (ME–61), 202–586–8247; *richard.langston@pr.doe.gov.*

SUPPLEMENTARY INFORMATION: DOE is adopting as final the Interim Final Rule published on March 28, 2002, at 67 FR 14873 amending the DEAR to

implement Executive Order 12829, National Industrial Security Program (January 6, 1993), and Section 828 of the National Defense Authorization Act for Fiscal Year 1997, and to bring the DEAR into conformance with existing practices.

Background

Executive Order 12829 requires a uniform system for classifying, safeguarding, and declassifying national security information. The Federal agencies are adopting the National Industrial Security Program as the uniform Federal industrial security program within the limitations of their separate statutory requirements. Among the more significant features of the program is the use of a Standard Form 328, Certificate Pertaining to Foreign Interests, to gather information relative to foreign ownership, control or influence. Previously, DOE used a separate questionnaire of its own with more and somewhat different questions. Now all agencies will collect the same information. This feature will result in the greatest savings for both contractors and Federal agencies because agencies will accept each others' clearances on a reciprocal basis, in most circumstances. The Final Rule makes changes to the DEAR to bring it into conformance with the new program.

The Final Rule also includes a provision (revised section 904.7102 of the DEAR) to allow the Secretary of Energy to waive a prohibition on award of a national security contract to an entity controlled by a foreign government if an environmental restoration requirement is involved. Section 2536(b)(1)(B) of title 10 U.S.C. provides waiver authority for a contract for environmental restoration, remediation, or waste management at a DOD or DOE facility. For such a contract, the prohibition on award of a contract under a national security program to an entity controlled by a foreign government that requires access to a proscribed category of information to perform the contract may be waived only if the Secretary concerned determines that: (1) A waiver will advance the environmental restoration, remediation, or waste management objectives of the cognizant Department; (2) a waiver will not harm the national security interests of the United States; and (3) the entity to which the contract is to be awarded is controlled by a foreign government with which the cognizant Secretary has authority to exchange Restricted Data under section 144.c. of the Atomic Energy Act of 1954 (42 U.S.C. 2164(c)).

DOE invited comments from the public, which were to be submitted on or before April 29, 2002. No comments were received. DOE has determined that no changes are needed to the Interim Final Rule and adopts the DEAR amendments as final without change.

Issuance of this Final Rule has been approved by the Office of the Secretary of Energy.

List of Subjects in 48 CFR Parts 904, 952 and 970

Government procurement.

Issued in Washington, DC, on December 20, 2002.

Richard H. Hopf,

Director, Office of Procurement and Assistance Management, OMBE, Department of Energy.

Robert C. Braden, Jr.,

Director, Office of Procurement and Assistance Management, National Nuclear Security Administration.

For the reasons set forth in the preamble, the interim final rule amending 10 CFR Parts 904, 952, and 970 which was published at 67 FR 14873 on March 28, 2002, is adopted as a final rule without change.

[FR Doc. 02–32994 Filed 12–31–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration (RSPA)

49 CFR Parts 192 and 195

Pipeline Safety: Qualification of Pipeline Personnel

AGENCY: Office of Pipeline Safety, Research and Special Programs Administration, DOT.

ACTION: Notice of public meeting.

SUMMARY: The Research and Special Programs Administration's (RSPA) Office of Pipeline Safety (OPS) will conduct a public meeting to discuss progress in implementing the operator personnel qualification (OQ) rule for gas and hazardous liquid pipelines. OPS will introduce and describe the operator qualification inspection protocol development process and provide an opportunity for public comment. A panel of experts will respond to questions from the public.

DATES: The public meeting will be held on January 22, 2003, beginning promptly at 9 a.m. and will continue until 5 p.m. Persons wishing to make a presentation or statement at the meeting should notify Janice Morgan, (202) 366–2392, no later than January 15, 2003.

ADDRESSES: The public meeting will be held at the Hyatt Regency San Antonio (Riverwalk), 123 Losoya Street, San Antonio, TX 78205 (Tel: 210–222–1234; Fax: 210–227–4928; Web: *http://www.sanantonioregency.hyatt.com.* This meeting is free and open to the public. You may register electronically for this meeting at: *http://primis.rspa.dot.gov/meetings/MtgHome.mtg?&mtg=5.*

Following presentations by OPS on operator qualification compliance and inspection protocols, the public will have the opportunity to provide comments and to submit documents for the record. Preregistered organizations and individuals will be afforded the first opportunity to make their presentations.

Although we encourage persons wishing to comment on operator qualification compliance and inspection protocols to participate in the public meeting, written comments will be accepted. You may submit written comments on operator qualification implementation and compliance issues to Richard Huriaux, U.S. Department of Transportation, Room 7128, 400 Seventh Street, SW, Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: You may contact Richard Huriaux at (202) 366–4565, regarding the agenda of this public meeting. General information about OPS programs may be obtained by accessing OPS's Internet home page at *http://ops.dot.gov.*

Information on Services for Individuals with Disabilities. For information on facilities or services for individuals with disabilities or to request special assistance, contact Janice Morgan, (202) 366–2392.

SUPPLEMENTARY INFORMATION: The operator qualification rules at 49 CFR 192.801 (for gas pipelines) and at 49 CFR 195.501 (for hazardous liquid pipelines) require every pipeline operator to have and follow a written personnel qualification program that includes provisions to identify covered tasks and to ensure that all persons performing these tasks are qualified to safely and effectively complete the tasks. By October 28, 2002, all gas and hazardous liquid pipeline operators should have completed the qualification of all individuals performing covered tasks on pipeline facilities.

On January 22, 2003, OPS will conduct a public meeting to discuss progress in implementing the operator personnel qualification rule for gas and hazardous liquid pipelines. OPS will present a detailed review of the development of the operator qualification inspection protocols.

The meeting will provide an opportunity to review compliance with the operator qualification rule, to clarify operator qualification requirements, and to hear compliance issues from Federal and State pipeline safety personnel, industry, and the public. All persons attending the meeting will have an opportunity to comment on operator qualification compliance issues and to question the expert panel on the new operator qualification compliance protocols.

Issued in Washington, DC on December 13, 2002.

Richard D. Huriaux,

Manager, Regulations, Office of Pipeline Safety.

[FR Doc. 02–32270 Filed 12–27–02; 4:07 pm]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 219

[Docket No. 2001–11213, Notice No. 2]

RIN 2130–AA81

Alcohol and Drug Testing: Determination of Minimum Random Testing Rates for 2003

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of determination.

SUMMARY: Using data from Management Information System annual reports, FRA has determined that the 2001 rail industry random testing positive rate was 0.77 percent for drugs and 0.21 percent for alcohol. Since the industry-wide random drug testing positive rate continues to be below 1.0 percent, the Federal Railroad Administrator (Administrator) has determined that the minimum annual random drug testing rate for the period January 1, 2003 through December 31, 2003 will remain at 25 percent of covered railroad employees. Since the random alcohol testing violation rate has remained below 0.5 percent for the last two years, the Administrator has determined that the minimum random alcohol testing rate will remain at 10 percent of covered railroad employees for the period January 1, 2003 through December 31, 2003.

DATES: This notice of determination is effective upon publication.

FOR FURTHER INFORMATION CONTACT: Lamar Allen, Alcohol and Drug Program Manager, Office of Safety Enforcement, Mail Stop 25, Federal Railroad Administration, 1120 Vermont Avenue, NW., Washington, DC 20005, (Telephone: (202) 493–6313).

SUPPLEMENTARY INFORMATION:

Administrator's Determination of 2003 Random Drug and Alcohol Testing Rates

In a final rule published on December 2, 1994 (59 FR 62218), FRA announced that it will set future minimum random drug and alcohol testing rates according to the rail industry's overall positive rate, which is determined using annual railroad drug and alcohol program data taken from FRA's Management Information System. Based on this data, the Administrator publishes a **Federal Register** notice each year, announcing the minimum random drug and alcohol testing rates for the following year (*see* 49 CFR 219.602, 608).

Under this performance-based system, FRA may lower the minimum random drug testing rate to 25 percent whenever the industry-wide random drug positive rate is less than 1.0 percent for two calendar years while testing at 50 percent. (For both drugs and alcohol, FRA reserves the right to consider other factors, such as the number of positives in its post-accident testing program, before deciding whether to lower annual minimum random testing rates). FRA will return the rate to 50 percent if the industry-wide random drug positive rate is 1.0 percent or higher in any subsequent calendar year.

In 1994, FRA set the 1995 minimum random drug testing rate at 25 percent because 1992 and 1993 industry drug testing data indicated a random drug testing positive rate below 1.0 percent; since then FRA has continued to set the minimum random drug testing rate at 25 percent as the industry positive rate has consistently remained below 1.0 percent. In this notice, FRA announces that the minimum random drug testing rate will remain at 25 percent of covered railroad employees for the period January 1, 2003 through December 31, 2003, since the industry random drug testing positive rate for 2001 was 0.77 percent.

FRA implemented a parallel performance-based system for random alcohol testing. Under this system, if the industry-wide violation rate is less than 1.0 percent but greater than 0.5 percent, the rate will be 25 percent. FRA will raise the rate to 50 percent if the industry-wide violation rate is 1.0 percent or higher in any subsequent calendar year. FRA may lower the minimum random alcohol testing rate to 10 percent whenever the industry-wide violation rate is less than 0.5 percent for two calendar years while testing at a higher rate. Since the industry-wide violation rate for alcohol has remained below 0.5 percent for the last two years, FRA is maintaining the minimum random alcohol testing rate at 10 percent of covered railroad employees for the period January 1, 2003 through December 31, 2003.

This notice sets the minimum random testing rates required next year. Railroads remain free, as always, to conduct random testing at higher rates.

Issued in Washington, DC, on December 20, 2002.

Alan Rutter,

Administrator.

[FR Doc. 02–33108 Filed 12–31–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 648

[Docket No. 021017239–2322–02 ; I.D. 091902F]

RIN 0648–AQ15

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries

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

ACTION: Final rule and 2003 specifications.

SUMMARY: NMFS announces final initial specifications for the 2003 fishing year for Atlantic mackerel, squid, and butterfish (MSB); including an in-season adjustment provision for the 2003 mackerel joint venture processing (JVP) annual specification. This action also specifies a method for carrying over *Loligo* squid Quarter I underages into Quarter III. The intent of this final rule is to promote the development and conservation of the MSB resource.

DATES: Effective February 3, 2003.

ADDRESSES: Copies of supporting documents used by the Mid-Atlantic Fishery Management Council, including the Environmental Assessment (EA) and Regulatory Impact Review (RIR), Final Regulatory Flexibility Analysis (FRFA), are available from: Patricia A. Kurkul, Regional Administrator, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298. The EA/RIR/FRFA is accessible via the Internet at *http://www.nero.nmfs.gov*.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, 978–

281–9273, fax 978–281–9135, e-mail *paul.h.jones@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Regulations implementing the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan (FMP) require NMFS to publish annual initial specifications for maximum optimum yield (Max OY), allowable biological catch (ABC), initial optimum yield (IOY), domestic annual harvest (DAH), domestic annual processing (DAP), JVP, and total allowable level of foreign fishing (TALFF) for the species managed under the FMP. In addition, regulations implemented under Framework Adjustment 1 to the FMP allow the specification of quota set-asides to be used for research purposes.

Proposed 2003 initial specifications were published on October 29, 2002 (67 FR 65934). Public comments were accepted through November 27, 2002. The final specifications are unchanged from those that were proposed. A complete discussion of the development of the specifications appears in the preamble to the proposed rule and is not repeated here.

2003 Final Initial Specifications

The following table contains the final initial specifications and research set-aside (RSA) for the 2003 MSB fisheries.

TABLE 1. FINAL INITIAL ANNUAL SPECIFICATIONS AND RSA, IN METRIC TONS (MT), FOR ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FOR THE FISHING YEAR JANUARY 1 THROUGH DECEMBER 31, 2003

Specifications	Squid		Alantic	h
	Loligo	*Illex*	Mackerel	Butterfish
Max OY	26,000	24,000	N/A[1]	16,000
ABC	17,000	24,000	347,000	7,200
IOY	16,872.5[5]	24,000	175,000[2]	5,900
DAH	16,872.5	24,000	175,000[3]	5,900
DAP	16,872.5	24,000	150,000	5,900
JVP	0	0	10,000[4]	0
TALFF	0	0	0	0
RSA	127.5	0	0	0

[1] Not applicable.
[2] IOY may be increased during the year, but the total ABC will not exceed 347,000 mt.
[3] Includes 15,000 mt of Atlantic mackerel recreational allocation.
[4] JVP may be increased up to 20,000 mt at discretion of Regional Administrator.
[5] Excludes 127.5 mt for RSA.

2003 Final Specifications

Atlantic Mackerel

This final rule specifies an Atlantic mackerel JVP of 10,000 mt for the 2003 fishery, with a possible increase of up to 10,000 mt (for a total JVP of up to 20,000 mt) later in the fishing year, should additional applications for JVP be received. This adjustment would be made by NMFS, in consultation with the Council, through publication of notification in the **Federal Register**. The action also specifies an Atlantic mackerel DAP of 150,000 mt and a DAH of 175,000 mt, which includes a 15,000–mt recreational component.

Four special conditions recommended by the Council and imposed by NMFS in previous years continue to apply to the 2003 Atlantic mackerel fishery, as follows: (1) JVPs would be allowed south of 37[deg]30' N. lat., but river herring bycatch may not exceed 0.25 percent of the over-the-side transfers of Atlantic mackerel; (2) the Administrator, Northeast Region, NMFS (Regional Administrator) should ensure that impacts on marine mammals are reduced in the prosecution of the Atlantic mackerel fishery; (3) the mackerel optimum yield (OY) may be increased during the year, but it should not exceed 347,000 mt; and (4) applications from a particular nation for an Atlantic mackerel JVP allocation for 2003 may be based on an evaluation by the Regional Administrator of that nation's performances relative to purchase obligations for previous years.

Atlantic Squids

Loligo

This final rule specifies a *Loligo* squid IOY of 16,898 mt, which is equal to ABC minus the RSA, and subdivides the annual quota into quarterly periods. The 2003 quarterly allocations are as follows:

Quarter	h	Per-cent	Metric Tons[1]	Re-search Set–aside
I	(Jan–Mar)	33.23	5,606.7	N/A
II	(Apr–Jun)	17.61	2,971.3	N/A
III	(Jul–Sep)	17.3	2,918.9	N/A
IV	(Oct–Dec)	31.86	5,375.6	N/A
Total		100	16,872.5	127.5

[1] Quarterly allocations after 127.5 mt RSA deduction.

Carry-over of Quarterly Quota Underages

In 2002, by default, quarterly underages from Quarters II and III carried over into Quarter IV, because Quarter IV does not close until 95 percent of the total annual quota has been harvested. Additionally, if the Quarter I landings for *Loligo* squid were less than 70 percent of the Quarter I allocation, the underage below 70 percent was to be applied to the Quarter III allocation. For 2003, the Council recommended that, in the event that the Quarter I landings for *Loligo* squid are

less than 80 percent of the Quarter I allocation, the underage below 80 percent should be added to the Quarter III allocation. In a November 20, 2002, letter to NMFS, the Council confirmed its intent relative to the transfer of underage of *Loligo* squid in Quarter I to Quarter III. The Council believes the proposed rule accurately reflected the intent of the Council with regard to this issue. Therefore, this final rule modifies the allocation method such that, if the Quarter I landings of *Loligo* squid are less than 80 percent of the Quarter I allocation, the underage below 80 percent will be added to the Quarter III allocation.

Comments and Responses

Three commenters commented on a total of two issues in the proposed specifications.

Comment 1: Three commenters expressed support for the proposed zero allocation of Atlantic mackerel TALFF.

Response 1: This final rule implements the proposed zero allocation of Atlantic mackerel TALFF.

Comment 2: Two commenters opposed the proposed Atlantic mackerel JVP specification of 10,000 mt because they believe shore-based processors would be negatively affected by foreign joint ventures that would compete with the U.S. domestic mackerel harvest.

Response 2: The Council relied on testimony presented by domestic processors during its May 2, 2002, meeting concerning their current and projected shoreside processing capacity for Atlantic mackerel in 2003. While domestic processing capacity is increasing, the Council believes, based on the best data available, that the capacity of the domestic fleet to harvest mackerel still exceeds the domestic processors' capacity to process mackerel. As a result, the Council recommended, and NMFS is implementing, the 10,000–mt JVP allocation to provide additional opportunity for U.S. vessels to sell mackerel.

Classification

This final rule has been determined to be not significant for purposes of E. O. 12866.

NMFS prepared a FRFA for this action. The FRFA includes a summary of the analyses done in support of these specifications. A copy of the FRFA is available from NMFS (see **ADDRESSES**). A summary of the FRFA follows:

The reasons why this action is being taken by the agency, and the objectives of this final rule are explained in the preamble to the proposed rule and are not repeated here. This action does not contain any collection-of-information, reporting, recordkeeping, or other compliance requirements. It does not duplicate, overlap, or conflict with any other Federal rules. This action is taken under authority of the Magnuson-Stevens Act and regulations at 50 CFR part 648.

Three comments were submitted on the proposed rule, but none of them were specific to the initial regulatory flexibility analysis. However, two individuals commented on the economic impacts of the measures on the fishing industry; NMFS has responded to those comments (Comment 2) in the Comments and Responses section of the preamble to this final rule. No changes were made to the final rule as a result of the comments received.

The numbers of potential fishing vessels in the 2003 fisheries are 384 for *Loligo* squid/butterfish, 73 for *Illex* squid, 2,242 for Atlantic mackerel, and 1,828 vessels with incidental catch permits for squid/butterfish. All of the vessels are considered small entities. Many vessels participate in more than one of these fisheries; therefore, the numbers are not additive. The final DAH specifications of 175,000 mt for Atlantic mackerel, 24,000 mt for *Illex* squid, and 5,900 mt for butterfish represent no constraint on vessels in these fisheries. The level of landings allowed under the final specifications for 2003 has not been achieved by vessels in these fisheries in recent years. Absent such a constraint, no impacts on revenues are expected as a result of the final action.

From 1997–2001, *Loligo* squid landings averaged 16,771 mt annually. If the 2003 final DAH specification of 16,872.5 mt for *Loligo* squid is achieved, there would be an increase in catch and revenue in the *Loligo* squid fishery relative to the average landings from 1997–2001. One alternative would have set ABC, DAH, DAP, and IOY at 18,300 mt. Under this alternative, the quota would be specified at a level that is 1,300 mt higher than is specified by the overfishing definition control rule in the FMP. Since the stock would not be protected from overfishing under this alternative, some negative economic and social impacts could be expected from this alternative in the long term, if the stock did become overfished. The vessel owners, crews, dealers, processors and fishing communities associated with these ports would be expected to be affected the most by this alternative when compared to the final 2003 annual specifications for *Loligo*. This action also modifies the provision for carrying over Quarter I *Loligo* squid underages. Under the new measure, *Loligo* squid Quarter I underages less than 80 percent of the Quarter I allocation would be applied to Quarter III. Currently, all underages from Quarter I less than 70 percent are applied to the Quarter III allocation. By making the increased underage available during Quarter III, *Loligo* squid permit holders could continue to fish during a time when that quarter may have otherwise been closed. This could provide an added economic benefit to fishers during Quarter III. However, because this provision would only shift a limited amount of quota from one period to another, and does not modify the *Loligo* squid annual quota, no overall change in revenue is expected.

One alternative considered for the Atlantic mackerel fishery was to set the 2003 specifications at the same level as 2002 (ABC = 347,00 mt, IOY = 85,000 mt, DAH = 85,000 mt, DAP = 50,000 mt, JVP = 20,000 mt and TALFF = 0 mt). This alternative would have increased JVP by 10,000 mt and decreased DAP by 100,000 mt. This alternative was rejected because of concerns associated with the potential for rapid expansion of the shoreside processing sector of this industry in 2003. If rapid expansion of the processing sector did occur early in 2003, and landings exceeded 85,000 mt, an inseason adjustment to IOY would be necessary. However, the majority of mackerel landings occur from January through March, and it is unlikely that an inseason adjustment could be made in time for quota to be available to the industry for that period. The result would be the unnecessary closure of the fishery that could result in negative economic and/or social impacts to the U.S. mackerel industry. Some or all of the vessel owners, crews, dealers, processors or fishing communities associated with the Atlantic mackerel fishery could be adversely affected by maintaining the 2002 annual specifications for Atlantic mackerel in 2003.

For *Illex* squid, one alternative considered would have set Max OY, ABC, IOY, DAH, and DAP at 30,000 mt. This specification would be far in excess of recent landings in this fishery. Therefore, there would be no constraints and, thus, no revenue reductions, associated with these specifications. However, the alternative was found unacceptable because an ABC specification of 30,000 mt may not prevent overfishing in years of moderate to low abundance of *Illex* squid.

For butterfish, the Council considered two alternatives; the first set a Max OY of 16,000 mt and an ABC, IOY, DAH, and DAP of 7,200 mt, and the second set

a Max OY of 16,000 mt and a ABC, IOY, DAH, and DAP at 10,000 mt. These specifications far exceed recent harvests in the butterfish fishery and would not constrain or impact the industry; however, they could lead to overfishing of the stock and, thus, were rejected.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as the small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the Northeast Regional Office, and the guide, i.e., permit holder letter, will be sent to all holders of permits issued for the mackerel, squid, and butterfish fisheries. The guide and this final rule will be available upon request (see **ADDRESSES**).

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 24, 2002.

Rebecca Lent,

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

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

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

2. In § 648.21, paragraph (f)(3) is revised to read as follows:

§ 648.21 Procedures for determining initial annual amounts.

* * * * *

(f) * * *

(3) Beginning January 1, 2003, if commercial landings in Quarter I are determined to be less than 80 percent of the Quarter I quota allocation, any remaining Quarter I quota that is less than 80 percent will be reallocated to Quarter III (e.g., if the Quarter I quota was 100,000 lb (220,462 kg) and 50,000 lb (110,231 kg) was landed, then the remaining Quarter I quota, up to 80 percent, or 30,000 lb (66,139 kg), would be reallocated to Quarter III. A balance of 20 percent, or 20,000 lb (44,092 kg), would remain in Quarter I).

* * * * *

[FR Doc. 02–33038 Filed 12–31–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 021122284–2323–02; I.D. 110602A]

RIN 0648–AQ30

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; 2003 Specifications

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

ACTION: Final rule, final 2003 specifications, and preliminary commercial quota adjustment; notification of 2003 commercial summer flounder quota harvest for the states of Maine and Delaware.

SUMMARY: NMFS issues final specifications for the 2003 summer flounder, scup, and black sea bass fisheries and makes preliminary adjustments to the 2003 commercial quotas for these fisheries. This final rule specifies allowed harvest limits for both commercial and recreational fisheries, as well as other commercial management measures, including scup and black sea bass possession limits and scup observer coverage. This action also prohibits federally permitted commercial vessels from landing summer flounder in the States of Maine and Delaware in 2003. Regulations governing the summer flounder fishery require publication of this notification to advise these states, Federal vessel permit holders, and Federal dealer permit holders that no commercial quota is available for landing summer flounder in Maine and Delaware in 2003. The intent of this action is to establish allowed 2003 harvest levels and other measures to attain the target fishing mortality or exploitation rates, as specified for these species in the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP).

DATES: The 2003 final specifications are effective from January 2, 2003 through December 31, 2003. The prohibition on landings of summer flounder in Maine and Delaware by Federal permit holders is effective 0001 hours January 1, 2003, through 2400 hours December 31, 2003. Amendments to sections 648.14(a)(122), 648.14(a)(127), 648.122(a), 648.122(b), and 648.122(d) require approval by the Office of Management and Budget (OMB) under the Paperwork reduction Act (PRA). When OMB approval is received , the effective date will be announced in the **Federal Register**.

ADDRESSES: Copies of supporting documents used by the Summer Flounder, Scup, and Black Sea Bass Monitoring Committees; the Environmental Assessment, Regulatory Impact Review, Final Regulatory Flexibility Analysis (EA/RIR/FRFA); and the Essential Fish Habitat Assessment are available from Patricia A. Kurkul, Regional Administrator, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–2298. The EA/RIR/FRFA is also accessible via the Internet at *http://www.nero.nmfs.gov.*

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin, Fishery Policy Analyst, (978) 281–9279, fax (978) 281–9135, e-mail *sarah.mclaughlin@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The summer flounder, scup, and black sea bass fisheries are managed cooperatively by the Atlantic States Marine Fisheries Commission (Commission) and the Mid-Atlantic Fishery Management Council (Council), in consultation with the New England and South Atlantic Fishery Management Councils. The management units specified in the FMP include summer flounder (*Paralichthys dentatus*) in U.S. waters of the Atlantic Ocean from the southern border of North Carolina northward to the U.S./Canada border, and scup (*Stenotomus chrysops*) and black sea bass (*Centropristis striata*) in U.S. waters of the Atlantic Ocean from 35[deg]13.3' N. lat. (the latitude of Cape Hatteras Lighthouse, Buxton, NC) northward to the U.S./Canada border. Implementing regulations for these fisheries are found at 50 CFR part 648, subparts A, G (summer flounder), H (scup), and I (black sea bass).

Pursuant to §§ 648.100 (summer flounder), 648.120 (scup), and 648.140 (black sea bass), the Administrator, Northeast Region, NMFS, (Regional Administrator) implements measures for the fishing year intended to achieve the annual targets set forth for each species in the FMP, specified either as a fishing mortality rate (F) or as an exploitation rate (the proportion of fish available at the beginning of the year that are

removed by fishing during the year). Once the catch limits are established, they are divided into quotas based on formulas contained in the FMP. The management measures (*e.g.*, commercial quotas, recreational harvest limits, minimum mesh requirements, minimum fish sizes, possession limits, and other gear restrictions) are summarized below, by species. Detailed background information regarding the status of the summer flounder, scup, and black sea bass stocks and the development of the 2003 specifications for these species was provided in the proposed specifications (67 FR 70904, November 27, 2002). That information is not repeated here. NMFS makes three corrections to the text published in the proposed 2003 specifications in this final rule. The term ½ B_{msy} used for summer flounder and scup indicates the biomass threshold below which the stock is considered overfished. This term was inadvertently published as B_{msy} in the proposed specifications (B_{msy} is the biomass level at which maximum sustainable yield (MSY) can be achieved), but because an accurate numeric range of yields at ½ B_{msy} was included, the information was not misleading. The 2003 commercial scup quotas by period (with research set-aside deducted) are corrected to reflect the percent share of the total quota less the research set-aside; the changes are slight, measuring less than one percent of the published figure in each case. Finally, as discussed in greater detail below, the cost to a fishing vessel of one at-sea observer day is estimated to be approximately $600, subject to finalization of observer program details, which would be paid by the vessel owner intending to fish in the scup Gear Restricted Areas (GRAs) under the scup GRA Exemption Program (see below for additional information).

NMFS will establish the 2003 recreational management measures for summer flounder, scup, and black sea bass by publishing a proposed and final rule in the **Federal Register** at a later date, following receipt of the Council's recommendations as specified in the FMP.

Summer Flounder

The FMP specifies a target F for 2003 of F_{max}, that is, the level of fishing that produces maximum yield per recruit. The best available scientific information indicates that F_{max} is currently equal to 0.26 (equal to an exploitation rate of about 22 percent from fishing). The Total Allowable Landings (TAL) associated with the target F is allocated 60 percent to the commercial sector and 40 percent to the recreational sector. The commercial quota is allocated to the coastal states based upon percentage shares specified in the FMP. The recreational harvest limit is specified on a coastwide basis. Recreational measures will be the subject of a separate rulemaking early in 2003.

This final rule implements the specifications contained in the proposed rule. This implementation results in a 23.3-million lb (10,569-mt) summer flounder TAL, which is allocated 13.98 million lb (6,341 mt) to the commercial sector and 9.32 million lb (4,227 mt) to the recreational sector. This TAL was determined by the Council's Summer Flounder Monitoring Committee (MC) to have at least a 50-percent probability of achieving the target F (0.26) that is specified in the FMP if the 2002 TAL and anticipated discard levels are not exceeded.

The proposed rule reflected the Council's and Board's recommendation to set aside 91,163 lb (41.4 mt) of the summer flounder TAL for research activities. The research set-aside process included the publication of a Request for Proposals that solicited proposals for 2003, based upon the research priorities identified by the Council (67 FR 13602, March 25, 2002). The deadline for submission of proposals was May 13, 2002. The Council recommended the approval of two research projects that would utilize the full summer flounder research quota. The summer flounder TAL having been adjusted to reflect this research set-aside, is divided into a commercial quota of 13.92 million lb (6,314 mt) and a recreational harvest limit of 9.28 million lb (4,209 mt). If any of these projects is not approved by the NOAA Grants Office, the research quota associated with the disapproved proposal(s) will be restored to the summer flounder TAL through publication of a notice in the **Federal Register** by NMFS.

Table 1 presents the final 2002 commercial summer flounder quota for each state, the reported 2002 landings for each state through October 31, 2002, and the resultant 2002 quota overages.

TABLE 1.—SUMMER FLOUNDER PRELIMINARY COMMERCIAL 2002 LANDINGS BY STATE

State	2002 Quota [1]		Reported 2002 landings through 10/31/02		Preliminary 2002 overage	
	lb [2]	kg [2,3]	lb	kg [3]	lb	kg [3]
ME	(12,938)	(5,868)	575	261	13,513	6,129
NH	67	30	22	10	0	0
MA	938,765	425,817	981,263	445,098	42,498	19,277
RI	2,286,310	1,037,053	2,490,431	1,129,652	204,121	92,589
CT	329,044	149,252	342,227	155,233	13,183	5,980
NY	1,114,800	505,665	946,584	429,368	0	0
NJ	2,438,217	1,105,957	2,373,209	1,076,481	0	0
DE	(43,647)	(19,798)	4,439	2,014	48,086	21,812
MD	297,266	134,838	268,574	121,824	0	0
VA	3,107,619	1,409,592	3,183,643	1,444,091	76,024	34,484
NC	4,001,133	1,814,883	3,808,380	1,727,470	0	0
Total [4]	14,456,636	6,557,421	14,399,347	6,531,501	397,425	180,271

[1] Reflects quotas as published on December 26, 2001 (66 FR 66348).
[2] Parentheses indicate a negative number.
[3] Kilograms are as converted from pounds and may not necessarily add due to rounding.
[4] Total quota is the sum of all states having allocation. A state with a negative number has an allocation of zero (0). Total quota and total landings do not equal the overage because they reflect positive quota balances in several states.

Based upon 2002 landings through October 31, 2002, NMFS adjusts the 2003 commercial quotas for 2002 quota overages. The commercial summer flounder percent share, 2003 initial quota (with and without the research set-aside deduction), 2002 quota overages, and the adjusted quotas (with and without the research set-aside deduction) for 2003, by state, are presented in Table 2.

TABLE 2.—FINAL STATE-BY-STATE COMMERCIAL SUMMER FLOUNDER ALLOCATIONS FOR 2003

State	Percent share	2003 Initial quota		2003 Initial quota, less research set-aside		2002 Quota overages (through 10/31/02) [2]		Adjusted 2003 quota [3]		Adjusted 2003 quota, less research set-aside	
		lb	kg [1]	lb	kg [1]	lb	kg [1]	lb	kg [1]	lb	kg [1]
ME	0.04756	6,649	3,016	6,623	3,004	13,513	6,129	(6,864)	(3,113)	(6,890)	(3,125)
NH	0.00046	64	29	64	29	0	0	64	29	64	29
MA	6.82046	953,502	432,501	949,772	430,809	42,498	19,277	911,004	413,229	907,274	411,537
RI	15.68298	2,192,485	994,494	2,183,907	990,603	204,121	92,589	1,988,364	901,916	1,979,786	898,025
CT	2.25708	315,540	143,127	314,306	142,567	13,183	5,980	302,357	137,148	301,123	136,588
NY	7.64699	1,069,051	484,914	1,064,869	483,016	0	0	1,069,051	484,918	1,064,869	483,021
NJ	16.72499	2,338,158	1,060,571	2,329,010	1,056,421	0	0	2,338,158	1,060,582	2,329,010	1,056,432
DE	0.01779	2,487	1,128	2,477	1,124	48,086	21,812	(45,599)	(20,684)	(45,609)	(20,688)
MD	2.03910	285,067	129,304	283,951	128,798	0	0	285,067	129,306	283,951	128,799
VA	21.31676	2,980,089	1,351,746	2,968,429	1,346,457	76,024	34,484	2,904,065	1,317,275	2,892,405	1,311,986
NC	27.44584	3,836,936	1,740,405	3,821,924	1,733,596	0	0	3,836,936	1,740,423	3,821,924	1,733,613
Total [4]	100.00	13,980,028	6,341,235	13,925,332	6,316,424	397,425	180,271	13,582,603	6,161,029	13,527,907	6,136,218

[1] Kilograms are as converted from pounds and may not necessarily add due to rounding.
[2] For Maine and Delaware, includes continued repayment of overharvest from 2001.
[3] Parentheses indicate a negative number.
[4] Total quota is the sum of all states having allocation. A state with a negative number has an allocation of zero (0).

The Commission has established a system whereby 15 percent of each state's quota may be voluntarily set aside each year to enable vessels to land an incidental catch allowance after the directed fishery has been closed. The intent of the incidental catch set-aside is to reduce discards by allowing fishermen to land summer flounder caught incidentally in other fisheries during the year, while ensuring that the state's overall quota is not exceeded. These Commission set-asides are not included in these 2003 final specifications because NMFS does not have authority to establish such subcategories.

Maine and Delaware Summer Flounder Closures

Table 2 above indicates that, for the States of Maine and Delaware, the amount of the 2002 summer flounder quota overage (inclusive of overharvest from 2001) is greater than the amount of commercial quota allocated to those states for 2003. As a result, there is no quota available for 2003 in either Maine or Delaware. The regulations at § 648.4(b) provide that Federal permit holders agree, as a condition of their permit, must not land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available for harvest. Therefore, effective January 1, 2003, landings of summer flounder in Delaware and Maine by vessels holding commercial Federal fisheries permits are prohibited for the 2003 calendar year, unless additional quota becomes available through a quota transfer and is announced in the **Federal Register**. Federally permitted dealers are advised that they may not purchase summer flounder from federally permitted vessels that land in Maine or Delaware for the 2003 calendar year, unless additional quota becomes available through a transfer.

Scup

The target exploitation rate for scup in 2003 is 21 percent. The FMP allocates 78 percent of the total allowable catch (TAC) associated with the exploitation rate to the commercial sector and 22 percent of the TAC to the recreational sector. Scup discard estimates are deducted from both sectors' TACs to establish TALs for each sector. The commercial TAL is then allocated on a percentage basis to three quota periods, as specified in the FMP: Winter I (January–April)—45.11 percent; Summer (May–October)—38.95 percent; and Winter II (November– December)—15.94 percent. The recreational harvest limit is allocated on a coastwide basis. Recreational measures will be the subject of a separate rulemaking early in 2003.

This final rule implements the annual quota specifications contained in the proposed rule. This implementation results in a 18.65-million lb (8,459-mt) scup TAC and in a 16.5-million lb (7,484-mt) TAL. Three research projects that would utilize the full scup research quota, 66,650 lb (30.2 mt), have been recommended for approval. The scup TAL, having been adjusted to reflect this research set-aside, is divided into a commercial quota of 12.42 million lb (5,634 mt) and a recreational harvest limit of 4.01 million lb (1,819 mt). If any of these projects is not approved by the NOAA Grants Office, the research quota associated with the disapproved proposal(s) will be restored to the scup TAL through publication of a notice in the **Federal Register** by NMFS.

Table 3 presents the final 2002 commercial scup quota for each period, the reported 2002 landings for the 2002 Winter I and Summer periods, and the resultant 2002 quota overages.

TABLE 3.—SCUP PRELIMINARY 2002 COMMERCIAL LANDINGS BY QUOTA PERIOD AND 2002 OVERAGES

Quota period	2002 Quota [1]		Reported 2002 landings through 10/31/02		Preliminary overages as of 10/31/02	
	lb	kg [2]	lb	kg [2]	lb	kg [2]
Winter I	3,517,300	1,595,420	3,159,999	1,433,366	0	0
Summer	2,556,595	1,159,652	2,959,349	1,342,352	402,754	182,688

TABLE 3.—SCUP PRELIMINARY 2002 COMMERCIAL LANDINGS BY QUOTA PERIOD AND 2002 OVERAGES—Continued

Quota period	2002 Quota [1]		Reported 2002 landings through 10/31/02		Preliminary overages as of 10/31/02	
	lb	kg [2]	lb	kg [2]	lb	kg [2]
Winter II	1,179,502	535,019	n/a [3]	n/a [3]	n/a [3]	n/a [3]
Total	7,253,397	3,290,091	6,119,351	2,775,723	.....	.....

[1] Winter I and Summer Quotas as published on December 26, 2001 (66 FR 66348); Winter II quota as published on July 31, 2002 (67 FR 49621).
[2] Kilograms are as converted from pounds and may not necessarily add due to rounding.
[3] Not applicable.

Table 4 presents the commercial scup percent share, 2003 TAC, projected discards, 2003 initial quota (with and without the research set-aside deduction), and possession limits. To achieve the commercial quotas, this final rule implements a Winter I period (January–April) per trip possession limit of 15,000 lb (6.8 mt), and a Winter II period (November–December) per trip possession limit of 1,500 lb (680 kg). The Winter I per trip possession limit will be reduced to 1,000 lb (454 kg) when 80 percent of the commercial quota allocated to that period is projected to be harvested. See Response to Comment 1 (below) for additional information about the Winter I possession limit.

TABLE 4.—INITIAL COMMERCIAL SCUP QUOTA ALLOCATIONS FOR 2003 BY QUOTA PERIOD

Period	Percent share	Total allowable catch		Discards		Initial quota w/o research set-aside		Initial quota, less research set-aside		Possession limits (per trip) [2]	
		lb	kg [1]	lb	kg [1]	lb	kg [1]	lb	kg [1]	lb	kg [1]
Winter I	45.11	6,562,152	2,976,542	936,935	424,987	5,625,217	2,551,555	5,602,495	2,541,275	15,000	6,804
Summer	38.95	5,666,056	2,570,080	808,991	366,952	4,857,065	2,203,128	4,837,445	2,194,251	n/a [3]	n/a [3]
Winter II	15.94	2,318,792	1,051,786	331,074	150,173	1,987,718	901,614	1,979,689	897,981	1,500	680
Total	100.00	14,547,000	6,598,408	2,077,000	942,111	12,470,000	5,656,297	12,419,629	5,633,507	.....	.....

[1] Kilograms are as converted from pounds and may not necessarily add due to rounding.
[2] The Winter I landing limit will drop to 1,000 lb (454 kg) upon attainment of 80 percent of that period's allocation.
[3] Not applicable.

Table 5 presents the initial 2003 commercial scup quota allocations (with the research set-aside deductions), 2002 commercial quota overages for Winter I and Summer periods, as of October 31, 2002, and the adjusted 2003 commercial scup quotas, by period.

TABLE 5.—FINAL 2003 COMMERCIAL SCUP QUOTA ALLOCATIONS BY PERIOD

Quota period	2003 initial quota, less research set-aside		2002 quota overages through 10/31/02		2003 Adjusted quota	
	lb	kg [1]	lb	kg [1]	lb	kg [1]
Winter I	5,602,495	2,541,275	0	0	5,602,495	2,541,275
Summer	4,837,445	2,194,251	402,754	182,688	4,434,691	2,011,563
Winter II	1,979,689	897,981	[2] n/a	[2] n/a	1,979,689	897,981
Total	12,419,629	5,633,507	402,754	182,688	12,016,875	5,450,819

[1] Kilograms are as converted from pounds and may not necessarily add due to rounding.
[2] Not applicable.

Scup Gear Restricted Areas (GRAs)

In the preamble to the proposed rule, NMFS explained the reasons for its disapproval of the Council's recommendation to allow vessels to fish for non-exempt species with small mesh in the GRAs, provided that they use modified trawl nets and carry observers, consistent with Atlantic Coastal Cooperative Statistics Program (ACCSP) observer standards. That rationale continues to apply and is not repeated here. In the proposed rule, NMFS requested comment on an alternative whereby all vessels fishing for non-exempt species (*Loligo* squid, black sea bass, and silver hake (whiting)) with mesh less than the minimum mesh size required to fish for scup (specified at § 648.123) in the GRAs (described at § 648.122) for any portion of a trip would be required to use modified trawl gear (possessing an escapement extension of 45 meshes of 5.5-inch (13.97-cm) square mesh between the body of the net and the codend), and also would be required to carry a NMFS-certified observer. The alternative would require an initial enrollment be made through a phone call and that NMFS issue a Letter of Authorization to each participating vessel. Obtaining and paying for the observer would be the responsibility of the participating vessel. NMFS clarifies in this final rule that the cost to the fishing vessel of one at-sea observer day is estimated to be approximately $600, subject to finalization of observer program details, which would be paid by the vessel owner intending to fish in the GRAs. The proposed rule indicated an estimate of $1,150 per observer day, but this figure reflected the total program costs

per at-sea observer day, including administrative and other costs associated with the observer program that will be paid for by NMFS.

Black Sea Bass

Amendment 9 to the FMP, which was approved in 1996, established a recovery schedule to reduce overfishing on black sea bass over an 8-year timeframe. In 2003, the target exploitation rate is scheduled to drop from 37 percent to 25 percent, which is the exploitation rate associated with F_{max} (0.32). The FMP allocates 49 percent of the TAL associated with the exploitation rate to the commercial sector and 51 percent of the TAL to the recreational sector. The commercial TAL then is divided on a coastwide basis into four quarterly periods: Quarter 1 (January–March)—38.64 percent; Quarter 2 (April–June)—29.26 percent; Quarter 3 (July–September)—12.33 percent; and Quarter 4 (October–December)—19.77 percent. The recreational TAL is specified as a coastwide harvest limit. Recreational measures will be the subject of a separate rulemaking early in 2003.

This final rule implements the specifications contained in the proposed rule. This implementation results in a TAL of 6.8 million lb (3,084 mt). Three research projects that would utilize the full black sea bass research quota have been recommended for approval by the Council. The black sea bass TAL, having been adjusted to reflect this research set-aside, is divided into a commercial quota of 3.3 million lb (1,496 mt) and a recreational harvest limit of 3.43 million lb (1,557 mt). If any of these projects is not approved by the NOAA Grants Office, the research quota associated with the disapproved proposal(s) will be restored to the black sea bass TAL through publication of a notice in the **Federal Register** by NMFS.

Table 6 presents the final 2002 commercial black sea bass quota for each quarter, the reported 2002 landings for Quarters 1 through 3, and the resultant 2002 quota overages.

TABLE 6.—BLACK SEA BASS PRELIMINARY 2002 COMMERCIAL LANDINGS BY QUARTER AND 2002 OVERAGES

Quarter	2002 Quota [1]		Reported 2002 landings through 10/31/02		2002 overages as of 10/31/02	
	lb	kg [2]	lb	kg [2]	lb	kg [2]
Quarter 1	1,220,052	553,406	1,297,059	588,342	77,007	34,930
Quarter 2	856,208	388,369	1,070,546	485,596	214,338	97,223
Quarter 3	400,101	181,483	405,560	183,961	5,459	2,476
Quarter 4	656,274	297,681	[3] n/a	[3] n/a	[3] n/a	[3] n/a
Total	3,132,635	1,420,939	2,773,165	1,257,899	.....	.....

[1] Quarter 1 through 3 quotas as published on December 26, 2001 (66 FR 66348); Adjusted Quarter 4 quota as published on September 3, 2002 (67 FR 56229).
[2] Kilograms are as converted from pounds and may not necessarily add due to rounding.
[3] Not applicable.

Table 7 presents the initial 2003 commercial black sea bass quota allocations, with and without the research set-aside deduction, and the commercial possession limits being implemented through this final rule.

TABLE 7.—INITIAL COMMERCIAL BLACK SEA BASS QUOTA ALLOCATIONS AND POSSESSION LIMITS FOR 2003 BY QUARTER

Quarter	Percent share	Commercial quota w/o research set-aside		Commercial quota, less research set-aside		Possession limits	
		lb	kg[1]	lb	kg[1]	lb	kg[1]
1	38.64	1,287,485	583,993	1,274,671	578,181	7,000	3,175
2	29.26	974,943	442,227	965,240	437,826	5,000	2,268
3	12.33	410,836	186,352	406,747	184,497	5,000	2,268
4	19.77	658,736	298,798	652,180	295,824	5,000	2,268
Total	100.00	3,332,000	1,511,370	3,298,838	1,496,328	.....	.....

[1] Kilograms are as converted from pounds and may not necessarily add due to rounding.

Table 8 presents the initial 2003 commercial black sea bass quota allocations (with the research set-aside deductions), 2002 commercial quota overages for Quarters 1–3 as of October 31, 2002, and the adjusted 2003 commercial black sea bass quotas, by period.

TABLE 8.—FINAL 2003 COMMERCIAL BLACK SEA BASS QUOTA ALLOCATIONS BY PERIOD

Quarter	2003 Initial quota, less research set-aside		2002 Quota Overages through 10/31/02		2003 Adjusted quota	
	lb	kg[1]	lb	kg[1]	lb	kg[1]
Quarter 1	1,274,671	578,181	77,007	34,930	1,197,664	543,257
Quarter 2	965,240	437,826	214,338	97,223	750,902	340,607
Quarter 3	406,747	184,497	5,459	2,476	401,288	182,023
Quarter 4	652,180	295,824	n/a[2]	n/a[2]	652,180	295,824

TABLE 8.—FINAL 2003 COMMERCIAL BLACK SEA BASS QUOTA ALLOCATIONS BY PERIOD—Continued

Quarter	2003 Initial quota, less research set-aside		2002 Quota Overages through 10/31/02		2003 Adjusted quota	
	lb	kg[1]	lb	kg[1]	lb	kg[1]
Total	3,298,838	1,496,328	.....	.....	3,002,034	1,361,711

[1] Kilograms are as converted from pounds and may not necessarily add due to rounding.
[2] Not applicable.

Changes From Proposed Rule

For the Winter I scup fishery, NMFS is implementing a possession limit of 15,000 lb (6.8 mt) per trip rather than a possession limit of 10,000 lb (4.5 mt) per trip as originally proposed. This final rule includes the final adjusted commercial quotas for 2003, after accounting for overages in 2002 (through October 31, 2002).

Comments and Responses

Comments were received on the proposed measures from an organization representing the commercial fishing industry and a state marine fisheries agency.

Comment 1: Both commenters expressed concern with NMFS' disapproval of the Council's and Board's recommendation for a 15,000-lb (6.8-mt) per week landing limit for the scup Winter I period (January-April). The commenters indicated that several states are in the process of amending their regulations to implement a weekly limit and that, if NMFS implements the 10,000-lb (4.5-mt) per trip possession limit, the quota would be exhausted quickly and there would be confusion in the commercial fishery regarding compliance. The commenters indicated that the majority of the states are willing and able to share the enforcement burden associated with monitoring a weekly landing limit, and encouraged NMFS to implement the measure for the 2003 season and later assess whether additional enforcement efforts are required, should there be infractions. The commenters stressed that the commercial scup industry has requested the weekly limit to assure availability of quota throughout the fishing year and that its members will comply with the measure, as it is in their own interest to do so. The industry group comment states that the adoption of the weekly limit would also reduce regulatory discards associated with the final tow of each fishing trip (made to fill the limit).

Response: In the proposed rule, NMFS articulated its concern regarding the increased resources required to monitor and enforce a weekly limit. However, NMFS recognizes the efforts of industry to extend fishing opportunities, improve market conditions in the scup fishery, and to reduce regulatory discards, as well as the intent of the majority of the affected states to enforce a 15,000-lb (6.8-mt) per week landing limit. Therefore, based on comments received and on discussions with the states, NMFS has determined that implementation of a 15,000-lb (6.8-mt) possession limit per trip would be compatible with the states' 15,000-lb (6.8-mt) weekly landing limits, would be enforceable, and would benefit the industry. Landings will continue to be constrained by the Winter I quota, so overall landings and effects on the resource will not change.

In cases where state regulations regarding trip limits are more restrictive than this 15,000-lb (6.8-mt) trip limit, the state regulations would apply. That is, vessels landing scup in states with more restrictive possession limits may need to make more than one trip to reach the weekly limit, if that state is enforcing a 15,000-lb (6.8-mt) weekly landing limit.

Comment 2: A commercial fishing industry group indicated that a recent study demonstrated that the discard of scup in the *Loligo* fishery was less than 1 percent of the *Loligo* catch. The commenter stated that, as the small mesh Loligo fishery is not responsible for a significant portion of the scup discard problem, the fishery should be exempted from the GRA restrictions. The commenter further suggested that GRAs should be ended as a management tool for all small mesh fisheries. Until such time, the group suggested that NMFS require the use of 5.5-inch (13.97-cm) escapement panels in the GRAs and allow vessels using the gear access to the GRAs.

Response: NMFS supports the use of gear modifications for bycatch reduction as a potential replacement for area-based restrictions; however, at this time, the use of 5.5-inch (13.97-cm) escapement panels has not been demonstrated to reduce the bycatch of scup relative to the catch of non-exempt species, including *Loligo*. Until such time as gear modifications, or other suitable measures, are demonstrated to reduce sufficiently the bycatch of scup in the fisheries for non-exempt species, the GRAs will be considered to be a necessary measure. NMFS recognizes the need to collect information to clarify this issue and is implementing the Scup GRA Exemption Program in order to facilitate the collection of information necessary to evaluate the effectiveness of the 5.5-inch (13.97-cm) escapement panel in reducing the bycatch of scup in the fisheries for non-exempt species.

Comment 3: The same commenter opposed the proposed 100-percent observer coverage requirement in the scup GRAs because too large of a portion of the vessel's gross revenues per trip would be required to pay for the observer. The group also indicated that the $1,150 per day cost is not consistent with observer costs in other fisheries, such as the scallop fishery ($590/day) or the Northeast distant water longline experimental fishery ($800/day), and is not justifiable. The commenter suggested that NMFS provide observers at no cost to the vessels fishing in the GRAs using the Congressional funds allocated to the NMFS observer program, and that 5–10 percent coverage be implemented.

Response: NMFS explained in the proposed rule that implementation of 100-percent observer coverage would impose significantly fewer administrative and enforcement complexities, and provide more data to evaluate the effectiveness of the gear modifications than a lower level of observer coverage would. NMFS has clarified in the preamble of this final rule that the cost to a fishing vessel of one at-sea observer day is estimated to be approximately $600, subject to finalization of observer program details, and which would be paid by the vessel owner intending to fish in the GRAs. This program, which was requested by the industry to provide NMFS more complete data to evaluate the effectiveness of gear modifications in reducing discards, is dependent on observer coverage. The provision that vessels pay for observers was discussed at the August 2002 Council meeting.

Comment 4: The same commenter requested that NMFS increase the scup research set-aside to 3 percent of the

TAL or, at the minimum, to the full amount of the group's initial request.

Response: The overall proportion of the scup TAL to be set aside for research was determined by the Council, and specific amounts to be awarded for individual projects were recommended by the Council's Ecosystems Planning Committee and subsequently approved by the Regional Administrator. Initiation of research activities is ultimately contingent on the issuance of an award by the NOAA Grants Management Division. The Director of the NMFS Northeast Region State, Federal, and Constituent Programs Office has previously indicated in a letter to the commenter that estimated research set-aside values for the project appeared to far exceed research costs, and that approval of the project would be contingent upon reduction of the amount of the set-aside to a level commensurate with overall research costs.

During the comment period, NMFS also received a petition for rulemaking in a letter cosigned by the United Boatmen of New Jersey and New York, New York Fishing Tackle Trade Association, and Cape May Party and Charter Boat Association. The petition is for NMFS to recalculate the 2003 summer flounder, scup, and black sea bass quotas in light of the discovery of problems with trawl survey equipment on the NOAA R/V Albatross IV. Currently, NMFS does not have complete information regarding the effect of the trawl warp calibration issue on the stock assessments of Mid-Atlantic species under Council management. NMFS intends to evaluate all possible impacts of trawl gear warp offsets on the last 2 years of summer flounder, scup, and black sea bass surveys as soon as possible. NMFS intends to address this issue prior to preparing the summer flounder, scup, and black sea bass quota specifications for the 2004 fishing year. In the meantime, NMFS is considering the petition for rulemaking, and may publish a notice of receipt of the petition in the **Federal Register**, if appropriate, as a separate action.

Classification

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

This action establishes annual quotas and related management measures for the summer flounder, scup, and black sea bass fisheries. If implementation of the quota provisions and other management measures is delayed, NMFS will be prevented from carrying out its function of preventing overfishing of these three species. The fisheries covered by this action will begin making landings on January 1, 2003. If a delay in effectiveness is required, and a quota were to be harvested during a delayed effectiveness period, the lack of effective quota specifications would prevent NMFS from closing the fishery. The scup and black sea bass fisheries are expected to be active during the first few months of 2003, especially following a long period of closure for black sea bass during Quarter 4 of 2002. In addition, the States of Maine and Delaware would be open for summer flounder fishing but in a negative quota situation. These factors would likely result in large overages that would have distributional effects on other quota periods and might potentially disadvantage some gear sectors. Therefore, with the exception of the sections pertaining to gear modifications, the Assistant Administrator for Fisheries, NOAA, finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delayed effectiveness period for the quotas and other management measures, and for the closures of the fisheries in the States of Maine and Delaware.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rule making process, a small entity compliance guide (the guide) was prepared. Copies of the guide will be sent to all holders of Federal permits issued for the summer flounder, scup, and black sea bass fisheries. The guide will be available on the Internet at *http://www.nero.noaa.gov*. Copies of the guide can also be obtained from the Regional Administrator (*see* **ADDRESSES**).

The Council and NMFS prepared a Final Regulatory Flexibility Analysis (FRFA) for this action. The FRFA includes a summary of the analysis done in support of these specifications. A copy of the analysis is available from the Regional Administrator (*see* **ADDRESSES**). The preamble to the proposed rule included a detailed summary of the analysis contained in the IRFA, and that discussion is not repeated in its entirety here. A summary of the FRFA follows:

A description of the reasons why action by the agency is being taken and the objectives of this final rule are explained in the preambles to the proposed rule and this final rule and are not repeated here. This final rule does not duplicate, overlap, or conflict with any other Federal rules.

Public Comments

Two comments were received on the measures contained in the proposed rule. Comments did not refer specifically to the IRFA, but were related to economic impacts on small entities, especially as they relate to scup observer coverage and trip limits. NMFS clarifies in this final rule the cost to the fishing vessel of one at-sea observer day, and, in order to implement a measure that would be compatible with the states' 15,000-lb (6.8-mt) weekly landing limits, would be enforceable, and would benefit the industry, is implementing a 15,000-lb (6.8-mt) possession limit per trip.

Number of Small Entities

The Council estimates that the proposed 2003 quotas and management measures could affect 1,830 vessels with a Federal summer flounder, scup, and/or black sea bass permit, as of July 15, 2002. However, the more immediate impact of this rule will likely be felt by the 1,073 vessels that actively participated (*i.e.*, landed these species) in these fisheries in 2001, including vessels holding only state permits.

Minimizing Significant Economic Impact on Small Entities

In the FRFA, NMFS analyzed the measures being implemented in this action. Economic impacts are being minimized to the extent practicable with the measures being implemented in this final rule, while being consistent with the target fishing mortality rates or target exploitation rates specified in the FMP.

The economic analysis assessed the impacts of the various management alternatives. In the EA, the no action alternative is defined as follows: (1) No proposed specifications for the 2003 summer flounder, scup, and black sea bass fisheries would be published; (2) the indefinite management measures (minimum sizes, bag limits, possession limits, permit and reporting requirements, etc.) would remain unchanged; (3) there would be no quota set-aside allocated to research in 2003; and (4) there would be no specific cap on the allowable annual landings in these fisheries (*i.e.*, there would be no quotas). Because implementation of the no action alternative would be

inconsistent with the goals and objectives of the FMP, its implementing regulations, and the Magnuson-Stevens Fishery Conservation and Management Act; would substantially complicate the approved management program for these fisheries; and would very likely result in overfishing of the resources, the no action alternative is not considered to be a reasonable alternative to the preferred action and it is not analyzed in the EA/RIR/FRFA.

Alternative 1 consists of the harvest limits proposed by the Council and Board for summer flounder, scup, and black sea bass. Alternative 2 consists of the most restrictive quotas (*i.e.*, lowest landings) considered by the Council and the Board for all of the species. Alternative 3 consists of the least restrictive quotas (*i.e.*, highest landings) considered by the Council and Board for all three species. Although Alternative 3 would result in higher landings for 2003, it would also likely exceed the biological targets specified in the FMP.

Table 9 evaluates three alternative combinations of summer flounder, scup, and black sea bass landings (commercial and recreational).

TABLE 9.—COMPARISON OF THE ALTERNATIVES OF COASTWIDE COMMERCIAL QUOTA AND RECREATIONAL HARVEST LIMITS REVIEWED, UNADJUSTED FOR RESEARCH SET-ASIDE OR 2002 OVERAGES. (''FLK'' IS SUMMER FLOUNDER)

	Commercial quota		Recreational harvest limit	
	million lb	metric tons	million lb	metric tons
Quota Alternative 1 (Preferred Alternative):				
FLK Preferred Alternative	13.98	6,341	9.32	4,227
Scup Preferred Alternative	12.47	5,656	4.03	1,828
Black Sea Bass Perferred Alternative	3.33	1,510	3.47	1,574
Quota Alternative 2 (Most Restrictive):				
FLK Non-Selected Alternative 2	12.9	5,851	8.6	3,907
Scup Non-Selected Alternative 2	8.0	3,629	2.77	1,256
Black Sea Bass Non-Selected Alternative 2	2.25	1,021	2.35	1,066
Quota Alternative 3 (Least Restrictive):				
FLK Non-Selected Alternative 3	14.58	6,613	9.72	4,409
Scup Non-Selected Alternative 3	16.76	7,602	5.24	2,377
Black Sea Bass Non-Selected Alternative 3	3.53	1,601	3.67	1,665

In summary, the 2003 commercial quotas and recreational harvest limits contained in the Preferred Alternative would result in small decreases in summer flounder and black sea bass landings and substantially higher scup landings, relative to 2002. The proposed specifications contained in the Preferred Alternative were chosen because they provide for the maximum level of landings that still achieve the fishing mortality and exploitation targets specified in the FMP. While the commercial quotas and recreational harvest limits specified in Alternative 3 would provide for even larger increases in landings and revenues, they would not achieve the fishing mortality and exploitation targets specified in the FMP.

The possession limits for scup and black sea bass were chosen because they are enforceable and are intended to provide for economically viable fishing trips that will be equitably distributed over the entire quota period.

The economic effects of the existing GRAs will not change as a result of this final rule. The alternative to allow small-mesh vessels to fish voluntarily for non-exempt species in the GRAs if they deploy modified trawl gear and carry a NMFS-certified observer is being implemented to give vessels an opportunity to fish with small-mesh trawl gear in the GRAs while providing much-needed data on the selectivity of the modified trawl gear. Although the Scup GRA Exemption Program does impose additional voluntary compliance and operating costs, this alternative is expected to minimize both the reporting burden on small entities and the administrative support required of NMFS to oversee the program. The Scup GRA Exemption Program will keep intact the scup conservation benefits associated with the GRAs, but provide important selectivity information that can be evaluated in future management decisions regarding the GRAs.

Finally, the revenue decreases associated with the research set-asides are expected to be minimal, and are expected to yield important long-term benefits associated with improved data. It should also be noted that fish harvested under the research set-asides would be sold. As such, total gross revenue to the industry would not decrease if the research set-asides are utilized. In fact, because participants may have the ability to harvest and sell research set-aside catches when the season is otherwise closed to the rest of the fishery, they may obtain higher prices, which would increase the gross revenue to the industry.

This final rule contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. Public reporting burden for this collection of information is estimated to average approximately 2 minutes per vessel (twice a year), including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. When OMB approves the new collection-of-information requirement, NMFS will issue a notification in the **Federal Register**.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to 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.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 27, 2002.

Rebecca Lent,

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

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

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

2. In § 648.14, paragraph (a)(122) is revised, and paragraph (a)(127) is added, to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(122) Fish for, catch, possess, retain or land *Loligo* squid, silver hake, or black sea bass in or from the areas and during the time periods described in § 648.122(a) or (b) while in possession of any trawl nets or netting that do not meet the minimum mesh restrictions or that are obstructed or constricted as specified in § 648.122 and § 648.123(a), unless the nets or netting are stowed in accordance with § 648.23(b), or unless the vessel is in compliance with the Gear Restricted Area Exemption Program requirements specified at § 648.122(d).

* * *

(127) Fail to comply with the terms of the Gear Restricted Area Exemption Program requirements specified at § 648.122(d), if subject to the provisions of the Southern and Northern Gear Restricted Areas at § 648.122, (a) and (b).

3. In § 648.122, paragraphs (a)(1), (b)(1) are revised and paragraph (d) is added to read as follows:

§ 648.122 Season and area restrictions.

(a) * * *

(1) *Restrictions.* From January 1 through March 15, all trawl vessels in the Southern Gear Restricted Area that fish for or possess non-exempt species as specified in paragraph (a)(2) of this section, except for vessels participating in the Gear Restricted Area Exemption Program that are fishing with modified trawl gear and carrying a NMFS-certified observer as specified in paragraph (d) of this section, must fish with nets that have a minimum mesh size of 4.5 inches (11.43 cm) diamond mesh, applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net. For codends with fewer than 75 meshes, the minimum-mesh-size codend must be a minimum of one-third of the net, measured from the terminus of the codend to the headrope, excluding any turtle excluder device extension, unless otherwise specified in this section. The Southern Gear Restricted Area is an area bounded by straight lines connecting the following points in the order stated (copies of a chart depicting the area are available from the Regional Administrator upon request):

SOUTHERN GEAR RESTRICTED AREA

Point	N. lat.	W. long.
SGA1	39[deg]20’	72[deg]50’
SGA2	39[deg]20’	72[deg]25’
SGA3	38[deg]00’	73[deg]55’
SGA4	37[deg]00’	74[deg]40’
SGA5	36[deg]30’	74[deg]40’
SGA6	36[deg]30’	75[deg]00’
SGA7	37[deg]00’	75[deg]00’
SGA8	38[deg]00’	74[deg]20’
SGA1	39[deg]20’	72[deg]50’

* * * * *

(b) * * *

(1) *Restrictions.* From November 1 through December 31, all trawl vessels in the Northern Gear Restricted Area I that fish for or possess non-exempt species as specified in paragraph (b)(2) of this section, except for vessels participating in the Gear Restricted Area Exemption Program that are fishing with modified trawl gear and carrying a NMFS-certified observer as specified in paragraph (d) of this section, must fish with nets that have a minimum mesh size of 4.5 inches (11.43 cm) diamond mesh, applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net. For codends with fewer than 75 meshes, the minimum-mesh-size codend must be a minimum of one-third of the net, measured from the terminus of the codend to the headrope, excluding any turtle excluder device extension, unless otherwise specified in this section. The Northern Gear Restricted Area I is an area bounded by straight lines connecting the following points in the order stated (copies of a chart depicting the area are available from the Regional Administrator upon request):

NORTHERN GEAR RESTRICTED AREA I

Point	N. lat.	W. long
NGA1	41[deg]00’	71[deg]00’
NGA2	41[deg]00’	71[deg]30’
NGA3	40[deg]00’	72[deg]40’
NGA4	40[deg]00’	72[deg]05’
NGA1	41[deg]00’	71[deg]00’

* * * * *

(d) *Gear Restricted Area Exemption Program.* Vessels that are subject to the provisions of the Southern and Northern Gear Restricted Areas, as specified in paragraphs (a) and (b) of this section, respectively, may fish for, or possess, non-exempt species using trawl nets having a minimum mesh size less than that specified in paragraphs (a) and (b) of this section, provided that the following requirements are met:

(1) The vessel carries on board all required Federal fishery permits and a Scup GRA Exemption Program Authorization issued by the Regional Administrator, Northeast Region;

(2) The vessel carries a NMFS-certified observer on board if any portion of the trip will be, or is, in a GRA; and, (3) The vessel fishes in a GRA only with a specially modified trawl net that has an escapement extension consisting of a minimum of 45 meshes of 5.5-inch (13.97-cm) square mesh that is positioned behind the body of the net and in front of the codend.

* * * * *

[FR Doc. 02–33135 Filed 12–31–02; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 68, No. 1
Thursday, January 2, 2003

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 AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 300

[Docket No. 02–026–3]

Hot Water Dip Treatment for Mangoes

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We propose to amend the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference into the Code of Federal Regulations, by amending the hot water dip treatment schedule for rounded varieties of mangoes imported into the United States from Mexico or Central America to provide for the treatment of mangoes weighing between 701 and 900 grams. Currently, that hot water dip treatment schedule provides only for the treatment of mangoes weighing up to 700 grams. This action would allow larger, rounded varieties of mangoes from Mexico or Central America to be imported into the United States. We also propose to make other changes to the treatment, including the extension of the treatment time if the mangoes are to be hydrocooled within 30 minutes of the treatment.

DATES: We will consider all comments that we receive on or before February 18, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–026–3, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–026–3. If you use e-mail, address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 02–026–3'' on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: Dr. Inder P. Gadh, Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–6799.

SUPPLEMENTARY INFORMATION:

Background

To prevent the introduction of plant pests into the United States, the Animal and Plant Health Inspection Service (APHIS) restricts the importation of many articles, including fruits. As a condition of importation, some fruits are required to be treated for plant pests, in accordance with our regulations in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56 through 319.56–8, referred to below as the regulations). The Plant Protection and Quarantine (PPQ) Treatment Manual contains approved treatment schedules and is incorporated by reference into the regulations in 7 CFR 300.1.

The regulations in § 319.56–2i provide, in part, that mangoes may be imported into the United States from Central America, South America, and the West Indies if they are treated in accordance with the PPQ Treatment Manual. Similarly, mangoes from Mexico are listed in § 319.56–2x as being eligible for importation if treated in accordance with the PPQ Treatment Manual; if they are grown in a fruit-fly-free area listed in § 319.56–2(h), they do not need to be treated. Treatment is required to address the risks presented by the Mediterranean fruit fly (Medfly, *Ceratitis capitata*) and fruit flies of the genus *Anastrepha,* including the Mexican fruit fly (*A. ludens*).

The PPQ Treatment Manual currently provides a hot water dip treatment (treatment schedule T102–a) for mangoes from Mexico or Central America weighing up to 700 grams. Treatment schedule T102–a currently specifies that:

1. The mangoes must be treated in the country of origin at a certified facility under the monitoring of APHIS personnel.

2. Pulp temperature must be 70 [deg]F or above before starting the treatment.

3. Fruit must be submerged at least 4 inches below the water's surface.

4. Water must circulate constantly and be kept at 115 [deg]F throughout the treatment with the following tolerances:

[sbull] During the first 5 minutes of a treatment, temperatures below 113.7 [deg]F are allowed if the temperature is at least 115[deg]F at the end of the 5-minute period.

[sbull] For treatments lasting 65–75 minutes, temperatures may fall as low as 113.7 [deg]F for no more than 10 minutes under emergency conditions.

[sbull] For treatments lasting 90 minutes, temperatures may fall as low as 113.7 [deg]F for no more than 15 minutes under emergency conditions.

5. The duration of the hot water dip treatment is determined based on the origin, shape, and weight of the mangoes. For mangoes from Mexico or Central America, treatment schedule T102-a provides the following dip times:

Shape of mango	Weight (in grams)	Dip time (in minutes)
Flat, elongated varieties (such as Frances, Carrot, Zill, Ataulfo, Carabao, Irwin, and Manila)	Up to 375	65
	375–570	75
Rounded varieties (such as Tommy Atkins, Kent, Hayden, and Keitt)	Up to 500	75
	500–700	90

As indicated in the table, the upper weight limit for rounded varieties of mangoes offered for treatment is 700 grams. In order to provide exporters in Mexico and Central America with the ability to ship rounded varieties of mangoes weighing more than 700 grams to the United States, we are proposing to amend treatment schedule T102–a to provide for its use on mangoes weighing between 701 and 900 grams. Specifically, for rounded varieties of mangoes from Mexico and Central America, we would provide a dip time of 110 minutes for fruit weighing between 701 and 900 grams. We would also amend the tolerance for the 90-minute treatment, as described in item 4 above, to include the proposed 110-minute treatment so that for treatments lasting 90 to 110 minutes, temperatures may fall as low as 113.7 [deg]F for no more than 15 minutes under emergency conditions.

Research conducted by the Department's Agricultural Research Service (ARS) has shown that the hot water dip treatment administered at 115 [deg]F for 110 minutes to mangoes weighing 701–900 grams will kill the larvae of Medfly, *Anastrepha obliqua,* and *A. ludens.*

We are also proposing other changes to the treatment schedule based on an ARS report completed in February 2001 that states that hydrocooling immediately after hot water dip treatment compromises treatment efficacy. The report indicates that treatment efficacy can be maintained by requiring cooling of fruits in air for 30 minutes after the completion of the treatment, after which the fruit could be hydrocooled. Therefore, we propose to amend the treatment schedule by adding a note that the dip times of 65, 75, 90, and 110 minutes are valid if the fruit is not hydrocooled or is hydrocooled no sooner than 30 minutes after the completion of the hot water dip treatment. When hydrocooling is to be used within 30 minutes of treatment, an additional 10 minutes would have to be added to the treatment time. We would amend the treatment schedule to state that hydrocooling is optional and may be done for any length of time and that the temperature of the water used in hydrocooling cannot be less than 70 [deg]F in order to minimize the risk of fruit fly survival. A copy of the ARS research data and report on which these proposed changes are based may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT.**

We would also amend the treatment schedule by adding provisions that mangoes must be pre-sorted by weight class and that treatment of mixed loads is not allowed. These proposed changes would clarify how the treatment is conducted. Finally, where the treatment schedule now states that water must circulate constantly and be kept at 115 [deg]F throughout the treatment, we would state that the water temperature must be kept at 115 [deg]F or above throughout the treatment. Adding ''or above'' would clarify that increases in temperature could occur in the normal course of the treatment without reducing its effectiveness.

In addition to amending treatment schedule T102-a in the PPQ Treatment Manual, we would also amend 7 CFR part 300 to update the PPQ Treatment Manual's incorporation by reference in 7 CFR 300.1 to reflect the date of the amended treatment's inclusion in the manual.

Executive Order 12866 and Regulatory Flexibility Act

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

We are proposing to amend the PPQ Treatment Manual, which is incorporated by reference at 7 CFR 300.1, to allow mangoes from Mexico or Central America weighing from 701–900 grams to be treated for Medfly and fruit flies of the genus *Anastrepha* with a hot water dip. Currently, the PPQ Treatment manual contains a hot water dip treatment for mangoes from Mexico or Central America that weigh up to 700 grams.

According to data from the Food and Agriculture Organization of the United Nations, the U.S. production of mangoes is supplemented with mango imports in order to satisfy the domestic demand, and that demand appears to be increasing:

PRODUCTION, IMPORT, AND EXPORT DATA FOR MANGOES FROM THE UNITED STATES, MEXICO, AND CENTRAL AMERICA

[In metric tons]

Country and activity	1997	1998	1999	2000
U.S. production	2,720	2,720	2,720	3,000
U.S. exports	0	0	0	0
U.S. imports	186,520	197,393	219,144	235,080
Mexico production	1,500,317	1,473,852	1,508,468	1,559,351
Mexico exports	187,127	209,426	204,002	206,782
Mexico imports	60	28	167	1,007
Central America production	1,712,251	1,686,828	1,728,457	1,787,151
Central America exports	204,177	225,406	220,595	228,653
Central America imports	727	801	1,034	2,424

As shown in the table, U.S. mango imports are far greater than domestic production. U.S. production of mangoes has primarily been in southern Florida, with a smaller quantity grown in Hawaii and a negligible amount produced in California. According to the 1997 Census of Agriculture, there were 218 mango farms in Florida, 171 in Hawaii, and 2 in California. Florida accounted for about 97 percent of domestic production in that census year, while

Hawaii accounted for about 3 percent of production. There are no U.S. mango exports.

The Regulatory Flexibility Act requires that agencies consider the economic effects of their rules on small entities. Whether affected entities may be considered small in this case depends on their annual gross receipts. Annual receipts of $750,000 or less is the small entity criterion set by the Small Business Administration for establishments primarily engaged in ''other noncitrus fruit farming'' (NAICS code 111339). As noted previously, Florida accounted for about 97 percent of mango production in 1997, thus mango producers in that State are the entities most likely to be affected by this proposed rule. Most, if not all, mango producers in Florida are small entities. According to information provided by the University of Florida's Institute of Food and Agricultural Sciences (IFAS), about 10 to 15 growers manage the bulk of the producing mango acreage in Florida. According to IFAS, about 25 percent of Florida growers produce mangoes alone, while the remaining 75 percent are diversified operations growing other tropical fruits in addition to mangoes. Florida growers occupy niche markets in the State by providing green fruit for processing into chutney and other products and by providing fresh, untreated, tree-ripened fruit for consumption. The availability of larger mangoes from Mexico and Central America in the larger U.S. market is expected to have little to no impact on Florida producers who occupy those niche markets, as producers in Mexico and Central America are not expected to be shipping green fruit for processing and would be unable to provide untreated, tree-ripened fruit to U.S. markets.

The availability of a treatment for larger mangoes of the rounded varieties is not expected to significantly affect U.S. mango producers, as the amount of those larger mangoes likely to be imported from Mexico and Central America would represent a fraction of current import levels. Moreover, much of Florida's harvest (the source of about 97 percent of domestic production in 1997) is consumed within that State or is processed into chutney and other products; these markets are unlikely to be affected by the availability of larger mangoes from Mexico and Central America. Therefore, we do not expect that the economic effects of this proposed rule on U.S. entities, large or small, would be significant.

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

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

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

List of Subjects in 7 CFR Part 300

Incorporation by reference, Plant diseases and pests, Quarantine.

Accordingly, 7 CFR part 300 is amended as follows:

PART 300—INCORPORATION BY REFERENCE

1. The authority citation for part 300 continues to read as follows:

Authority: 7 U.S.C. 7701–7772; 7 CFR 2.22, 2.80, and 371.3.

2. In § 300.1, paragraph (a) would be amended as follows:

a. In paragraph (a)(4), by removing the word ''and''.

b. In paragraph (a)(5), by removing the period and adding the word ''; and'' in its place.

c. By adding a new paragraph (a)(6) to read as follows:

§ 300.1 Plant Protection and Quarantine Treatment Manual.

(a) * * *

(6) Treatment T102-a, dated ————.

* * * * *

Done in Washington, DC, this 23rd day of December 2002.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–33049 Filed 12–31–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–ANE–40–AD]

Airworthiness Directives; Hartzell Propeller Inc. ( )HC–( )(2,3)(X,V)( )–( ) Series and HA–A2V20–1B Series Propellers with Aluminum Blades

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to revise an existing airworthiness directive (AD), applicable to Hartzell Propeller Inc. ( )HC–( )(2,3)(X,V)( )–( ) series and HA–A2V20–1B series propellers with aluminum blades. That AD currently requires initial and repetitive dye penetrant and eddy current inspections of the blade and an optical comparator inspection of the blade retention area, and, if necessary, replacement with serviceable parts. In addition, that AD currently requires initial and repetitive visual and magnetic particle inspection of the blade clamp, dye penetrant inspection of the blade internal bearing bore, and, if necessary, replacement with serviceable parts. Also, for all HC–(1,4,5,8)(2,3)(X,V)( )–( ) steel hub propellers, that AD currently requires an additional initial and repetitive visual and magnetic particle inspection of the hub, and, if necessary, replacement with serviceable parts. This proposal would revise that AD by introducing as an optional terminating action for the initial and repetitive inspections of that AD, replacement of affected propellers with Hartzell Propeller Inc. model ''MV'' series propellers. This proposal is prompted by type certification approval of the Hartzell ''MV'' series propellers that are direct replacements for the affected propellers, and service bulletin approval to allow modification of affected propellers to the ''MV'' type design configuration. The Hartzell ''MV'' series propellers were certified as Hartzell propeller models ( )HC–( )(2,3)MV( )–( ) and HA–A2MV20–1B. The actions specified by the proposed AD are intended to prevent blade separation due to cracked blades, hubs, or blade clamps, which can result in loss of control of the airplane.

DATES: Comments must be received by March 3, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation

Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 96–ANE–40–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: *9-ane-adcomment@faa.gov.* Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in the proposed rule may be obtained from Hartzell Propeller Inc., One Propeller Place, Piqua, OH 45356–2634, ATTN: Product Support; telephone (937) 778–4200, fax (937) 778–4321. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Tomaso DiPaolo, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Ave., Des Plaines, IL 60018; telephone (847) 294–7031, fax (847) 294–7834.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–ANE–40–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 96–ANE–40–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On August 15, 1997, the Federal Aviation Administration (FAA) issued airworthiness directive (AD) 97–18–02, Amendment 39–10112 (62 FR 45309, August 27, 1997), applicable to Hartzell Propeller Inc. ( )HC–( )(2,3)(X,V)( )–( ) series propellers and HA–A2V20–1B series propellers, to require initial and repetitive dye penetrant and eddy current inspections of the blade and an optical comparator inspection of the blade retention area, and, if necessary, replacement with serviceable parts. In addition, that AD was issued to require initial and repetitive visual and magnetic particle inspections of the blade clamp, dye penetrant inspections of the blade internal bearing bore, and, if necessary, replacement with serviceable parts. Also, that AD was issued to require for all HC–(1,4,5,8)(2,3)(X,V)( )–( ) steel hub propellers, an additional initial, and repetitive visual and magnetic particle inspections of the hub and, if necessary, replacement with serviceable parts. That action was prompted by reports of cracked blades, blade clamps, and hubs and reports of blade separations. That condition, if not corrected, could result in loss of control of the airplane.

Hartzell Certification Efforts To Create Optional Terminating Action To Address AD 97–18–02

Since issuance of that AD, Hartzell Propeller Inc. has received type certification approval of the Hartzell ''MV'' series of propellers that are direct replacements for the affected propellers. The Hartzell ''MV'' series propellers were certified as Hartzell propeller models ( )HC–( )(2,3)MV( )–( ) and HA–A2MV20–1B. Also, Hartzell Propeller Inc. service bulletins (SB's) HC–SB–61–232, dated March 20, 1998, and HC–SB–61–233, dated April 17, 1998, have been approved to allow modification of affected propellers to the ''MV'' type design configuration. This proposal would introduce as an optional terminating action, for the initial and repetitive inspections of this proposal, replacement of affected propellers with Hartzell Propeller Inc. model ''MV'' series propellers.

Manufacturer's Service Information

The FAA has reviewed and approved the technical contents of Hartzell Propeller Inc. SB No. HC–SB–61–217, Revision 1, dated July 11, 1997, that describes procedures for fluorescent dye penetrant and eddy current inspections of the blade and an optical comparator inspection of the blade retention area, and, if necessary, replacement with serviceable parts. In addition, this SB describes procedures for visual and magnetic particle inspection of the blade clamp, dye penetrant inspection of the blade internal bearing bore and, if necessary, replacement with serviceable parts. For all HC–(1,4,5,8)(2,3)(X,V)( )( ) steel hub propellers, this SB describes an additional visual and magnetic particle inspection of the hub, and, if necessary, replacement with serviceable parts.

FAA's Determination of an Unsafe Condition and Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other Hartzell Propeller Inc. ( )HC–( )(2,3)(X,V)( )–( ) series and HA–A2V20–1B series propellers of this same type design, the proposed AD would revise AD 97–18–02 to continue to require:

[sbull] Initial and repetitive dye penetrant and eddy current inspections of the blade and an optical comparator inspection of the blade retention area, and, if necessary, replacement with serviceable parts.

[sbull] Initial and repetitive visual and magnetic particle inspection of the blade clamp, and, if necessary, replacement with serviceable parts.

[sbull] Initial and repetitive dye penetrant inspection of the blade internal bearing bore, and, if necessary, replacement with serviceable parts.

[sbull] For all HC–(1,4,5,8)(2,3)(X,V)( )–( ) steel hub propellers, an additional initial and repetitive visual and magnetic particle inspection of the hub, and, if necessary, replacement with serviceable parts.

[sbull] A reporting requirement to obtain additional data and determine if adjustment can be made to the repetitive inspection intervals, with possible relief.

This proposal also adds as an optional terminating action for the initial and repetitive inspections of this proposal, replacement of affected propellers with Hartzell Propeller Inc. model MV propellers.

Economic Analysis

Since the proposed revision to AD 97–18–02 is to add an optional terminating action, the total cost of the proposed revised AD on U.S. operators can be estimated to be $0.

Regulatory Analysis

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–10112 (62 FR 45309, August 27, 1997), and by adding a new airworthiness directive, to read as follows:

Hartzell Propeller Inc.: Docket No. 96–ANE–40–AD. Revises AD 97–18–02, Amendment 39–10112.

Applicability: This airworthiness directive (AD) is applicable to Hartzell Propeller Inc. ( )HC–( )(2,3)(X,V)( )–( ) series and HA–A2V20–1B series propellers with aluminum blades. These propellers are installed on but not limited to the aircraft listed in the following Table 1:

TABLE 1.—AFFECTED AIRCRAFT

Manufacturer	Aircraft model
Aero Commander (Twin Commander)	500
	500A
	500B, 500S, and 500U
	520
	560
	560A, 560E
	680, 680E, 720
	680F, 680FP, 680FL, 680FLR
	B1 (Callair)
Aeromere	Falco F.8.L
Aeronautica Macchi	AL60–F5
	AM–3
Bauger	Sail Plane
Beech	35 Series Bonanza
	35–C33 Debonair
	35–C33A, E33A, F33A
	50 Series Twin Bonanza
	58P, 58TC Baron
	95–55, 95–A55, 95–B55 Baron
	65, A65, 65–(B)80, 65–A80, A65–8200, 70
Bellanca	14–13
	14–19
	14–19–2
	14–19–3
	7GCA, 7GCB, 7GCC
	DW–1 Eagle
Camair	480
Cessna	170
	170A
	172 Skyhawk
	175
	180, A, B, C, D, E, F, G, H
	182, A, B, C, D, E, G, H, J, K, L, M
	210, A, B, C, 5, 5A
	310, A, B, C, D, E, F ,G, H, E310H
	320, 320–1 Skyknight
	320A, 320B
	402 Businessliner
	411
	Wren 460
	Wren 460H, J, K, L, M
deHavilland	DH104 Dove
	DH114 Heron

TABLE 1.—AFFECTED AIRCRAFT—Continued

Manufacturer	Aircraft model
Dornier	DO27Q–6
	DO28A–1
	DO28B–1
Fuji	T–3, LM–2
GAF—Gov't. Aircraft Factories	N22B, N24A, N22S, N22C
Goodyear	(Loral)
	GA22A Goodyear Blimp
	GZ19, 19A Goodyear Blimp
Great Lakes	2T–1A–2
Grumman	G44, G44A Widgeon
	G21C, D Goose
Helio	H–391 Courier
	H–391B Courier
	H–395A Courier
Luscombe	11
	11A
Mooney	M20
Multitech (Temco)	D16 Twin Navion
	D16A Twin Navion
Nardi	FN–333
Navion	Navion B
	Navion, Navion A
Pacific Aerospace (Fletcher)	FU–24, FU–24A
Piaggio	P–149D
	P136–L1 Royal Gull
	P136–L2 Royal Gull
	P149D
	P166 Royal Gull
Pilatus	PC–3
	PC–6
	PC–6–H1, –H2 Porter
Piper	PA–E23–250 Aztec
	PA14 Family Cruiser
	PA18(A)(S)–150 Super Cub
	PA18A–150 Super Cub
	PA22–150, PA22S–150 Tripacer
	PA23 Series Apache
	PA23–160 Apache
	PA23–235 Aztec
	PA23–250 Aztec
	PA24–250 Comanche
	PA24–400 Comanche
	PA24S Comanche
	PA28 Cherokee
	PA28–140 Cherokee
Prop Jets Inc.	200
	200A,B,C
Republic (STOL Amphibian)	RC3 Seabee
Scottish Aviation (BAE)	B.206 Series 2 Beagle
Stinson	L–5
	108, –1, –2, –3
	108–2–3
Sud Aviation (SOCATA)	GY.80–150 Gardan
	GY.80–160 Gardan Horizon
Swift	GC–1B
Taylorcraft	20
Texas Bullet	205
Windecker	Eagle

Note 1: The above is not a complete list of aircraft which may contain the affected Hartzell Propeller Inc. ( )HC–( )(2,3)(X,V)( )–( ) series and HA–A2V20–1B series propellers with aluminum blades because of installation approvals made by, for example, Supplemental Type Certificate or field approval under FAA Form 337 ''Major Repair and Alteration.'' It is the responsibility of the owner, operator, and person returning the aircraft to service to determine if an aircraft has an affected propeller.

Note 2: The parentheses that appear in the propeller models indicate the presence or absence of additional letter(s) which vary the basic propeller hub model designation. This airworthiness directive is applicable regardless of whether these letters are present or absent on the propeller hub model designation.

Note 3: This AD applies to each propeller identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For propellers that have been modified, altered, or repaired so that the performance of the

requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (h) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

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

To prevent blade separation due to cracked blades, hubs, or blade clamps, which can result in loss of control of the airplane, accomplish the following:

(a) On Hartzell propeller models with hub models ( )HC-(1,4,5,8)(2,3)(X,V)( )-( ) perform initial and repetitive inspections and, if necessary, replace with serviceable parts in accordance with Hartzell Propeller Inc. Service Bulletin (SB) No. HC-SB–61–217, Revision 1, dated July 11, 1997, as follows:

(1) Initially perform a fluorescent dye penetrant and eddy current inspection of the blade, an optical comparator inspection of the blade retention area, a dye penetrant inspection of the blade internal bearing bore, and a visual and magnetic particle inspection of the blade clamp and of the hub. The initial inspection is required within the following:

(i) 1,000 hours time since new (TSN) for propellers with less than 900 hours TSN on September 11, 1997, provided that the initial inspections are performed within 60 calendar months TSN or 24 calendar months after September 11, 1997, whichever calendar time occurs later, or

(ii) 100 hours time in service (TIS) for propellers with 900 or more hours TSN, or unknown TSN, on September 11, 1997, provided that the initial inspections are performed within 24 calendar months after September 11, 1997.

(2) Thereafter, perform repetitive fluorescent dye penetrant and eddy current inspection of the blade, an optical comparator inspection of the blade retention area, and a visual and magnetic particle inspection of the blade clamp. The repetitive inspection is required at intervals not to exceed 500 hours TIS or 60 calendar months, whichever occurs first, since last inspection.

(3) Thereafter, perform a repetitive visual and magnetic particle inspection of the hub. This repetitive hub inspection is required at intervals not to exceed 250 hours TIS or 60 calendar months, whichever occurs first, since last inspection.

(4) Thereafter, perform repetitive dye penetrant inspections of the blade internal bearing bore. This repetitive blade internal bearing bore inspection is required at intervals not to exceed 60 calendar months since last inspection.

(b) On Hartzell propeller models with hub models ( )HC-(A,D)(2,3)(X,V)( )-( ), and HA-A2V20–1B, except HC-A3VF–7( ), perform initial and repetitive inspections and, if necessary, replace with serviceable parts in accordance with Hartzell SB No. HC-SB–61–217, Revision 1, dated July 11, 1997, as follows:

(1) Initially perform a fluorescent dye penetrant and eddy current inspection of the blade, an optical comparator inspection of the blade retention area, a visual and magnetic particle inspection of the blade clamp, and a dye penetrant inspection of the blade internal bearing bore. The initial inspection is required within the following:

(i) 1,000 hours TSN for propellers with less than 800 hours TSN on September 11, 1997, provided that the initial inspections are performed within 60 calendar months TSN or 24 calendar months after September 11, 1997, whichever calendar time occurs later; or

(ii) 200 hours TIS for propellers with 800 or more hours TSN, or unknown TSN, on September 11, 1997, provided that the initial inspections are performed within 24 calendar months after September 11, 1997.

(2) Thereafter, perform repetitive fluorescent dye penetrant and eddy current inspection of the blade, an optical comparator inspection of the blade retention area, and a visual and magnetic particle inspection of the blade clamp. The repetitive inspection is required at intervals not to exceed 500 hours TIS or 60 calendar months, whichever occurs first, since last inspection.

(3) Thereafter, perform repetitive dye penetrant inspections of the blade internal bearing bore. This repetitive blade internal bearing bore inspection is required at intervals not to exceed 60 calendar months since last inspection.

(c) On Hartzell propeller models with hub models HC–A3VF–7( ) perform initial and repetitive inspections and, if necessary, replace with serviceable parts in accordance with Hartzell SB No. HC–SB–61–217, Revision 1, dated July 11, 1997, as follows:

(1) Initially perform a fluorescent dye penetrant and eddy current inspection of the blade, an optical comparator inspection of the blade retention area, a visual and magnetic particle inspection of the blade clamp, and a dye penetrant inspection of the blade internal bearing bore. The initial inspection is required within the following:

(i) 3,000 hours TSN for propellers that have never been overhauled and have less than 2,500 hours TSN on September 11, 1997, provided that the initial inspections are performed within 60 calendar months TSN or 24 calendar months after September 11, 1997, whichever calendar time occurs later, or

(ii) 3,000 hours TIS since last overhaul for propellers that have been overhauled but have less than 2,500 hours TIS since last overhaul on the September 11, 1997, provided that the initial inspections are performed within 60 calendar months TIS since last overhaul or 24 calendar months after September 11, 1997, whichever calendar time occurs later, or

(iii) 500 hours TIS, for propellers that have never been overhauled and have 2,500 or more hours TSN on September 11, 1997, or propellers which have been overhauled and have 2,500 or more hours TIS since last overhaul on September 11, 1997, or propellers with unknown TSN, provided that the initial inspections were performed within 24 calendar months after September 11, 1997.

(2) Thereafter, perform repetitive fluorescent dye penetrant and eddy current inspection of the blade, an optical comparator inspection of the blade retention area, and a visual and magnetic particle inspection of the blade clamp. The repetitive inspection is required at intervals not to exceed 3,000 hours TIS or 60 calendar months, whichever occurs first, since last inspection.

(3) Thereafter, perform repetitive dye penetrant inspections of the blade internal bearing bore. This repetitive blade internal bearing bore inspection is required at intervals not to exceed 60 calendar months since last inspection.

(d) The initial inspection of the internal blade bearing bore required by paragraphs (a)(1), (b)(1), or (c)(1) of this AD need not be done again if previously done in accordance with page 4 of Hartzell SB No. HC–SB–61–217, Revision 1, dated July 11, 1997.

(e) If not previously done, shot peen the propeller blade shank area during the initial inspection required by paragraphs (a)(1), (b)(1), or (c)(1) of this AD, as appropriate, and perform the shot peening in accordance with Hartzell SB No. HC–SB–61–217, Revision 1, dated July 11, 1997. Re-shot peening of the propeller blade shank area during the initial or repetitive inspections required by paragraphs (a)(1), (b)(1), or (c)(1) or (a)(2), (b)(2), or (c)(2) of this AD, as appropriate, is required only if the propeller blade shank area has been repaired or has excessive wear or damage in accordance with Hartzell SB No. HC–SB–61–217, Revision 1, dated July 11, 1997.

Reporting Requirements

(f) Report inspection results to the Manager, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Ave., Des Plaines, IL 60018, within 15 working days of the inspection. Reporting requirements have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 2120–0056.

Optional Terminating Action

(g) Replacement of affected propellers with, or modification to Hartzell Propeller Inc. model ''MV'' series propellers constitutes terminating action for the initial and repetitive inspections specified in paragraphs (a) through (e) of this AD. The Hartzell ''MV'' series of propellers were certified as Hartzell propeller models ( )HC–( )(2,3)MV( )-( ) and HA–A2MV20–1. Modification of affected propellers to ''MV'' series propellers must be done in accordance with Hartzell SB No.'s HC–SB–61–232, dated March 20, 1998, and HC–SB–61–233, dated April 17, 1998.

Alternative Methods of Compliance

(h) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Chicago Aircraft Certification Office. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Chicago Aircraft Certification Office. Compliance with Hartzell SB No. HC–SB–61–217, Revision 2, dated October 7, 1999, is an alternative method of compliance to Hartzell SB No. HC–SB–61–217, Revision 1.

Note 4: Information concerning the existence of approved alternative methods of

compliance with this airworthiness directive, if any, may be obtained from the Chicago Aircraft Certification Office.

Special Flight Permits

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

Issued in Burlington, Massachusetts, on December 24, 2002.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–33074 Filed 12–31–02; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[DC051–7002b; FRL–7434–8]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; the District of Columbia; Control of Emissions From Existing Hospital/Medical/ Infectious Waste Incinerator (HMIWI) Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the HMIWI section 111(d)/129 negative declaration submitted by the District of Columbia Department of Health, Environmental Health Administration. The negative declaration certifies that HMIWI units, which are subject to the requirements of sections 111(d) and 129 of the Clean Air Act (CAA), do not exist in the District of Columbia air pollution control jurisdiction. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by February 3, 2003.

ADDRESSES: Written comments should be mailed to Walter Wilkie, Deputy Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: James B. Topsale at (215) 814–2190, or by e-mail at *topsale.jim@epa.gov.* Please note that while questions may be posed via phone and e-mail, formal comments must be submitted in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: December 20, 2002.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 02–33099 Filed 12–31–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[DC051–7003b; DE068–7003b; PA187–7003b, PA186–7003b; FRL–7434–6]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; Delaware, the District of Columbia, Allegheny County and Philadelphia, Pennsylvania; Control of Emissions From Existing Small Municipal Waste Combustion Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the section 111(d)/129 negative declarations submitted by the District of Columbia, the State of Delaware, Allegheny County and the City of Philadelphia, Pennsylvania. Each negative declaration certifies that small municipal waste combustion (MWC) units, which are subject to the requirements of sections 111(d) and 129 of the Clean Air Act (CAA), do not exist within its air pollution control jurisdiction. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by February 3, 2003.

ADDRESSES: Written comments should be mailed to Walter Wilkie, Deputy Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: James B. Topsale at (215) 814–2190, or by e-mail at *topsale.jim@epa.gov.* Please note that while questions may be posed via phone and e-mail, formal comments must be submitted in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: December 20, 2002.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 02–33097 Filed 12–31–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[DC051–7001b; PA186–7001b; FRL–7435–1]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; the District of Columbia, and the City of Philadelphia, Pennsylvania; Control of Emissions From Existing Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the municipal solid waste (MSW) landfill section 111(d) negative declarations submitted by the District of Columbia, and the City of Philadelphia, Pennsylvania. Each negative declaration certifies that MSW landfills, subject to the requirements of section 111(d) of the Clean Air Act (CAA), do not exist in its air pollution control jurisdiction. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by February 3, 2003.

ADDRESSES: Written comments should be mailed to Walter Wilkie, Deputy Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: James B. Topsale at (215) 814–2190, or by e-mail at *topsale.jim@epa.gov*. Please note that while questions may be posed via phone and e-mail, formal comments must be submitted in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: December 20, 2002.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 02–33101 Filed 12–31–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[DC051–7004b; DE068–7004b; PA186–7004b; FRL–7434–4]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; Delaware, the District of Columbia, and Philadelphia, Pennsylvania; Control of Emissions From Existing Commercial/Industrial Incineration (CISWI) Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the section 111(d)/129 negative declarations submitted by the District of Columbia, the State of Delaware, and the City of Philadelphia, Pennsylvania. Each negative declaration certifies that CISWI units, which are subject to the requirements of sections 111(d) and 129 of the Clean Air Act (CAA), do not exist within its air pollution control jurisdiction. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by February 3, 2003.

ADDRESSES: Written comments should be mailed to Walter Wilkie, Deputy Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: James B. Topsale at (215) 814–2190, or by e-mail at *topsale.jim@epa.gov.* Please note that while questions may be posed via phone and e-mail, formal comments must be submitted in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: December 20, 2002.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 02–33095 Filed 12–31–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7429–2]

RIN 2060–AG99, 2060–AG52, 2060–AG69, 2060–AG67, 2060–AG96, 2060–AH03

National Emission Standards for Hazardous Air Pollutants: Stationary Combustion Turbines, Surface Coating of Metal Cans, and Primary Magnesium Refining

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of proposed rules and changes to public comment periods.

SUMMARY: This document is to inform the public that the proposed national emission standards for hazardous air pollutants (NESHAP) for Stationary Combustion Turbines, Surface Coating of Metal Cans, and Primary Magnesium Refining have been signed by the Administrator and are scheduled to be published as proposed rules in the **Federal Register** within a few weeks. Copies are available on EPA's website. We typically allow a 60-day public comment period after publication of proposed NESHAP in the **Federal Register**; however, we are providing advance notice that when these proposed rules are published in the **Federal Register**, the comment period will be 30 days after publication.

FOR FURTHER INFORMATION CONTACT: Mr. Keith W. Barnett, Minerals and Inorganic Chemicals Group, Emission Standards Division (C504–05), U.S. EPA, Research Triangle Park, North Carolina 27711, facsimile number (919) 541–5600, telephone number (919) 541–5605, electronic mail *barnett.keith@epa.gov*.

SUPPLEMENTARY INFORMATION: An electronic copy of today's notice is

available on the Worldwide Web through the Technology Transfer Network (TTN). Following the Assistant Administrator's signature, a copy of this notice will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg*. In addition, electronic versions of all these proposed NESHAP that are affected by this notice are also currently available on the TTN at *http://www.epa.gov/ttn/oarpg/new.html*. 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.

In accordance with section 112(e)(1) of the Clean Air Act (CAA), EPA issued a schedule for promulgation of NESHAP that specified that the NESHAP for Stationary Combustion Turbines, Surface Coating of Metal Cans, and Primary Magnesium Refining were to be promulgated as final rules by November 15, 2000. We are now considerably past that date. In addition, the requirements of section 112(j) of the CAA specify that all sources in these source categories must submit permit applications for case-by-case determinations of the maximum achievable emissions reductions of hazardous air pollutants in the absence of a final rule. It is imperative that these proposed rules be finalized as soon as possible to avoid the unnecessary expenditure of resources by affected sources and permitting authorities.

The proposed NESHAP were signed by the Administrator on November 26, 2002, and were available on the TTN on the same day. Therefore, the proposed NESHAP have been widely available to the public since that time. We do not anticipate that any of the proposed NESHAP will be published in the **Federal Register** prior to December 26, 2002. If we allow a comment period of 30 days from actual publication in the **Federal Register**, the proposed NESHAP will still have been widely available to the public for 60 days or more.

Dated: December 20, 2002.

Jeffrey R. Holmstead,

Assistant Administrator for Air and Radiation.

[FR Doc. 02–33102 Filed 12–31–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7435–6]

RIN 2060–AG99

National Emission Standards for Hazardous Air Pollutants: Surface Coating of Automobiles and Light-Duty Trucks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of change to public comment period.

SUMMARY: This document is to inform the public of a correction to the proposed national emission standards for hazardous air pollutants (NESHAP) for surface coating of automobiles and light-duty trucks that were published in the **Federal Register** on December 24, 2002 (67 FR 78612). As published, written comments on the proposed rule were to be submitted to EPA on or before February 7, 2003. Today, we are providing notice that the period for public comment is being extended and will end on February 24, 2003 (a 60-day public comment period).

Additionally, the December 24, 2002 **Federal Register** document stated that if anyone contacts EPA requesting to speak at a public hearing, they should do so by January 3, 2003. We are extending the period to request a public hearing to January 13, 2003 (20 days).

Finally, the **Federal Register** document stated that, if requested, a public hearing would be held approximately 15 days after the date of publication of the notice in the **Federal Register**. Today's document corrects the date of the hearing. It will be held, if requested, on January 27, 2003 (approximately 30 days after the date of publication of the proposal in the **Federal Register**).

FOR FURTHER INFORMATION CONTACT: Ms. Janet Eck, Coatings and Consumer Products Group, Emission Standards Division (C539–03), U.S. EPA, Research Triangle Park, North Carolina 27711, facsimile number (919) 541–5689, telephone number (919) 541–7946, electronic mail *eck.janet@epa.gov*.

SUPPLEMENTARY INFORMATION: An electronic copy of today's document is available on the Worldwide Web through the Technology Transfer Network (TTN). Following the Assistant Administrator's signature, a copy of this document will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg*. In addition, an electronic version of the proposed NESHAP is currently available on the TTN at *http://www.epa.gov/ttn/oarpg/new.html*. 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.

Dated: December 27, 2002.

Thomas W. Eagles,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 02–33144 Filed 12–31–02; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 68, No. 1

Thursday, January 2, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Food Stamp Program—Store Applications, Form FNS–252, Food Stamp Application for Stores

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: USDA's Food and Nutrition Service (FNS) has revised its Food Stamp Program Application for Stores, Form FNS–252, the application for retailers who wish to participate in the Food Stamp Program. The form was revised to simplify and streamline information collected from retailers on the application and make it easier to read. We are soliciting public comments on the content, format and design of the revised Form FNS–252. For consistency purposes, we will not use the revised Form–252 until the new Store Tracking and Redemption Subsystem (STARS) is in operation, around the third quarter of 2004. The current Form FNS–252 will be effective until the STARS system is operational and we are ready to use the revised Form FNS–252. In addition, FNS is drafting an addendum to the revised Form FNS–252. Corporations (chain stores) will use the addendum to submit information to FNS that is unique to each store under the corporation. The addendum will not collect new types of information other than those collected on the revised Form FNS–252.

DATES: Written comments must be submitted on or before March 3, 2003.

ADDRESSES: Comments are invited on the content, format and design of the revised Form FNS–252, Food Stamp Program Application for Stores, and the proposed addendum to this form. Comments may be sent to Karen Walker, Chief, Retailer Management Branch, Benefit Redemption Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 404, Alexandria, VA 22302; FAX number (703) 305–1863; E-mail: *BRDHQ-WEB@fns.usda.gov.* All submitted comments should refer to the title of this proposal and/or the OMB approval number.

FOR FURTHER INFORMATION CONTACT: Requests for additional information, or copies of the revised Form FNS–252, should be directed to Karen Walker at (703) 305–2418 or *BRDHQ-WEB@fns.usda.gov.* Requests submitted over e-mail should refer to the title of this proposal and/or the OMB approval number in the subject line.

SUPPLEMENTARY INFORMATION:

Title: Food Stamp Program: Food Stamp Program Application for Stores, Form FNS–252.

OMB Number: 0584–0008.

Expiration Date: May 31, 2003.

Type of Request: Revision of a currently approved collection.

Abstract: Section 9 of the Food Stamp Act of 1977, as amended, (7 U.S.C. 2011 *et seq.*) requires retail food stores to submit applications to FNS for approval prior to participating in the Food Stamp Program. FNS field offices review retailer applications to ensure that the store is eligible and then authorize or deny a store to accept and redeem Food Stamp Program benefits. We know that many retailers submit incomplete or erroneous applications to the field office. This can be attributed, in part, to the complexity and length of the current form and the technical language used. It is our belief that a simpler application will result in fewer mistakes upfront and will reduce the time it takes for a field office to process an incomplete or incorrect application. Retailers will also benefit from the simplified, revised Form FNS–252 because they will better understand what information is being asked of them initially. Therefore, it is more likely that retailers will submit a complete application the first time.

As part of this effort, reengineering teams at FNS were charged with identifying areas where the current Form FNS–252 could be improved to reduce and streamline information collected on the application. Additionally, field offices provided their feedback on how the current Form FNS–252 can be improved. Based on these recommendations, FNS contracted with the Office of Personnel Management's Forms Processing Center in Macon, Georgia to revise the current Form FNS–252 into a customer- and computer-friendly format.

The revised Form FNS–252 offers a significant improvement over the current Form FNS–252 while adhering to the regulatory requirements for the authorization process for retailers. The design of the revised Form FNS–252 is superior over the current Form FNS–252 because it can be scanned and easily converted into an online application in the future. Additionally, the language on the revised Form FNS–252 is clearer and shorter which should result in fewer errors and omissions on incoming applications. In summary, the revised Form FNS–252:

- Utilizes plain language;
- Deletes redundant questions and questions that solicit information which can be collected from other FNS sources such as store visits and databases;
- Improves the accuracy of submitted information through better targeted questions; and
- Supports the Department's efforts to comply with the E–GOV requirements by making the form compatible with current technology.

Finally, FNS is in the process of developing an addendum to the revised Form FNS–252. The addendum will not collect new types of information other than those collected on the revised Form FNS–252. A corporation operating chain stores will use the addendum to submit specific information to FNS on each store, such as the store's location and hours of operation. The new STARS system will be able to accept both electronic and paper submissions of the addendum.

Burden Estimates: The burden associated with the revised Form FNS–252 is determined from information available in the STARS database on initial authorizations and reauthorizations. For the burden associated with initial authorizations, we have used Fiscal Year (FY) 2001 data as the base number for FY 2002 estimates for all newly authorized applicants. Based on current economic conditions, we believe this number will increase or remain constant for the present year. We will use 18,888 as the base number for FY 2002 for all newly

authorized stores. We have further increased this number by 3% (566) to account for applications that are processed by field offices but are not authorized, and decreased this number by 9.8% (1,851) to account for chain stores that participate in the Food Stamp Program. A corporation operating chain stores will only need to complete one revised Form FNS–252 for all of its stores and the (shorter) addendum for each individual store. Thus, the total number of initial applications expected to be received and processed for FY 2002 is estimated to be 17,603 (18,888 + 566—1,851). We further estimate that ninety-eight percent (17,251) of the 17,603 applications will be submitted using the Form FNS–252. The remaining applications will be submitted on another form such as the Form FNS–252–2, Meal Service Application.

For burden estimates associated with applications for reauthorization, we have used FY 2001 data as the base number for FY 2002 estimates because we do not anticipate any radical variation in the number of stores to be reauthorized for the current year. Program regulations require that participating stores be reauthorized at least every five years. Of the stores to be reauthorized, only 3% will have to complete a new Form FNS–252 due to recent procedural changes. Stores that do not complete a new Form FNS–252 are reauthorized using information available from other FNS sources such as the store visit form. Of the 151,716 stores that were authorized in FY 2001, approximately 20,938 were subject to reauthorization. Therefore, for FY 2002, we estimate the number of stores to be reauthorized that will use the Form FNS–252 to be 628 (3% of 20,938). It is important to note that corporations, and the stores under the corporation, are not included in reauthorization estimates because they are usually exempt from completing additional paperwork after the corporation has been authorized.

The hourly burden rate per response for the current Form FNS–252, as approved by OMB, is 20 to 68 minutes, with the average being 27 minutes. Hourly burden time per response varies and includes the time to review instructions, search existing data resources, gather and copy records, complete and review the application and submit the form and documentation to FNS. We estimate the burden rate per response for the revised Form FNS–252 to be an average of 19 minutes (.32 hour)—an estimated, average reduction of 8 minutes over the current Form FNS–252. Our estimates are based on projections that included in formal time studies conducted at FNS by staff who were not involved in the redesign efforts of the form or who are not familiar with the retailer application process. We estimate the burden rate per response for the addendum to the revised Form FNS–252 to be an average of 5 minutes (.08 hour). Because corporations account for 9.8 percent of all authorized stores, more than 1,851 chain stores will benefit from completing the shorter addendum to the revised Form FNS–252, on an annual basis.

As noted above, we will evaluate the revised Form FNS–252 on the appropriateness and clarity of the form's content, format and design. Before making final changes to the revised Form FNS–252, we will consider feedback from the public. If the results of the evaluation are positive, we will finalize the revised Form FNS–252 and the addendum to this form. We will begin using both forms when the new STARS system is operational; we will use the current Form FNS–252 during the interim period, until we are ready to use the revised Form FNS–252.

The estimated burden computation is provided below:

New Authorizations—17,251 (17,603 × 98%); Reauthorizations—628 (20,938 × 3%);

Total Responses = 17,879 (17,251 + 628)

We estimate the annual burden hours to be 5,721 hours for the revised Form FNS–252. The computation is provided below:

Estimated Total Annual Burden: FNS–252: 5,721 (17,879 × .32 hour).

Total Annual Hours: 5,721.

Affected Public: Retail food stores.

Estimated Number of Respondents: 17,879.

Estimated Annual Number of Responses Per Respondent: 1.

Estimated Total Annual Responses: 17,879.

Estimate of Burden: 5,721.

Estimated Total Annual Burden: 5,721.

We estimate the annual burden hours to be 148 hours for the addendum to the revised Form FNS–252. The computation is provided below:

Estimated Total Annual Burden: Addendum to Revised FNS–252: 148 (1,851 × .08 hour).

Total Annual Hours: 148.

Affected Public: Retail food stores under a corporation.

Estimated Number of Respondents: 1,851.

Estimated Annual Number of Responses Per Respondent: 1.

Estimated Total Annual Responses: 1,851

Estimate of Burden: 148.

Estimated Total Annual Burden: 148.

Dated: December 18, 2002.

Roberto Salazar,

Administrator, Food and Nutrition Service.

[FR Doc. 02–33112 Filed 12–31–02; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with section 351.213 (2002) of the Department of Commerce (the Department) Regulations, that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review: Not later than the last day of January 2003, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in January for the following periods:

	Period
Antidumping Duty Proceedings	
Brazil:	
Brass Sheet and Strip, A–351–603	1/1/02–12/31/02
Stainless Steel Wire Rod, A–351–819	1/1/02–12/31/02
Canada: Brass Sheet and Strip, A–122–601	1/1/02–12/31/02
France:	
Anhydrous Sodium Metasilicate (ASM), A–427–098	1/1/02–12/31/02

	Period
Stainless Steel Wire Rods, A–427–811	1/1/02–12/31/02
Taiwan: Top-of-the-Stove Stainless Steel Cooking Ware, A–583–603	1/1/02–12/31/02
The People's Republic of China: Folding Gift Boxes, A–570–866	8/6/01–12/31/02
Potassium Permanganate, A–570–001	1/1/02–12/31/02
The Republic of Korea: Top-of-the Stove Stainless Steel Cooking Ware, A–580–601	1/1/02–12/31/02
Countervailing Duty Proceedings	
Brazil: Brass Sheet and Strip, C–351–604	1/1/02–12/31/02
Taiwan: Top-of-the-Stove Stainless Steel Cooking Ware, C–583–604	1/1/02–12/31/02
The Republic of Korea: Top-of-the-Stove Stainless Steel Cooking Ware, C–580–602	1/1/02–12/31/02

Suspension Agreements

None.

In accordance with section 351.213(b) of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. The Department changed its requirements for requesting reviews for countervailing duty orders. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Enforcement, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with section 351.303(f)(l)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of January 2003. If the Department does not receive, by the last day of January 2003, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: December 23, 2002.

Holly A. Kuga,

Senior Office Director, Group II, Office 4, Import Administration.

[FR Doc. 02–33133 Filed 12–31–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-201–827]

Notice of Final Rescission of Antidumping Duty Administrative Review: Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Mexico

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Rescission of Antidumping Duty Administrative Review.

SUMMARY: We have determined that the first administrative review of Tubos de Acero de Mexico, S.A. (''TAMSA'') should be rescinded.

EFFECTIVE DATE: (Insert date of publication in the **Federal Register)**.

FOR FURTHER INFORMATION CONTACT: James Terpstra, Mark Young, or George McMahon, AD/CVD Enforcement, Office 6, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3965, (202) 482–6397, or (202) 482–1167, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department regulations refer to the regulations codified at 19 CFR part 351 (April 2001).

Case History

On September 4, 2002, the Department published the preliminary notice of intent to rescind this administrative review of the antidumping duty order on certain large diameter carbon and alloy seamless standard, line, and pressure pipe (''SLP'') from Mexico, with respect to Tubos de Acero de Mexico, S.A. (''TAMSA''). *See Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Mexico: Preliminary Notice of Intent to Rescind Administrative Review,* 67 FR 56531 (September 4, 2002). As discussed in the preliminary notice, this review is intended to cover shipments of subject merchandise by TAMSA, during the period of review (''POR'') February 4, 2000, through July 31, 2001. However, based upon our shipment data query and examination of entry documents, we determined that TAMSA was a non-shipper for the purpose of this review in our preliminary results. We invited parties to comment on our preliminary results (67 FR at 56533). However, interested parties did not submit case briefs or request a hearing. In summary, there have been no changes since the Department published its preliminary notice of intent to rescind this administrative review.

Scope of the Review

The products covered are large diameter seamless carbon and alloy (other than stainless) steel standard, line, and pressure pipes produced, or equivalent, to the American Society for Testing and Materials (''ASTM'') A-53,

ASTM A-106, ASTM A-333, ASTM A-334, ASTM A-589, ASTM A-795, and the American Petroleum Institute (''API'') 5L specifications and meeting the physical parameters described below, regardless of application, with the exception of the exclusions discussed below. The scope of this review also includes all other products used in standard, line, or pressure pipe applications and meeting the physical parameters described below, regardless of specification, with the exception of the exclusions discussed below. Specifically included within the scope of this review are seamless pipes greater than 4.5 inches (114.3 mm) up to and including 16 inches (406.4 mm) in outside diameter, regardless of wall-thickness, manufacturing process (hot finished or cold-drawn), end finish (plain end, beveled end, upset end, threaded, or threaded and coupled), or surface finish.

The seamless pipes subject to this review are currently classifiable under the subheadings 7304.10.10.30, 7304.10.10.45, 7304.10.10.60, 7304.10.50.50, 7304.31.60.50, 7304.39.00.36 7304.39.00.40, 7304.39.00.44, 7304.39.00.48, 7304.39.00.52, 7304.39.00.56, 7304.39.00.62, 7304.39.00.68, 7304.39.00.72, 7304.51.50.60, 7304.59.60.00, 7304.59.80.30, 7304.59.80.35, 7304.59.80.40, 7304.59.80.45, 7304.59.80.50, 7304.59.80.55, 7304.59.80.60, 7304.59.80.65, and 7304.59.80.70 of the Harmonized Tariff Schedule of the United States (''HTSUS'').

Specifications, Characteristics, and Uses: Large diameter seamless pipe is used primarily for line applications such as oil, gas, or water pipeline, or utility distribution systems. Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the ASTM A-106 standard may be used in temperatures of up to 1000 degrees Fahrenheit, at various American Society of Mechanical Engineers (''ASME'') code stress levels. Alloy pipes made to ASTM A-335 standard must be used if temperatures and stress levels exceed those allowed for ASTM A-106. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A-106 standard.

Seamless standard pipes are most commonly produced to the ASTM A-53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements. If exceptionally low temperature uses or conditions are anticipated, standard pipe may be manufactured to ASTM A-333 or ASTM A-334 specifications.

Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line pipes are produced to the API 5L specification.

Seamless water well pipe (ASTM A-589) and seamless galvanized pipe for fire protection uses (ASTM A-795) are used for the conveyance of water.

Seamless pipes are commonly produced and certified to meet ASTM A-106, ASTM A-53, API 5L-B, and API 5L-X42 specifications. To avoid maintaining separate production runs and separate inventories, manufacturers typically triple or quadruple certify the pipes by meeting the metallurgical requirements and performing the required tests pursuant to the respective specifications. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers.

The primary application of ASTM A-106 pressure pipes and triple or quadruple certified pipes in large diameters is for use as oil and gas distribution lines for commercial applications. A more minor application for large diameter seamless pipes is for use in pressure piping systems by refineries, petrochemical plants, and chemical plants, as well as in power generation plants and insome oil field uses (on shore and off shore) such as for separator lines, gathering lines and metering runs. These applications constitute the majority of the market for the subject seamless pipes. However, ASTM A-106 pipes may be used in some boiler applications.

The scope of this review includes all seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, regardless of application, with the exception of the exclusions discussed below, whether or not also certified to a non-covered specification. Standard, line, and pressure applications and the above-listed specifications are defining characteristics of the scope of this investigation. Therefore, seamless pipes meeting the physical description above, but not produced to the ASTM A-53, ASTM A-106, ASTM A-333, ASTM A-334, ASTM A-589, ASTM A-795, and API 5L specifications shall be covered if used in a standard, line, or pressure application, with the exception of the specific exclusions discussed below.

For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in ASTM A-106 applications. These specifications generally include ASTM A-161, ASTM A-192, ASTM A-210, ASTM A-252, ASTM A-501, ASTM A-523, ASTM A-524, and ASTM A-618. When such pipes are used in a standard, line, or pressure pipe application, such products are covered by the scope of this review.

Specifically excluded from the scope of this review are:

A. Boiler tubing and mechanical tubing, if such products are not produced to ASTM A-53, ASTM A-106, ASTM A-333, ASTM A-334, ASTM A-589, ASTM A-795, and API 5L specifications and are not used in standard, line, or pressure pipe applications.

B. Finished and unfinished oil country tubular goods (''OCTG''), if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in this scope when used in standard, line or pressure applications.

C. Products produced to the A-335 specification unless they are used in an application that would normally utilize ASTM A-53, ASTM A-106, ASTM A-333, ASTM A-334, ASTM A-589, ASTM A-795, and API 5L specifications.

D. Line and riser pipe for deepwater application, *i.e.*, line and riser pipe that is (1) used in a deepwater application, which means for use in water depths of 1,500 feet or more; (2) intended for use in and is actually used for a specific deepwater project; (3) rated for a specified minimum yield strength of not less than 60,000 psi; and (4) not identified or certified through the use of a monogram, stencil, or otherwise marked with an API specification (*e.g.*, ''API 5L'').

With regard to the excluded products listed above, the Department will not instruct Customs to require end-use certification until such time as petitioner or other interested parties provide to the Department a reasonable basis to believe or suspect that the products are being utilized in a covered

application. If such information is provided, the Department will require end-use certification only for the product(s) (or specification(s)) for which evidence is provided that such products are being used in a covered application as described above. For example, if, based on evidence provided by petitioner, the Department finds a reasonable basis to believe or suspect that seamless pipe produced to the A-335 specification is being used in an A-106 application, it will require end-use certifications for imports of that specification. Normally the Department will require only the importer of record to certify to the end-use of the imported merchandise. If it later proves necessary for adequate implementation, the Department may also require producers who export such products to the United States to provide such certification on invoices accompanying shipments to the United States.

Although the HTSUS subheadings are provided for convenience and U.S. Customs Service (''Customs'') purposes, the written description of the merchandise subject to this scope is dispositive.

Rescission of First Administrative Review

We provided interested parties with an opportunity to comment on the preliminary results. As noted above, however, we received no comments from any party. As discussed in detail in the preliminary results, because TAMSA made no entries, exports or sales of the subject merchandise to the U.S. during the POR, we determined that it was a non-shipper. In accordance with 19 CFR 351.213(d)(3) and consistent with Department practice, we are rescinding our review of TAMSA (*see, e.g., Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China: Final Results of 1999–2001 Administrative Review and Partial Rescission of Review*, 67 FR 68987 (November 14, 2002); *see also, Frozen Concentrated Orange Juice From Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 67 FR 40913 (June 14, 2002)).

This notice also serves as a reminder to parties subject to an administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO are sanctionable violations.

This determination is issued and published pursuant to sections 751(a) and 777(i) of the Act.

Dated: December 24, 2002.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 02–33134 Filed 12–31–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Channel Islands National Marine Sanctuary Advisory Council

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The Channel Islands National Marine Sanctuary (CINMS or Sanctuary) is seeking applicants for the following vacant seats on its Sanctuary Advisory Council (Council): Business Representative and Tourism Representative. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the conservation and management of marine resources; and the length of residence in the area affected by the Sanctuary. Applicants who are chosen as members should expect to serve three-year terms, pursuant to the Council's Charter.

DATES: Applications are due by January 10, 2003.

ADDRESSES: Application kits may be obtained from Nancy Berenson at Channel Islands National Marine Sanctuary, 115 Harbor Way, Suite 150, Santa Barbara, CA 96825. Completed applications should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Michael Murray at (805) 884–1464, or *michael.murray@noaa.gov,* or visit the CINMS Web site at: *http://www.cinms.nos.noaa.gov.*

SUPPLEMENTARY INFORMATION: The CINMS Advisory Council was originally established in December 1998 and has a broad representation consisting of 20 members, including ten government agency representatives and ten members from the general public. The Council functions in an advisory capacity to the Sanctuary Manager. The Council works in concert with the Sanctuary Manager by keeping him or her informed about issues of concern throughout the Sanctuary, offering recommendations on specific issues, and aiding the Manager in achieving the goals of the Sanctuary program. Specifically, the Council's objectives are to provide advice on: (1) Protecting natural and cultural resources, and identifying and evaluating emergent or critical issues involving Sanctuary use or resources; (2) Identifying and realizing the Sanctuary's research objectives; (3) Identifying and realizing educational opportunities to increase the public knowledge and stewardship of the Sanctuary environment; and (4) Assisting in developing an informed constituency to increase awareness and understanding of the purpose and value of the Sanctuary and the National Marine Sanctuary Program.

Authority: 16 U.S.C. 1431 *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: December 18, 2002.

Jamison S. Hawkins,

Acting Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 02–33137 Filed 12–31–02; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 001206342–2305–03; I.D. 102802A]

RIN 0648–ZB00

Financial Assistance for Community-based Habitat Restoration Projects

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

ACTION: Notice of availability of funds.

SUMMARY: The purpose of this document is to invite the public to submit proposals for available funding to implement grass-roots habitat restoration projects that will benefit living marine resources, including anadromous fish, under the NOAA Community-based Restoration Program (CRP). This document describes the conditions under which applications (project proposals) will be accepted under the CRP, and describes criteria under which applications will be evaluated for funding consideration.

Projects funded through the CRP will be expected to have strong on-the-ground habitat restoration components that provide educational and social benefits for people and their communities in addition to long-term ecological habitat improvements for NOAA trust resources. Proposals selected for funding through this solicitation will be implemented through a project grant, cooperative agreement, or interagency transfer.

DATES: Applications for funding under the CRP will be accepted upon publication of this document in the **Federal Register** and must be received by or postmarked by March 3, 2003. Applications received or postmarked after that time will not be considered for funding. Applications submitted via the U.S. Postal Service must have an official postmark; private metered postmarks are not acceptable. Applications delivered by a delivery service after the postmark date will be accepted for review if the applicant can document that the application was provided to the delivery service on or prior to the specified postmark cut-off date. In any event, applications received later than 15 business days following the closing date will not be accepted. No facsimile or electronic mail applications will be accepted.

ADDRESSES: Send applications to Christopher D. Doley, Director, NOAA Restoration Center, National Marine Fisheries Service, 1315 East West Highway (F/HC3), Silver Spring, MD 20910–3282; ATTN: CRP Project Applications.

See **SUPPLEMENTARY INFORMATION** section under *Electronic Access* for additional information on the CRP and for application form information.

FOR FURTHER INFORMATION CONTACT: Robin J. Bruckner or Alison Ward at(301)713–0174, or by e-mail at *Robin.Bruckner@noaa.gov* or *Alison.Ward@noaa.gov*.

SUPPLEMENTARY INFORMATION

I. Program Description

The CRP, a financial and technical Federal assistance program, promotes strong partnerships at the national, regional and local level to fund grass-roots, community-based activities that restore living marine resources and their habitats and promote stewardship and a conservation ethic for NOAA trust resources. NOAA trust resources are living marine resources that include commercial and recreational fishery resources (marine fish and shellfish and their habitats); anadromous species (fish, such as salmon and striped bass that spawn in freshwater and then migrate to the sea); endangered and threatened marine species and their habitats; marine mammals, turtles, and their habitats; marshes, mangroves, seagrass beds, coral reefs, and other coastal habitats; and resources associated with National Marine Sanctuaries and National Estuarine Research Reserves. Habitats in the Great Lakes region are not covered by this solicitation.

The CRP's objective is to bring together citizen groups, public and nonprofit organizations, watershed groups, industry, corporations and businesses, youth conservation corps, students, landowners, academics, and local government, state, and Federal agencies to cooperatively implement habitat restoration projects. Partnerships developed at national, regional and local levels contribute funding, land, technical assistance, workforce support or other in-kind services to promote citizen participation in the improvement of locally important living marine resources, as well as develop local stewardship and monitoring activities to sustain and evaluate the success of the restoration.

The CRP recognizes the significant role that communities can play in habitat restoration, and acknowledges that habitat restoration is often best implemented through technical and monetary support provided at a community level. Community-based restoration projects supported by the CRP are successful because they have significant local backing, depend upon citizens hands-on involvement, and typically involve NOAA technical assistance or oversight. The role of NOAA in the CRP is to help identify potential restoration projects, strengthen the development and implementation of sound restoration projects and science-based monitoring of such projects within communities, and develop long-term, ongoing national and regional partnerships to support community-based restoration efforts of living marine resource habitats across a wide geographic area. For more information on the CRP, see *Electronic Access*.

II. Authority

The Secretary of Commerce is authorized under the Fish and Wildlife Coordination Act, 16 U.S.C. 661, as amended by the Reorganization Plan No. 4 of 1970, to provide grants or cooperative agreements for fisheries habitat restoration.

III. Catalogue of Federal Domestic Assistance

The CRP is described in the ''Catalogue of Federal Domestic Assistance,'' under program number 11.463, Habitat Conservation.

IV. Eligible Applicants

Eligible applicants are institutions of higher education, hospitals, other non-profits, commercial organizations, organizations under the jurisdiction of foreign governments, international organizations, state, local and Indian tribal governments. Applications from Federal agencies will be considered. Before non-NOAA Federal applicants may be funded, they must demonstrate that they have legal authority to receive funds from another federal agency in excess of their appropriation. Because this announcement is not proposing to procure goods or services from applicants, the Economy Act (31 U.S.C. 1535) is not an appropriate legal basis. Although Federal agencies are eligible to apply under this solicitation, they are strongly encouraged to work with states, non-governmental organizations, national service clubs or youth corps organizations and others that are eligible to apply, rather than seeking project funding directly from the CRP. Proposals selected for funding from non-Federal applicants will be funded through a project grant or cooperative agreement under the terms of this document. For applications funded through cooperative agreements, substantial involvement of the Federal government in the project may include, but is not limited to, activities such as hands-on technical or permitting assistance, monitoring the progression of the restoration through site visits, and involvement in public events to highlight restoration activities. Proposals selected for funding from a non-NOAA Federal agency will be funded through an interagency transfer.

The Department of Commerce/ National Oceanic and Atmospheric Administration (DOC/NOAA) is strongly committed to broadening the participation of Historically Black Colleges and Universities, Hispanic Serving Institutions, and Tribal Colleges and Universities in its educational and research programs. The DOC/NOAA vision, mission, and goals are to achieve full participation by Minority Serving Institutions (MSI) in order to advance the development of human potential, to strengthen the nation's capacity to provide high-quality education, and to increase opportunities for MSIs to participate in, and benefit from, Federal financial assistance programs. DOC/

NOAA encourages proposals for habitat restoration projects involving MSIs according to the criteria in this document.

V. Eligible Restoration Activities

NOAA is interested in funding projects that will result in on-the-ground restoration of habitat to benefit living marine resources, including anadromous fish species. Restoration is defined here as activities that contribute to the return of degraded or altered marine, estuarine, coastal and freshwater anadromous fish habitats to a close approximation of their condition prior to disturbance. Restoration may include, but is not limited to, improvement of coastal wetland tidal exchange or reestablishment of historic hydrology; dam or berm removal; improvement or reestablishment of fish passage; reef/substrate/habitat creation; establishment of riparian buffer zones and improvement of freshwater habitat features that support anadromous fishes; exclusionary fencing and planting; planting of native coastal wetland and submerged aquatic vegetation; and enhancement of feeding, spawning and growth areas essential to marine or anadromous fish. NOAA recognizes that accomplishing restoration is a multi-faceted effort involving project design, engineering services, permitting, construction, oversight and monitoring.

In general, proposed projects should clearly demonstrate anticipated benefits to habitats, such as salt marshes, seagrass beds, coral reefs, mangrove forests, and riparian habitat near rivers, streams and creeks used by anadromous fish, or where fish passage is certain to be restored to habitat formerly used by anadromous fish. Priorities for habitat restoration activities include: areas identified by NOAA Fisheries as essential fish habitat (EFH) and areas within EFH identified as Habitat Areas of Particular Concern; areas identified as critical habitat for federally or state listed marine and anadromous species; areas identified as important habitat for marine mammals and turtles; watersheds or such other areas under conservation management as special management areas under state coastal management programs; and other important commercial or recreational marine fish habitat, including degraded areas that historically were important habitat for living marine resources. To protect the Federal investment, projects on private lands need to provide assurance that the project will be maintained for its intended purpose for the life of the project. Projects must involve significant community support through an educational and/or volunteer component tied to the restoration activities. Implementation of on-the-ground habitat restoration projects must involve community outreach and monitoring to assess project success, and may involve limited pre-implementation activities, such as engineering and design and short-term baseline studies. Proposals emphasizing a singular restoration component, such as only outreach or program coordination are discouraged, as are applications that propose to expand an organization's day-to-day activities, or that primarily seek support for administration, salaries, overhead and travel. The CRP anticipates the availability of limited funds for high quality, quantitative monitoring projects to advance the science and technology of coastal and marine habitat restoration. Proposals emphasizing science-based monitoring of existing or simultaneously proposed CRP projects are encouraged.

Although NOAA recognizes that water quality and land use issues may impact habitat restoration efforts, this initiative is intended to fund physical habitat restoration projects. The following restoration projects will not be eligible for funding: (1) Activities that constitute legally required mitigation for the adverse effects of an activity regulated or otherwise governed by state or Federal law; (2) activities that constitute restoration for natural resource damages under Federal or state law, (3) activities that are required by a separate consent decree, court order, statute or regulation, and (4) direct water quality improvement measures, including wastewater treatment plant upgrades or combined sewer outfall improvements. Funds from the CRP may be sought to enhance restoration activities beyond the scope legally required by these activities. Because funds are limited, funding land purchase agreements, conservation easements, and artificial reef projects to create habitat where it did not exist historically will be a low priority.

VI. Funding Availability

This solicitation announces that funding of up to $2,000,000 is expected to be available for community-based habitat restoration in FY 2003. The NOAA Restoration Center anticipates that typical project awards will range from $50,000 to $200,000; NOAA will not accept proposals for under $25,000 or proposals for over $250,000 under this solicitation. There is no guarantee that sufficient funds will be available to make awards for all proposals. The number of awards to be made as a result of this solicitation will depend on the number of eligible applications received, the amount of funds requested for initiating restoration projects by the applicants, the merit and ranking of the proposals, and the amount of funds made available to the CRP by Congress. The exact amount of funds that may be awarded will be determined in pre-award negotiations between the applicant and NOAA representatives. Publication of this document does not obligate NOAA to award any specific project or obligate all or any parts of any available funds.

VII. Matching Requirements

The overall focus of the CRP is to provide seed money to individual projects that leverage funds and other contributions from a broad public and private sector to implement locally important habitat restoration to benefit living marine resources. To this end, applicants are encouraged to demonstrate a minimum 1:1 non-Federal match for CRP funds requested to complete the proposed project. NOAA strongly encourages applicants to leverage as much investment as possible; applicants with less than 1:1 match will not be disqualified.

For non-Federal applicants, the match can come from a variety of public and private sources and can include in-kind goods and services; cash match is highly encouraged. Federal funds may not be considered matching funds. Applicants are permitted to combine contributions from additional non-Federal partners in order to meet the 1:1 match expected. Applicants whose proposals are selected for funding will be bound by the percentage of cost sharing reflected in the award document signed by the NOAA Grants Officer.

VIII. Award Period

Generally, the CRP will make awards only to those projects where requested funding will be used to complete proposed restoration activities, with the exception of post-construction monitoring, within a period of 24 months from the approved start date of the project. If an application is selected for funding, NOAA has no obligation to provide any additional prospective funding in connection with that award in subsequent years. Any subsequent proposal to continue work on an existing project must be submitted to the competitive process for consideration and will not receive preferential treatment. Renewal of an award to increase funding or to extend the period of performance is at the total discretion of NOAA.

IX. Electronic Access

Information on the CRP, including examples of community-based habitat restoration projects that have been funded to date, can be found on the world wide web at *http://www.nmfs.noaa.gov/habitat/restoration/community*. The standard NOAA application forms and instructions for applicants are accessible through this web site, or they can be obtained from the NOAA Restoration Center (see **ADDRESSES**). Potential applicants are invited to contact NOAA Restoration Center staff before submitting an application to discuss the applicability of project ideas to the CRP's goals and objectives, and to request an application package that contains instructions for submitting NOAA standard grants applications and supplementary instructions specific to the NOAA Community-based Restoration Program.

X. Application Process

To submit a proposal, a complete NOAA standard grants application package should be filed in accordance with the guidelines in this document. Each application should include all specified sections as follows: Cover sheet-an applicant must use Office of Management and Budget (OMB) Standard Form 424 as the cover sheet for each project; budget detail (SF 424A and budget justification narrative); grant assurances SF424B and CD–511, and SF-LLL and CD–346 if applicable; narrative project description, and curriculum vitae or resume of primary project personnel. Budgets must include a detailed breakdown by category of cost (object class) separated into Federal and non-Federal shares as they relate to specific aspects of the project, with appropriate justification for both the Federal and non-Federal shares.

In general, applications should clearly demonstrate the broad-based benefits expected to specific habitats, and how these benefits will be achieved through the proposed restoration activities. The narrative project description should be no more than 12 double-spaced pages long, in 12–point font, and should give a clear presentation of the proposed work. It should identify the problems the project will address and describe short- and long-term objectives and goals, the methods for carrying out and monitoring the project, and the project's relevance to enhancing habitat to benefit living marine resources. The project narrative should describe the organizational structure of the applicant group, detail its qualifications, and identify proposed project staff; participants (project partners) other than the applicant, and their contributions should be identified. Applicants should indicate if the project has been submitted for funding consideration elsewhere, whether the funds requested are Federal or non-Federal, and what amount has been requested or secured from other sources. The need for assistance should be demonstrated, and the narrative should provide assurance that all necessary environmental permits and consultations will be secured prior to the use of Federal funds for construction. Applicants should not assume prior knowledge on the part of NOAA as to the relative merits of the project described in the application.

Applications should not be bound in any manner and should be printed on one side only. Three hard copies (including one signed original) of each application are required and must be submitted to the NOAA Restoration Center (see **ADDRESSES**). Applicants may opt to submit additional hard copies (seven are needed for reviewing purposes) if it does not cause a financial hardship; an additional copy only may also be submitted electronically in either Microsoft Word or WordPerfect formats on a PC-compatible floppy disk or CD ROM. Applications for multiple projects submitted by the same applicant must be submitted in separate envelopes.

XI. Indirect Costs

The budget may include an amount for indirect costs if the applicant has an established indirect cost rate with the Federal government. Indirect costs are essentially overhead costs for basic operational functions (e.g., lights, rent, water, insurance) that are incurred for common or joint objectives and therefore cannot be identified specifically within a particular project. For this solicitation, the Federal share of the indirect costs must not exceed the lesser of either the indirect costs the applicant would be entitled to if the negotiated Federal indirect cost rate were used or 25 percent of the direct costs proposed. For those situations in which the use of the applicant's indirect cost rate would result in indirect costs greater than 25 percent of the Federal direct costs, the difference may be counted as part of the non-Federal share. A copy of the current, approved negotiated indirect cost agreement with the Federal Government should be included with the application. If the applicant does not have a current negotiated rate and plans to seek reimbursement for indirect costs, documentation necessary to establish a rate must be submitted within 90 days of receiving an award.

XII. Project Selection Process

Applications will be screened by CRP staff to determine if they are eligible, complete and in accordance with instructions detailed in the standard NOAA Grants Application Package. Eligible restoration proposals will undergo a technical review, ranking, and selection process. As appropriate during this process, the NOAA Restoration Center will solicit individual technical evaluations of each project proposed and may request evaluations from other NOAA offices, the Regional Fishery Management Councils, other Federal and state agencies, such as state coastal management agencies and state fish and wildlife agencies, and private and public sector restoration experts who have knowledge of a specific applicant, program or its subject matter. Proposals also will be reviewed by NOAA regional and headquarters staff to determine how well they meet the stated aims of the CRP, and how well the proposal meets the goals of the NOAA RC.

Applications for habitat restoration projects will be evaluated by individual technical reviewers, including those mentioned in the above paragraph, according to the criteria and weights described in this solicitation. The proposals will be rated, and reviewer comments and composite project ranks will be presented to the Director of the NOAA Restoration Center (Director). The Director, in consultation with CRP staff, will consider the evaluations and may take into account the following: (a) Diversity of geographic location and habitat types to be restored; (b) diversity of applicants; (c) degree of duplication of proposed activities with other projects that are currently in effect or approved for funding by NOAA and other Federal agencies; (d) factors that may not be known by technical reviewers, including past performance of the applicant, that would affect achievement of the CRP's objectives as described in this announcement and the CRP Guidelines (65 FR 16890, March 30, 2000); and (e) the availability of funds. Hence, awards may not necessarily be made to the highest scored proposals. The Director, in consultation with CRP staff, will select the proposals to be recommended to the Grants Management Division for funding and determine the amount of funds available for each approved proposal. Unsuccessful applicants will be notified in writing that their proposal was not among those recommended for funding, and unsuccessful applications will be kept on file until the close of the following fiscal year then destroyed.

Successful applicants may be asked to modify objectives, work plans, or budgets prior to final approval of an award. The exact amount of funds to be awarded, the final scope of activities, the project duration, and specific NOAA cooperative involvement with the activities of each project will be determined in pre-award negotiations among the applicant, the NOAA Grants Office, and the NOAA CRP staff. Projects should not be initiated in expectation of Federal funding until a notice of award document is received from the NOAA Grants Office.

Successful applicants generally will be selected approximately 60 days after the close of this solicitation. The earliest date for receipt of awards will be approximately 120 days after the close of this solicitation, when all NOAA/applicant negotiations of cooperative activities have been completed. Applicants should consider this selection and processing time in developing requested start dates for proposed restoration activities.

XIII. Evaluation Criteria

Reviewers will assign scores to proposals ranging from 0 to 60 points based on the following four evaluation criteria and respective weights.

(1) *Potential of the Project to Benefit Living Marine Resources (15 points)*

Proposals will be evaluated on the extent of proposed habitat restoration activities and the type(s) of habitat(s) that will be restored. In particular, NOAA will evaluate proposals based on the amount and type of habitat proposed for restoration and the potential of the applicant to restore, protect, conserve, and enhance habitats and ecosystems vital to self-sustaining populations of living marine resources under NOAA Fisheries stewardship; whether the habitat(s) to be restored will benefit commercial, recreational, threatened or endangered species; whether the proposal addresses a priority habitat, restoration need, special consideration, or is part of a watershed or community stewardship plan; whether the effects of restoration are expected to persist; and whether the proposed project will complement or encourage other local restoration activities. Projects on permanently protected lands may be given priority consideration. Proposals for science-based monitoring of existing or simultaneously proposed CRP projects will be evaluated on the extent to which the potential results advance restoration methods, techniques, and project implementation.

(2) *Technical Merit and Adequacy of Project Implementation Plan (15 points)*

Proposals will be evaluated on the technical feasibility of the project from both biological and engineering perspectives, and on the qualifications and past experience of the project leaders and/or partners in designing, implementing and effectively managing and overseeing projects that benefit living marine resources, including anadromous fish species. Communities and/or organizations developing their first locally-driven restoration project may not be able to document past experience and, therefore, will be evaluated on the basis of their potential to effectively manage and oversee all project phases and on the availability of NOAA or other technical expertise to guide the project to a successful completion.

Proposals also will be evaluated on the adequacy of the implementation plan and the applicant's ability to: deliver the restoration objective stated in the proposal; demonstrate that the proposed activity will result in tangible benefits to living marine resources and will be sustainable and long-lasting; provide for long-term management of the restored resource, including adequate monitoring and a method for evaluating project success; and provide assurance that implementation of the project will meet all Federal and state environmental laws by obtaining applicable permits.

(3) *Community Commitment and Partnership Development (15 points)*

Proposals will be evaluated on activities proposed to involve citizens and broaden their participation in coastal habitat restoration or science-based monitoring and the depth and breadth of community support, as reflected by the diversity and strength of project partners. Community participation may include: (a) hands-on training, restoration and monitoring activities undertaken by volunteers; (b) sponsorship by local entities, either through in-kind goods and services (earth-moving services, technical expertise, conservation easements) or cash contributions; (c) public education and outreach; (d) support from state and local governments; and (e) ability to achieve long-term stewardship for restored living marine resources and to generate a community conservation ethic.

(4) Cost-effectiveness and Budget Justification (15 points)

Proposals will be evaluated on the percentage of funds that will be dedicated to all phases of project implementation including physical, on-the-ground coastal habitat restoration and/or science-based monitoring, compared to the percentage that is for administration, salaries, overhead and travel. Applications proposing to use restoration funds to expand an organization's day-to-day activities are unlikely to obtain a high score under this criterion. To encourage on-the-ground restoration, funding for salaries must be used to support staff directly involved in accomplishing the restoration work. Proposals also will be evaluated on the need for funding and the overall leverage of NOAA funds anticipated, including the amount of cash match; the potential for, or demonstrated NOAA involvement in, the project; the ability to which the proposed project is likely to catalyze future restoration and protection of living marine resources; and the ability of the applicant to demonstrate that a significant benefit will be generated for a reasonable cost. NOAA will expect cost-sharing to leverage funding and to further encourage partnerships among government, industry, and academia.

XIV. Allowable Costs

Funds awarded cannot necessarily pay for all the costs that the recipient might incur in the course of carrying out the project. Generally, costs that are allowable include salaries, equipment, supplies, and training, as long as these are ''necessary and reasonable.'' Allowable costs are determined by reference to the OMB Circulars A–122, ''Cost Principles for Non-profit Organizations'' A–21, ''Cost Principles for Education Institutions'' A–87, ''Cost Principles for State, Local and Indian Tribal Governments'' and Federal Acquisition Regulation, codified at 48 Code of Federal Regulations, subpart 31.2 ''Contracts with Commercial Organizations.''

XV. Other Requirements

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), as amended by the **Federal Register** notice published on October 30, 2002 (67 FR 66109), is applicable to this solicitation.

Applications under this program are subject to the provisions of Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Classification

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act [5 U.S.C. 553 (a) (2)] or by any other law for this document concerning grants, benefits, and contracts. Accordingly, a regulatory flexibility analysis is not required by the

Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The CRP will determine National Environmental Policy Act compliance on a project by project basis.

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

The use of the standard NOAA grants application package referred to in this notice involves collection-of-information requirements subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, 424B, SF-LLL, and CD–346 have been approved by OMB under the respective control numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the Paperwork Reduction Act, unless that collection displays a currently valid OMB control number.

Dated: December 27, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 02–33136 Filed 12–31–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–2170–000 and ER02–2170–001]

Before Commissioners: Pat Wood, III, Chairman; William L. Massey, and Nora Mead Brownell: Aquila, Inc.; Order Accepting for Filing and Suspending Power Sales and Purchase Agreement, Establishing Hearing Procedures, and Providing Guidance on Affiliate Sales Policy

December 20, 2002.

1. In this order, we will accept, suspend, make effective subject to refund, and set for hearing, Aquila Inc.'s (Aquila) executed Master Power Sales and Purchase Agreement (Agreement) for the sale of electric energy to its affiliated power marketer, Aquila Merchant Services (AMS). This order establishes an evidentiary hearing to determine whether the price charged by Aquila for the affiliate sale to AMS under the Agreement addresses the Commission's affiliate abuse concerns; *i.e.*, was not below the relevant market price. This order benefits customers because it provides guidance on the Commission's affiliate sales policy and ensures that customers are protected from affiliate abuse.

Background

2. On June 26, 2002, Aquila filed the Agreement with the Commission for the sale of up to 70 MWh per hour of electric energy from Aquila to its affiliated power marketer, AMS, for the period June 28, 2002 through August 31, 2002.[1] The Agreement established the sale price as the highest of: (1) $32.00 per MWh; (2) 110 percent of the seller's incremental cost; (3) the seller's highest hourly priced sale during the hour; or (4) an hourly price tied to the ''Into Cinergy'' trading hub prices for that day, as published by Megawatt Daily.[2] According to Aquila, this would ensure that the sale price under the Agreement would not be too low and could not result in harm to Aquila's captive ratepayers. Aquila requested an effective date of June 28, 2002.

3. On August 23, 2002, Commission staff issued a deficiency letter requesting that Aquila: (1) Provide cost support for the $32.00 per MWh rate; (2) explain why ''Into Cinergy'' as published by Megawatt Daily is an appropriate index; and (3) further explain the 70 percent and 130 percent multiplier. The deficiency letter also required that the Agreement be filed as a stand-alone rate schedule.

4. During the period June 28, 2002 through August 31, 2002, Aquila went forward with the affiliate sale to AMS pursuant to the Agreement.

5. On October 22, 2002, Aquila filed its response to the deficiency letter. It explains that the $32.00 per MWh rate was a negotiated rate floor to be utilized only during an hour when the ''Into Cinergy'' price, 110 percent of Aquila's incremental cost and the price in the highest priced Aquila off-system sale were all below $32.00 in a given hour. Aquila also claims that ''Into Cinergy'' is the appropriate index for the Aquila system because it represents the closest liquid trading point to the market in Missouri. According to Aquila, the only other alternative, the ''Into Entergy'' trading hub, is not liquid and there are frequent transmission constraints between Entergy and Missouri which cause a separation of market prices. In addition, Aquila explains that the 70 percent and 130 percent multipliers were developed as a proxy for converting the average 16-hour ''Into Cinergy'' trading hub market price into useful hourly prices.[3] Further, Aquila states that in every one of the 36 hours of the Agreement under which energy was purchased, the sales price was higher than the relevant adjusted ''Into Cinergy'' price.[4] Aquila also designates the Agreement as Aquila's FERC Rate Schedule No. 120.

Notice of Filing

6. Notice of Aquila's June 26, 2002 filing was published in the **Federal Register**, 67 FR 45,716 (2002), with comments, interventions or protests due on or before July 17, 2002. None was filed. Notice of Aquila's October 22, 2002 filing was published in the **Federal Register**, 67 FR 67,165 (2002), with comments, interventions or protests due on or before November 12, 2002. None was filed.

Discussion

7. A traditional public utility with market-based rate authority is prohibited from making sales to an affiliate absent prior approval from the Commission in a separate filing under section 205 of the Federal Power Act (FPA).[5] The Commission requires that this prohibition be included in the utility's market-based rate tariff unless the Commission has otherwise authorized the utility to transact with its affiliates.[6]

8. The Commission has also stated that affiliate abuse takes place when a traditional public utility and its affiliated power marketer transact in ways that result in a transfer of benefits from the traditional public utility (and its captive customers) to the affiliated power marketer (and its shareholders).[7] Because sales of power between an

[1] Aquila stated that it filed the Agreement with the Commission because it involves a sale of electric energy from Aquila to an affiliated power marketer.

[2] Aquila stated that the sale price would be no lower than 70 percent of the ''Into Cinergy'' index for hours between 6 a.m. and noon and between 8 p.m. and 10 p.m.; and 130 percent of the ''Into Cinergy'' index for hours between noon and 8 p.m. *See* June 26 Transmittal at 2.

[3] Aquila states that the 70 percent multiplier discounts the 16-hour ''Into Cinergy'' Hub price for the morning and evening hours when the typical hourly market is lower than the 16-hour average while the 130 percent multiplier applies a premium for the peak hours when the hourly market is above the average. It asserts that while it did not use a study to determine the 70 percent and 130 percent multipliers, it determined that these numbers were conservative based on the actual hourly prices in the market. *See* October 22 Transmittal at 3.

[4] Aquila states that energy was scheduled during only five percent of the hours when the Agreement was operative, which it claims demonstrates that the pricing was not favorable to the purchaser. *See* October 22 Transmittal at 4. Aquila attaches an after-the-fact analysis of the hourly energy prices for the ''Into Cinergy'' hub as reported in Megawatt Daily for the 16-hour period of 6 a.m. through 10 p.m. for June, July and August 2002. *See* Attachment A, October 22 Transmittal.

[5] 16 U.S.C. 824d (2000).

[6] *See, e.g.*, AES Placerita, Inc. *et al.*, 89 FERC ¶ 61,202 at 61,613 (1999).

[7] *See, e.g.*, Heartland Energy Services Inc., 68 FERC ¶ 61,223 at 62,062 (1994).

affiliated power marketer and an affiliated public utility are not at arms-length and present the situations in which affiliate abuse may be the most prevalent, the Commission requires that no sale of power occur unless the Commission approves the transaction in a separate rate filing under section 205.[8] In evaluating whether to approve a request to sell power to an affiliate where a traditional public utility, such as Aquila, makes sales to an affiliated power marketer, the Commission is concerned that such sales not be made at a rate that is too low (*i.e.*, below market price).[9]

9. In the instant case, Aquila filed under section 205 of the FPA for authority to make sales to its affiliated power marketer pursuant to the terms and conditions of the Agreement. However, Aquila submitted its proposal two days prior to the service commencement date and proceeded to transact under the Agreement without prior Commission approval. As noted, initiating such a sale before receiving our authorization is not consistent with our precedent.

10. Aquila submits that the sale price as established in the Agreement addresses the Commission's affiliate abuse concerns because it sets the sale price at the highest of: (1) $32.00 per MWh; (2) 110 percent of the seller's incremental cost; (3) the seller's highest hourly priced sale during the hour or; (4) an hourly price tied to the ''Into Cinergy'' trading hub prices for that day, as published by Megawatt Daily. Although Aquila attempts to demonstrate why the pricing protections proposed in the Agreement would produce a sales price that is not below the market price, the more appropriate question at this point in time, given that the term of the Agreement has concluded, is what harm, if any, captive customers have experienced as a result of the transactions. In particular, the key issue is whether the price actually charged for the sales in question under the Agreement satisfied the Commission's affiliate abuse concerns; *i.e.*, was not below the relevant market price.

11. Because we are unable to resolve this issue based on the record before us, we will require an evidentiary hearing. We encourage the parties to provide a diverse range of evidence for purposes of establishing relevant market prices. This should include benchmark evidence which shows the prices, terms and conditions of sales made by non-affiliated sellers or evidence of the prices that non-affiliated buyers were willing to pay for similar services from Aquila. Accordingly, we will accept the Agreement for filing, suspend it for a nominal period to become effective June 28, 2002, subject to refund, and establish an evidentiary hearing on the pricing issue. If Aquila is found to have transacted at a price below the relevant market price, the Commission will consider, among other remedies, requiring a surcharge up to the market price with interest.[10]

12. Finally, we reaffirm that sales of power between a traditional public utility and its affiliates are not permitted without first receiving Commission approval of the transaction under section 205 of the FPA.[11]

The Commission orders:

(A) The Agreement is hereby accepted for filing and suspended for a nominal period, to become effective June 28, 2002, subject to refund.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 402(a) of the Department of Energy Organization Act and the Federal Power Act, particularly Sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR chapter 1), a public hearing shall be held in Docket No. ER02–2170–001, as discussed in the body of this order.

(C) A Presiding Administrative Law Judge (ALJ), to be designated by the Chief Administrative Law Judge for that purpose, pursuant to 18 CFR 375.304 (2002), must convene a prehearing conference in this proceeding to be held within approximately fifteen (15) days after issuance of this order, in a hearing or conference room of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The Presiding Judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided for in the Commission's Rules of Practice and Procedure.

(D) The Secretary is hereby directed to publish a copy of this order in the **Federal Register.**

By the Commission.

Magalie R. Salas,

Secretary.

[FR Doc. 02–33093 Filed 12–31–02; 8:45 am]

BILLING CODE 6717–01–P

[8] *See, e.g.*, Heartland Energy Services, Inc., 68 FERC ¶ 61,223 at 62,064 (1994); Southern Company Services, Inc., 72 FERC ¶ 61,324 at 62,047 (1995); Tucson Electric Power Company, 81 FERC ¶ 61,131 at 61,623 (1997); Central and South West Services, Inc., 82 FERC ¶ 61,001 at 61,003 (1998), *reh'g denied,* 85 FERC ¶ 61,444 (1998).

[9] *See, e.g.*, Pinnacle West Capital Corp., *et al.*, 91 FERC 61,290 (2000); *reh'g denied,* 95 FERC ¶ 61,300 (2001). *See also* Detroit Edison Co., 80 FERC ¶ 61,348 (1997) (*Detroit Edison*), where the Commission allowed sales by a public utility to its affiliated power marketer subject to the following conditions: (1) The sale must be at a rate that is no lower than the rate it charges non-affiliates; (2) the public utility must make the same offer to unaffiliated entities at the same time through its electronic bulletin board; (3) the public utility must simultaneously post the actual price charged to its affiliate for all transactions. *Id.* at 62,198.

[10] We note that we have the statutory authority to order such remedies as we may deem appropriate. 16 U.S.C. 825h (2000).

[11] See *supra* ¶ 7 & 9.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–090]

CenterPoint Energy Gas Transmission Company; Notice of Compliance Filing

December 26, 2002.

Take notice that on December 23, 2002, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets to be effective as of November 4, 2002:

Substitute Original Sheet No. 461.
Substitute Original Sheet No. 654.

CEGT states that the purpose of this filing is to comply with the Commission's order issued October 31, 2002 in this docket.

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: January 6, 2003.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–33058 Filed 12–31–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–329–003]

Great Lakes Gas Transmission Limited Partnership; Notice of Compiance Filing

December 26, 2002.

Take notice that on December 23, 2002, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 the following tariff sheets, proposed to be effective October 1, 2002:

Substitute First Revised Sheet No. 14A.
Substitute First Revised Sheet No. 15.
Substitute Fourth Revised Sheet No. 39A.
Substitute First Revised Sheet No. 39B.
Seventh Revised Sheet No. 40A.

Great Lakes states that these tariff sheets are being filed in compliance with the Commission's November 21, 2002 Order on Clarification and Rehearing in Docket No. RP00–329–002 (November 21 Order), wherein the Commission denied rehearing and clarified that shippers may add or change to primary points within the zones for which they are paying, to the extent there is available capacity. Great Lakes was directed to file revised tariff sheets within thirty (30) days of the November 21 Order consistent with the modifications set forth in that Order. The tariff sheets included in this compliance tariff filing reflect those required modifications.

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: January 6, 2003.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–33059 Filed 12–31–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–530–001]

Guardian Pipeline, L.L.C.; Notice of Compliance Filing

December 26, 2002.

Take notice that on December 20, 2002 Guardian Pipeline, L.L.C. (Guardian), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the revised tariff sheets, as listed in Appendix A attached to the filing, to be effective February 1, 2003.

Guardian states that in the Order issued November 29, 2002, the Commission generally accepted Guardian's filing, including pro forma tariff sheets, made on September 3, 2002, in Docket No. RP02–530–000 in compliance with Order No. 637 (Order No. 637, Regulations of Short Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services, FERC Stats. & Regs. (CCH) 31,091, Order No. 637–A, FERC Stats. & Regs. (CCH) 31,099, Order No. 637–B, 92 F.E.R.C. (CCH) 61,062 (2000), aff'd in part and remanded in part sub nom., Interstate Natural Gas Ass'n of America v. FERC, 285 F.3d 18 (DC Cir. 2002)) and directed Guardian to file actual tariff sheets, consistent with the directives in the Order, to implement Guardian's Order No. 637 compliance filing. Guardian states that this filing is to comply with the directives set forth in the Order.

Guardian states that copies of this tariff filing are being served on its shippers, the Wisconsin and Illinois public service commissions, and all parties to this proceeding.

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: January 2, 2003.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–33063 Filed 12–31–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docekt No. RP03–210–000]

Guardian Pipeline, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

December 26, 2002.

Take notice that on December 20, 2002, Guardian Pipeline, L.L.C. (Guardian), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, revised tariff sheets as listed in Appendix A attached to the filing, to be effective February 1, 2003.

Guardian states that the purpose of this filing is to two fold. First, Guardian is proposing to modify its cash-out mechanism to include a weekly pricing mechanism. Second, Guardian is proposing to strike certain language from its Pro Forma Service Agreement that prevents shippers that receive service at negotiated rates under Section 26.2 of the GT&C from protesting or otherwise contesting any filing by Transporter to adjust its rates and charges.

Guardian states that copies of this tariff filing are being served on its shippers and the Wisconsin and Illinois public service commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's 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: January 2, 2003.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–33064 Filed 12–31–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–56–001]

Guardian Pipeline, L.L.C.; Notice of Compliance Filing

December 26, 2002.

Take notice that on December 20, 2002, Guardian Pipeline, L.L.C. (Guardian), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the revised tariff sheets as listed in Appendix A attached to the filing, to be effective December 1, 2002.

Guardian states that in the Order issued November 29, 2002, the Commission, inter alia, accepted, subject to certain modifications, tariff sheets filed by Guardian on October 31, 2002, in Docket No. RP03–56–000 to implement an interruptible park and loan service under new Rate Schedule PAL and an enhanced aggregation and wheeling service under new Rate Schedule EAW. Guardian states that the Commission accepted those tariff sheets filed in Docket No. RP03–56–000 effective December 1, 2002, subject to Guardian making a compliance filing within thirty (30) days of the date of the Order. Guardian states that this filing is intended to comply with the directives set forth in the Order with respect to Docket No. RP03–56–000.

Guardian states that copies of this tariff filing are being served on its shippers, the Wisconsin and Illinois public service commissions and parties to this docket.

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: January 2, 2003.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–33070 Filed 12–31–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–155–001]

In the Matter of Gulf South Pipeline Company, L.P.; Notice of Compliance Filing

December 26, 2002.

Take notice that on December 20, 2002, Gulf South Pipeline Company (Gulf South), 20 East Greenway, Houston, Texas 77046, filed in the referenced proceeding, pursuant to section 7(c) of the Natural Gas Act, as amended, a compliance filing as required by the Commission's Order Issuing Certificate, issued November 21, 2001, (101 FERC 61,204 (2002). In this filing, Gulf South is submitting pro forma tariff sheets to revise its FSS-M Rate Schedule for the Magnolia Gas Storage Facility and providing an explanation of how it is marketing the firm storage capacity at Magnolia, along with a copy of the information package sent to interested parties. The filing is on file with the Commission and open to public inspection. This filing may be viewed on the web at *http://www.ferc.gov* using the ''FERRIS'' link (please call (202) 502–8423 for assistance).

The name, address, and telephone number of the person to whom correspondence and communications concerning this application should be addressed is: J. Kyle Stephens, Director of Certificates; Gulf South Pipeline Company, L.P., 20 East Greenway Plaza, Houston, Texas, 77046; phone: (713) 544–7309; fax: (713) 544–3540; e:mail: *kyle.stephens@gulfsouthpl.com*.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 16, 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 C F R 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. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. Instructions may be found on the

Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–33050 Filed 12–31–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–213–000]

Gulf South Pipeline Company, LP; Notice of Proposed Changes in FERC Gas Tariff

December 26, 2002.

Take notice that on December 20, 2002, Gulf South Pipeline Company, LP (Gulf South) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets, to become effective January 19, 2003.

Second Revised Sheet No. 1
Third Revised Sheet No. 2
First Revised Sheet No. 25
First Revised Sheet No. 303
Second Revised Sheet No. 400
First Revised Sheet No. 401
First Revised Sheet No. 402
First Revised Sheet No. 403
Second Revised Sheet No. 404
Second Revised Sheet No. 405
Sheet Nos. 406–449
Sheet Nos. 456–499
Third Revised Sheet No. 502
First Revised Sheet No. 504
Original Sheet No. 1417
Original Sheet No. 1418
Original Sheet No. 1419
Original Sheet No. 1420
Original Sheet No. 1421
Sheet Nos. 1422–1499
Second Revised Sheet No. 1905
Second Revised Sheet No. 2002
Third Revised Sheet No. 2701
Fourth Revised Sheet No. 2702
Fourth Revised Sheet No. 3613
Second Revised Sheet No. 3705
Third Revised Sheet No. 3706
Second Revised Sheet No. 4010
Third Revised Sheet No. 4400

Gulf South states that it is proposing to modify various aspects of its tariff to recognize that firm storage services will be offered at both its Bistineau and Magnolia storage facilities. In addition, Gulf South states that it is proposing to establish guidelines under which the initial Magnolia firm storage capacity will be sold and additional auction procedures that will be followed by Gulf South to market available firm storage capacity from Magnolia after August 1, 2003 and Bistineau that is not subject to contractual right of first refusal.

Gulf South states that copies of this filing have been served upon Gulf South's customers, state commissions and other interested parties.

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: January 2, 2003.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–33067 Filed 12–31–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–153–003]

Horizon Pipeline Company, L.L.C.; Notice of Compliance Filing

December 26, 2002.

Take notice that on December 23, 2002, Horizon Pipeline Company, L.L.C. (Horizon) tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, tariff sheets listed in Appendix A to the filing, with an effective date of December 23, 2002.

Horizon states that the purpose of this filing is to comply with the Commission's Order on Compliance with Order No. 637 issued in Docket Nos. RP02–153–000, *et al.*, on November 21, 2002 (Order). The Order approved, subject to a number of modifications, Horizon's Order No. 637 compliance plan submitted herein on January 30, 2002.

Horizon states that copies of the filing are being mailed to all parties set out on the Commission's official service list in Docket No. RP02–153–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: January 6, 2003.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–33061 Filed 12–31–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–214–000]

Kinder Morgan Interstate Gas Transmission LLC; Notice of Tariff Filing

December 26, 2002.

Take notice that on December 23, 2002, Kinder Morgan Interstate Gas Transmission LLC (KMIGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1–B, Third Revised Sheet No. 37, to become effective January 23, 2003.

KMIGT states that the purpose of this filing is to revise Section 18.5 of KMIGT's General Terms and Conditions (GT&C) in order to eliminate the five-

year term matching cap concerning the exercise of the right of first refusal in compliance with the Commission Order on Remand issued October 31, 2002.

KMIGT states that a copy of this filing has been served upon all of its customers and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's 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: January 6, 2003.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–33068 Filed 12–31–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–409–004 and RP00–631–003]

Natural Gas Pipeline Company of America; Notice of Compliance Filing

December 26, 2002.

Take notice that on December 23, 2002, Natural Gas Pipeline Company of America (Natural) tendered for filing to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the revised tariff sheets listed on Appendix A to the filing, with a effective date of December 23, 2002.

Natural states that the purpose of this filing is to comply with the Commission's Order on Compliance with Order Nos. 637, 587–G and 587–L, issued in Docket Nos. RP00–409–000 and RP00–631–000, *et al.*, on November 21, 2002. The Order approved, subject to a number of modifications, Natural's Revised and Restated Order No. 637 Compliance Plan submitted herein on September 28, 2001.

Natural states that copies of the filing are being mailed to all parties set out on the Commission's official service list in Docket Nos. RP02–409–000 and RP00–631–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: January 6, 2003.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–33060 Filed 12–31–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–70–000]

PG&E Gas Transmission, Northwest Corporation; Notice of Technical Conference

December 26, 2002.

In the Commission's order issued on December 6, 2002,[1] the Commission directed that a technical conference be held to address issues raised by the filing.

Take notice that the technical conference will be held on Friday, January 10, 2003, at 10:30 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

All interested parties and Staff are permitted to attend.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–33071 Filed 12–31–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docekt No. RP02–445–002]

Sea Robin Pipeline Company; Notice of Compliance Filing

December 26, 2002.

Take notice that on December 20, 2002, Sea Robin Pipeline Company (Sea Robin) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Eighth Revised Sheet No. 2, to be effective October 1, 2002.

Sea Robin states that the purpose of this filing, made in accordance with the provisions of Section 154.204 of the Commission's Regulations, is to conform the pagination and content of Tariff Sheet No. 2 to reflect the Commission's acceptance of tariff revisions in Docket Nos. RP00–470–001 and RP02–445–000. Sea Robin is proposing no change to the content on Sheet No. 2 that has been accepted by the Commission in these two separate filings.

Sea Robin's states that copies of this filing are being served on all jurisdictional customers and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the

[1] PG&E Gas Transmission, Northwest Corporation, 101 FERC 61,280 (2002).

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: January 2, 2003.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–33062 Filed 12–31–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–212–000]

Sea Robin Pipeline Company; Notice of Flowthrough Crediting Mechanism

December 26, 2002.

Take notice that on December 20, 2002, Sea Robin Pipeline Company (Sea Robin) submitted its Annual Flowthrough Crediting Mechanism Filing. Sea Robin states that the purpose of this filing was made pursuant to Section 27 of the General Terms and Conditions of Sea Robin's FERC Gas Tariff which requires the crediting of certain amounts received as a result of resolving monthly imbalances between its gas and liquefiables shippers and under its operational balancing agreements as described in Section 6 of its Tariff, and to accumulate amounts received as a result of imposing scheduling penalties as described in section 5.8 of its Tariff.

Sea Robin reports that it received $665,506.21 in excess of amounts paid to shippers for the twelve months ended October 31, 2002. In accordance with Section 27.1, this excess amount will be credited to shippers, based upon shippers' transportation volumes for the twelve months ended October 31, 2002.

Sea Robin further states that copies of this filing are being served on all affected customers, applicable state regulatory agencies and parties to the proceeding.

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 January 3, 2003. 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. 02–33066 Filed 12–31–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 516]

South Carolina Electric and Gas Company; Notice of Meetings to Discuss Three Filings Before the Commission and Soliciting Comments

December 26, 2002.

The Federal Energy Regulatory Commission (FERC or Commission) will hold meetings in the project area to discuss three matters pending before the Commission associated with the South Carolina Electric and Gas Company's (license or SCE&G) Saluda Project No. 516. The Saluda Project is located on the Saluda River in Richland, Lexington, Saluda, and Newberry counties, near Columbia, South Carolina.

The three matters are as follows: (1) The Commission's request for comments on the September 4, 2002, Environmental Assessment (EA), on SCE&G's applications to sell project lands for future development (subdockets –319, –321, –326, –329, –330, –330, –331, –332, –333, –354, –355, –356, –357, –358, and –359); (2) the Land Use and Shoreline Management Plan update (LUSMP) filed by the licensee on February 1, 2000, and supplemented on March 28, 2002, for Commission review and approval (subdocket –318); and (3)the investigation of alleged unauthorized clearing of lands within the project boundary (subdocket –353).

We invite the written and oral comments from federal and state resource agencies, non-governmental organizations, and the general public at the meetings. We will hold two meetings, one on January 21, 2003, from 6:30–9 p.m. at the Irmo Elementary School, 7401 Gibbes Street, Irmo, SC 29063 and the second meeting on January 22, 2003, from 8:30 a.m.–11:30 a.m. at the Embassy Suites Hotel, Columbia-Greystone, 200 Stoneridge Drive, Columbia, SC 29210. The public and agencies may attend either or both meetings.

SCE&G has requested that the meeting address: (1) A brief history and overview of Lake Murray shoreline management; (2) the status of FERC review of the LUSMP update; (3) the Commission's October 9, 2002, letter regarding shoreline vegetation; (4) the proposed recommendations of the land-sale EA; (5) the factual and scientific basis cited for FERC-imposed shoreline conditions; (6) the standard of proof required to refute allegations of LUSMP violations; (7) the appropriate means for determining factual and scientific basis for evaluation of project lands and waters; and (8) miscellaneous issues as they relate to the three matters.

While we appreciate the suggestions of the licensee, Commission staff will limit comments and discussions to the three maters identified above, and the upcoming licensing process. We also request that the licensee and/or state representative provide a status update on the proposed land swap/donation with the State of South Carolina.

The meetings will be recorded by a stenographer and will become part of the record for this project. An agenda for the meeting is attached.

Interested parties may also file written comments. All such comments (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments 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. Please include the project number (P–516 and appropriate subdocket) on any comments.

The deadline for filing comments is February 28, 2003.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Please direct any questions about this meeting to Jack Hannula at (202) 502–8917 or Elizabeth Jones at (202) 502–8246. Licensee contact is Mr. Brian McManus, (202) 879–5452, Attorney on behalf of SCE&G.

Linwood A. Watson, Jr.,
Deputy Secretary.

Saluda Project No. 516; South Carolina Gas & Electric Company

January 21 and January 22, 2002

Meeting Agenda

Irmo School, Tuesday, January 21:

6:30 Introduction and meeting procedures (FERC)
7 History and Overview of Shoreline Management (SCE&G)
7:30 Discussions on SCE&G's applications to sell project lands for future private development; the LUSMP filed for Commission review and approval, and the investigation of alleged unauthorized clearing of lands (All)
8:30 Status of proposed land swap/ donation to the state (SCE&G) 8:45 Status of SCE&G's relicensing plans (SCE&G)

Embassy Suites Hotel, Wednesday, January 22

8:30 Introduction and meeting procedures (FERC)
9 History and Overview of Shoreline Management (SCE&G)
9:40 Discussions on SCE&G's applications to sell project lands for future private development; the LUSMP filed for Commission review and approval, and the investigation of alleged unauthorized clearing of lands (All)
10:50 Status of proposed land swap/ donation to the state (SCE&G)
11:10 Status of SCE&G's relicensing plans (SCE&G)

Magalie R. Salas,
Secretary.

[FR Doc. 02–33054 Filed 12–31–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–211–000]

Texas Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 26, 2002.

Take notice that on December 20, 2002, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets to become effective on January 1, 2003:

Sixth Revised Sheet No. 193.
First Revised Sheet No. 193A.
Sixth Revised Sheet No. 236.
First Revised Sheet No. 237.

Texas Gas states that the purpose of the instant filing is to comply with the Order on Remand issued by the Commission on October 31, 2002, which affirmed its determination on Order No. 637 that pipelines must permit a segmented transaction that consists of a backhaul and a forward haul to the same point that exceeds the shipper's maximum contract demand at that point.

Texas Gas states that copies of the revised tariff sheets are being mailed to all parties on the official service list, to Texas Gas's jurisdictional customers and to interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's 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: January 2, 2003.

Linwood A. Watson, Jr.,
Deputy Secretary.

[FR Doc. 02–33065 Filed 12–31–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–215–000]

TransColorado Gas Transmission Company; Notice of Tariff Filing

December 26, 2002.

Take notice that on December 23, 2002, TransColorado Gas Transmission Company (TransColorado) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to be effective January 23, 2003:

Original Sheet No. 0
Original Sheet No. 10
Original Sheet No. 229
Original Sheet No. 258
Original Sheet No. 265

TransColorado states that the purposes of this filing are to reflect a transfer of ownership of an interest in the partnership, state a new issuing officer for the tariff, make some housekeeping changes, and to revise Section 18.5 of TransColorado's General Terms and Conditions (GT&C) in order to eliminate the five-year term matching cap concerning the exercise of the right of first refusal in compliance with the Commission Order on Remand issued October 31, 2002.

TransColorado states that a copy of this filing has been served upon all of its customers and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's 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: January 6, 2003.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–33069 Filed 12–31–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–33–000, et al.]

Idaho Power Company, IDACORP Energy, L.P, et al.; Electric Rate and Corporate Filings

December 23, 200.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification:

1. Idaho Power Company, IDACORP Energy L.P.

[Docket No. EC03–33–000]

Take notice that on December 18, 2002, Idaho Power Company (Idaho Power) and IDACORP Energy, L.P. (IELP, collectively Applicants) filed an Application for Commission Approval of Disposition of Jurisdictional Facilities under Section 203 of the Federal Power Act. The jurisdictional facilities that are the subject of the Application are certain wholesale power sales transactions (Grays Harbor Transactions) between Idaho Power and Grays Harbor County Public Utility District No. 1. By their Application, Applicants seeks Commission approval for the assignment of the Grays Harbor Transactions from Idaho Power to IELP.

Comment Date: January 8, 2003.

2. Idaho Power Company, IDACORP Energy, L.P.

[Docket No. EC03–34–000]

Take notice that on December 18, 2002, Idaho Power Company (Idaho Power) and IDACORP Energy, L.P. (IELP, collectively Applicants) filed an Application for Commission Approval of Disposition of Jurisdictional Facilities under Section 203 of the Federal Power Act. The jurisdictional facilities that are the subject of the Application are certain wholesale power sales transactions (Overton Transactions) between Idaho Power and Overton Power District No. 5. By their Application, Applicants seeks Commission approval for the assignment of the Overton Transactions from Idaho Power to IELP.

Comment Date: January 8, 2003.

3. Mountain View Power Partners, LLC, San Gorgonio Power Corporation, Centennial Power, Inc., Mountain View Power Partners, LLC

[Docket Nos. EC03–35–000 and ER01–751–002]

Take notice that on December 19, 2002, Mountain View Power Partners, LLC (Mountain View), San Gorgonio Power Corporation (San Gorgonio) and Centennial Power, Inc. (Centennial) tendered for filing an application pursuant to Section 203 of the Federal Power Act for authorization to dispose of jurisdictional facilities. San Gorgonio will transfer 100% of the membership interests in Mountain View to Centennial. Mountain View owns and operates an approximately 66.6 MW wind power generating plant (Project) located in San Gorgonio Pass of Riverside County, California, near the city of Palm Springs. Mountain View is currently wholly owned by San Gorgonio. Pursuant to an acquisition agreement, the proposed transaction will result in the disposition of FERC-jurisdictional facilities consisting of Mountain View's market-based rate tariff, related power sales agreement, and minor interconnection facilities connecting the Project to the transmission grid. Mountain View also requests that the Commission accept this filing as a notice of change in status with respect to its market-based rate authorization.

Comment Date: January 9, 2003.

4. San Diego Gas & Electric Company

[Docket No. ER02–1790–001]

Take notice that on December 16, 2002, pursuant to Commission Order dated June 24, 2002, San Diego Gas & Electric Company (SDG&E) tendered for filing its First Revised Service Agreement No. 1 to SDG&E's FERC Electric Tariff, First Revised Volume No. 6., incorporating revisions to the Interconnection Facilities Agreement with Otay Mesa Generating Company, LLC (OMG). The revised Service Agreement implements Internal Revenue Service Notice 2001–82, ''Expansion of Safe Harbor Provisions Under Notice 88–129'', which provides in certain circumstances, regulated public utilities, such as SDG&E will not realize income upon contributions by interconnecting electric generators of certain interconnection facilities. The amendment further clarifies terms pertaining to creditworthiness requirements of OMG and the guarantor of OMG's financial obligations as contemplated by Section 10.22. The amendments were approved in the June 24, 2002 Letter Order, conditioned on SDG&E's filing of the Revised Service Agreement within thirty days. SDG&E requests that the filing be accepted out-of-time.

SDG&E states that copies of the filing have been served on OMG and on the California Public Utilities Commission.

Comment date: January 6, 2003.

5. New England Power Company

[Docket No. ER02–2568–002]

Take notice that on December 19, 2002, in compliance with the Commission's November 19, 2002 ''Order Accepting Unexecuted Related Facilities Agreement, As Modified For Filing'' (New England Power Company, 101 FERC 61,183), New England Power Company (NEP) submitted for filing First Revised Service Agreement No. 214 between NEP and Lake Road Generating Company, L.P. under NEP's open access transmission tariff, New England Power Company, FERC Electric Tariff, Original Volume No. 9.

Comment Date: January 9, 2003.

6. Commonwealth Edison Company

[Docket No. ER02–2598–001]

Take notice that on December 18, 2002, Commonwealth Edison Company (ComEd) tender for filing a refund report in compliance with the Commission's Order issued on November 21, 2002.

ComEd states that a copy of this filing is being served upon NRG Power Marketing, Inc.

Comment Date: January 8, 2003.

7. PJM Interconnection, L.L.C.

[Docket No. ER03–262–001]

Take notice that on December 19, 2002, the New PJM Co panies and PJM Interconnection, L.L.C. (PJM) submitted a filing to include the New PJM Companies as transmission owners within PJM and to make associated revision to the PJM Transmission Owners Agreement, the PJM West Transmission Owners Agreement (West TOA), the PJM Operating Agreement, and the PJM Open Access trransmission Tariff (PJM Tariff).

Comment Date: January 9, 2003.

8. Arizona Public Service Company

[Docket No. ER03–294–000]

Take notice that on December 19, 2002, Arizona Public Service Company submitted a Notice of Cancellation effective January 1, 2002, Service Agreement No. 60, FERC Electric Tariff, Volume No. 3 dated December 4, 2001.

Comment Date: January 9, 2003.

9. SESCO Enterprises, LLC.

[Docket No. ER03–295–000]

Take notice that on December 18, 2002, SESCO Enterprises, LLC. (SESCO) petitioned the Commission for acceptance of SESCO Rate Schedule 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.

SESCO intends to engage in wholesale electric power and energy purchases and sales as a marketer. SESCO is not in the business of generating or transmitting electric power.

Comment Date: January 9, 2003.

10. Southern Company Services, Inc.

Docket Nos. ER03–298–000]

Take notice that on December 18, 2002, Southern Company Services, Inc. (SCS) acting on behalf of Alabama Power Company (APC), filed the Interconnection Agreement (Agreement) between Mobile Energy Services, L.L.C. and APC. The Agreement allows Mobile Energy to interconnect its facility in Mobile, Alabama and to operate in parallel with APC's electric system. The Agreement is dated as of November 18, 2002 and terminates in one (1) year.

An effective date of November 18, 2002 has been requested.

Comment Date: January 8, 2003.

11. American Transmission Company LLC

[Docket No. ES03–18–000]

Take notice that on December 18, 2002, American Transmission Company LLC (ATCLLC) tendered for an Application Under Section 204 of the Federal Power Act for Authorization to Issue notes and debt securities with a total amount outstanding at one time not to exceed $710,000,000, to issue $393,000,000 in additional equity interests and for waiver of certain part 34 requirements.

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. 02–33076 Filed 12–31–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–36–000, et al]

Northwestern Wind Power, LLC, et al.; Electric Rate and Corporate Filings

December 24, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification:

1. Northwestern Wind Power, LLC

[Docket No. EC03–36–000]

Take notice that on December 20, 2002, Northwestern Wind Power, LLC (Northwestern) and Klondike Wind Power LLC (Klondike) filed an application for authorization pursuant to Section 203 of the Federal Power Act for Northwestern to sell, and for Klondike to purchase, certain assets of Northwestern's Klondike Project in Oregon. The transaction would transfer ownership of a 24 megawatt wind electric generation facility at the Klondike Project. Jurisdictional assets included in the transaction are a long-term power purchase agreement for the facility's entire output, and limited substation transmission facilities necessary to interconnect the facility's power to a transmitting utility.

Comment Date: January 7, 2003.

2. Flying Cloud Power Partners, LLC

[Docket No. EG02–32–000]

Take notice that on December 20, 2002, Flying Cloud Power Partners, LLC (Flying Cloud), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Flying Cloud, a Delaware limited liability company, will be engaged directly and exclusively in the business of owning all or part of one or more eligible facilities, and selling electric energy at wholesale. Flying Cloud is developing a 43.5 megawatt wind power generation facility to be located in Dickinson County, Iowa (the ''Facilities''). The Facilities will be eligible facilities pursuant to Section 32(a)(2) of PUHCA. Flying Cloud states that it has served a copy of the filing on the Securities and Exchange Commission and the Iowa Utilities Board.

Comment Date: January 14, 2003.

3. Just Energy, LLC

[Docket No. ER02–2134–002]

Take notice that on December 19, 2002, Just Energy, LLC (Just Energy) tendered for filing a compliance filing in the above-referenced docket involving Just Energy, LLC Tariff Sheet No. 1.

Comment Date: January 10, 2003.

4. Virginia Electric and Power Company

[Docket No. ER03–106–002]

Take notice that on December 20, 2002, Virginia Electric and Power Company (the Dominion Virginia Power or Company), respectfully tendered for filing the second amended filing in this proceeding. Dominion Virginia Power respectfully requests a waiver of the Commission's regulations and permit an effective date of January 1, 2003, as requested in the filing of October 31, 2002.

Dominion Virginia Power states that copies of the filing were served upon the Virginia State Corporation Commission, the North Carolina Utilities Commission, Old Dominion Electric Cooperative, and all customers under the wholesale cost based tariff.

Comment Date: January 10, 2003.

5. Flying Cloud Power Partners, LLC

[Docket No. ER03–296–000]

Take notice that on December 19, 2002, Flying Cloud Power Partners, LLC (Flying Cloud) tendered for filing pursuant to 18 CFR 385.205, an Application for Order Accepting Initial Rate Schedule, Granting Authorizations and Blanket Authority and Waving Certain Requirements.

Comment Date: January 9, 2003.

6. New York Independent System Operator, Inc.

[Docket No. ER03–297–000]

Take notice that on December 19, 2002, the New York Independent System Operator, Inc. (NYISO), filed proposed revisions to the NYISO's Market Administration and Control Area Services Tariff (Services Tariff). The proposed filing would amend the TCC credit policy. The NYISO has requested that the Commission make the filing effective on January 10, 2003.

The NYISO has served a copy of this filing to all parties that have executed Service Agreements under the NYISO's Open-Access Transmission Tariff or Services Tariff, the New York State Public Service Commission and to the electric utility regulatory agencies in New Jersey and Pennsylvania.

Comment Date: January 9, 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.

[FR Doc. 02–33077 Filed 12–31–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Request to Amend License and Solicit Comments, Motions to Intervene, and Protests

December 26, 2002.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of license to delete license article 434.

b. *Project No:* 2058–027.

c. *Date Filed:* April 11, 2002.

d. *Applicant:* Avista Corporation.

e. *Name of Project:* Clark Fork.

f. *Location:* The Clark Fork Project is located on the Clark Fork River in Bonner County, Idaho and Sanders County, Montana.

g. *Filed Pursuant to:* Federal Power Act, (16 U.S.C. 791(a) 825) and 799 and 801.

h. *Applicant Contact:* Steven Fry, Avista Corporation, 1411 East Mission, P.O. Box 3727, Spokane, WA 99220–0500, (509) 495–4084.

i. *FERC Contact:* Any questions regarding this notice should be addressed to Thomas LoVullo at (202) 502–8900, or e-mail address: *thomas.lovullo@ferc.gov*.

j. *Deadline for filing comments and or motions:* January 27, 2003.

All documents (an original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please reference the project number (P–2058) on any comments or motions filed with the Commission.

k. *Description of Request*: Article 434 requires Avista Corporation (licensee) to file a plan, with the Commission, to conduct seasonal, site-specific monitoring of bank profiles in the lower Clark Fork River. The licensee indicated that prior to relicensing of the project, it initiated easement discussions with the individual landowners. As of December 2001, the licensee indicated, it acquired 69 out of a possible 87 easements. The licensee stated that the erosion issues of the landowners group have been adequately addressed and, therefore, requested that license article 434 be deleted. The Clark Fork Management Committee, which is comprised of one representative from each of the 27 parties (the licensee, state and federal resource agencies, Native American tribes and non-governmental organizations) to the licensing Settlement Agreement, concurred that article 434 was no longer necessary and should be deleted.

l. 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 FER 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.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. 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.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in 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. q. Comments, 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 at *http://www.ferc.gov* under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–33051 Filed 12–31–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission Notice of Application Accepted for Filing and Soliciting Motions to Intervene and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection

December 26, 2002.

a. *Type of Application:* New Major License.

b. *Project No.:* 2105–089.

c. *Date Filed:* October 23, 2002.

d. *Applicant:* Pacific Gas and Electric Company.

e. *Name of Project:* Upper North Fork Feather River Project.

f. *Location:* On the North Fork Feather River, in the vicinity of the community of Chester, Plumas County, California, T28N, R7E. The project occupies 1,500 acres of land administered by the Forest Supervisors of the Lassen and Plumas National Forests.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:* Mr. Randal Livingston, Lead Director, Hydro Generation Department, Pacific Gas and Electric Company, P.O. Box 770000 (N11C), San Francisco, CA, 94177, (415) 973–6950, and Ms. Janet Loduca, Attorney, Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, CA, 94120–7442, (415) 973–0174.

i. *FERC Contact:* John Mudre, (202) 502–8902 or *john.mudre@ferc.gov*.

j. *Deadline for filing motions to intervene and protests*: 60 days from the issuance 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.

The Commission's rules of practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests 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.

k. This application has been accepted, but is not ready for environmental analysis at this time.

l. The existing Upper North Fork Feather River Project consists of three dams and reservoirs, five powerhouses, tunnels and penstocks connecting the reservoirs to the powerhouses, 230–kV and 115–kV transmission facilities, and various roads, recreation facilities, and administrative facilities. Project reservoirs include Lake Almanor (1,142,251 acre-feet), Butt Valley Reservoir (49,891 acre-feet), and Belden Forebay (2,477 acre-feet). Powerhouses include Butt Valley Powerhouse (41 MW), Caribou No. 1 Powerhouse (75 MW), Caribou No. 2 Powerhouse (120 MW), Oak Flat Powerhouse (1.3 MW), and Belden Powerhouse (125 MW). The applicant proposes no new facilities, but proposes to add 33.73 acres of lands of the Plumas National Forest to the project because of historical and future project use of these lands.

m. 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.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests 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 protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–33052 Filed 12–31–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing with the Commission, Soliciting Additional Study Requests, and Establishing Procedures for Relicensing and a Deadline for Submission of Final Amendments

December 26, 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.:* 2207–009.

c. *Date Filed:* December 18, 2002.

d. *Applicant:* Mosinee Paper Corporation.

e. *Name of Project:* Mosinee Hydroelectric Project.

f. *Location:* On the Wisconsin River in the town of Mosinee, Marathon County, Wisconsin. The project does not utilize lands of the United States.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mr. Jeff Verdoorn, Mosinee Paper Corporation, 100 Main Street, Mosinee, Wisconsin. 54455 (715) 693–2111.

i. *FERC Contact:* Michael Spencer, *michael.spencer@ferc.gov*, (202) 502–6093.

j. *Cooperating Agencies:* We are asking Federal, State, and local agencies and Indian tribes 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. Pursuant to Section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* February 16, 2003.

All documents (original and eight copies) should be filed with: Magalie Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's rules of practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Additional study requests and 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 Website at (*http://www.ferc.gov*) under the ''e-filing link.

m. This application is not ready for environmental analysis at this time.

n. *Description of Project:* The existing Mosinee Project consists of: (1) Three dam sections spanning between bedrock islands; (2) a 1,277-acre reservoir; (3) a powerhouse with an total installed capacity of 3,050-kilowatts and (4) appurtenant facilities. The applicant estimates that the average annual generation is 23,680 megawatthours.

o. 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 three digits in the docket number field to access the document. For assistance, call (202) 502–8222 or for TTY (202) 502–6157. A copy is also available for inspection and reproduction at the address in item h above.

p. With this notice, we are initiating consultation with the Wisconsin State Historic Preservation Officer (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

Note: The above paragraph initiating consultaion with the SHPOs may be unnecessary if that language was included in the pre-filing notice requesting preliminary terms and conditions.

q. *Procedural schedule and final amendments*: The application should be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Deficiency Letter—February 2003
Issue Acceptance Letter—May 2003
Issue Scoping Document for Comments—June 2003
Request Additional Information—August 2003
Issue Scoping Document 2 for Comments—September 2003
Notice of application is ready for environmental analysis—March 2004
Notice of the availability of the EA—September 2004
Ready for Commission's decision on the Application—December 2004
Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–33053 Filed 12–31–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

December 26, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12328–000.

c. *Date filed:* August 2, 2002.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Michael J. Kirwan Dam Hydroelectric Project.

f. *Location:* At the existing U.S. Army Corps of Engineers' Michael J. Kirwan Dam on the Mahoning River, near the Town of Wayland, Portage County, Ohio.

g. *Filed pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, Ohio, 44301 (330) 535–7115.

i. *FERC Contact:* Regina Saizan, (202) 502–8765.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance 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. Comments, 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. Please include the project number (P–12328–000) on any comments or motions filed.

The Commission's rules of practice and procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would utilize the existing U.S. Army Corps of Engineers' Michael J. Kirwan Dam, and would consist of: (1) A proposed 96-inch-diameter steel penstock approximately 50 feet long, (2) a proposed powerhouse containing one turbine/generator unit having a total installed capacity of 1.323 MW, (3) a proposed .25-mile-long, 14.7 kV transmission line, and (4) appurtenant facilities. The project would have an annual generation of 8.11 GWh.

l. 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, call toll-free 1–866–208–3676 or e-mail *ferconlinesupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h.

m. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. 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.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the project number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the applicant specified in the particular application.

s. 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. 02–33055 Filed 12–31–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions to Intervene, Protests, and Comments

December 26, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12353–000.

c. *Date filed:* August 21, 2002.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Green River Lake Dam Hydroelectric Project.

f. *Location:* At the existing U.S. Army Corps of Engineers' Green River Lake Dam on the Green River, near the Towns of Campbellsville, Columbia, and Elkhorn, Taylor County, Kentucky.

g. *Filed pursuant to:* Federal Power Act, 16 U.S.C.§§ 791(a)–825(r).

h. *Applicant Contact:* Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, Ohio, 44301 (330) 535–7115.

i. *FERC Contact:* Regina Saizan, (202) 502–8765.

j. Deadline for filing comments, protests, and motions to intervene: 60 days from the issuance 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. Comments, 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. Please include the project number (P–12353–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would utilize the existing U.S. Army Corps of Engineers' Green River Lake Dam, and would consist of: (1) Two proposed 48-inch-diameter steel penstock approximately 50 feet long, (2) a proposed powerhouse containing two turbine/generator units having a total installed capacity of 5.5 MW, (3) a proposed 4-mile-long, 14.7 kV transmission line, and (4) appurtenant facilities. The project would have an annual generation of 34 GWh.

l. 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, call toll-free 1–866–208–3676 or e-mail *ferconlinesupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h.

m. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. 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.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. 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. 02–33056 Filed 12–31–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions To Intervene

December 26, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12416–000.

c. *Date filed:* November 14, 2002.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name and Location of Project:* The Kentucky L&D #11 Hydroelectric Project would be located on the Kentucky River in Estill County, Kentucky. The proposed project would utilize an existing dam administered by the U.S. Army Corps of Engineers.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

g. *Applicant contact:* Mr. Raymond Helter, Universal Electric Power

Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

h. *FERC Contact:* Tom Papsidero, (202) 502–6002.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance 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. Comments, 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. Please include the project number (P–12416–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project, using the Corps' existing Kentucky Lock and Dam No. 11 and Reservoir, would consist of: (1) Six proposed 50-foot-long, 8-foot-diameter steel penstocks, (2) a proposed powerhouse containing six generating units with a combined installed capacity of 8 megawatts, (3) a proposed 300-foot-long, 14.7–kv transmission line, and (4) appurtenant facilities. The project would operate in a run-of-river mode and would have an average annual generation of 49 GWh.

k. 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, call toll-free 1–866–208–3678 or e-mail *ferconlinesupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the applicant's address in item g above.

l. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. 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.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. 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. 02–33057 Filed 12–31–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0322; FRL–7282–5]

Fosetyl-Al; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2002–0322, must be received on or before February 3, 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: Sidney Jackson, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7610; e-mail address: jackson.sidney@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may incude, but are not limited to:

- Crop production (NAICS Industry 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

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

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

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPP–2002–0322. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

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

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

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

C. How and To Whom Do I Submit Comments?

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

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

contact you for clarification, EPA may not be able to consider your comment.

i. *EPA dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2002–0322. The system is an ''anonymous access'' system, which means, EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID number OPP–2002–0322. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

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

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2002–0322.

3. *By hand delivery or courier.* Deliver your comments to: PIRIB, Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID number OPP–2002–0322. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

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

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

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

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

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time, or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 20, 2002

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner's summary of the pesticide petition is printed below as required by the FFDCA section 408(d)(3). The summary of the petition was prepared by Bayer CropScience Company and represents the view of the company. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues, or an explanation of why no such method is needed.

PP 2E6366

EPA has received a pesticide petition (PP 2E6366) from the Interregional Research Project Number 4 (IR-4), New Jersey Agricultural Experiment Station, Rutgers University, New Brunswick, NJ 08903 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR 180.415 by establishing a tolerance for residues of the fungicide, fosetyl-al (aluminum tris O-ethylphosphonate), in or on the raw agricultural commodity onion, green, at 10 parts per million (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of fosetyl-al in plants is adequately understood. Adequate data on the nature of the residues in plants, including identification of major metabolites and degradates of fosetyl-al, are available. Radiolabeled studies on the uptake, translocation and metabolism in plants show that the chemical proceeds through hydrolytic cleavage of the ethyl ester. The major residues are fosetyl-al, phosphorus acid,

and ethanol. The tolerances are established for the parent only, that is fosetyl-al.

2. *Analytical method.* Adequate methods are available for enforcement purposes. There are two analytical methods acceptable for determining residues of fosetyl-al in plants: a gas chromatography method is available for enforcement of tolerance in pineapple and is listed as Method I in Pesticide Analytical Manual (PAM), Vol. II; a gas chromatography/phosphorus specific flame photometric detector (FPD-P) method (Rhone-Poulenc Method No. 163) for citrus has undergone a successful method tryout on oranges and has been sent to the Food and Drug Administration (FDA) for inclusion in PAM as Method II.

3. *Magnitude of residues.* Magnitude of residue data on green onions were collected form field trials conducted in Texas (Region 6) and California (Region 10). Each treated plot received seven foliar broadcast applications of the test substance at a rate of approximately 4.0 pounds active ingredient/acre (lb a.i./acre), for a total of approximately 28.0 lb a.i./acre. All applications were made 6 to 8 days apart, and marketable green onions were collected 2 to 3 days following the final application. Residues of fosetyl-al in green onions ranged from 0.39 ppm to 7.75 ppm.

B. Toxicological Profile

EPA has evaluated the available fosetyl-al toxicity data and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by fosetyl-al is discussed in the **Federal Register** of August 18, 2000 (65 FR 50431) (FRL–6599–4), as well as the no observed adverse effect level (NOAEL), and the lowest observed adverse effect level (LOAEL) from the toxicity studies reviewed. Please refer to this document should you desire detailed toxicological information on fosetyl-al.

1. *Carcinogenicity.* Long-term feeding studies were conducted with technical grade fosetyl-al in mice and rats and with monosodium phosphite, the primary urinary metabolite of fosetyl-al, in rats. These studies, in addition to a mechanistic study in rats, are described below:

i. *Rat.* Fosetyl-al was administered via admixture in the diet to CD rats at target levels of 0, 2,000, 8,000, and 30,000/40,000 ppm for approximately 2 years. After 2 weeks at 40,000 ppm, this dietary level was reduced to 30,000 ppm due to the occurrence of red coloration of the urine and a decrease in body weight gain. Although, these findings were no longer apparent after week 2, analytical verification of dietary levels revealed that the highest dietary level ranged from approximately 38,000 to 61,000 ppm during the first 32 weeks of the study. Calculi in the urinary bladder were observed for several male and female rats at 30,000/40,000 ppm. Microscopic examination revealed transitional cell carcinomas and papillomas in the urinary bladders of high dose males. In addition, a statistically significant increase in adrenal pheochromocytomas (benign and malignant combined) was observed in males at 8,000 and 30,000/40,000 ppm. The adrenal slides were independently reread by two consulting pathologists who found no significant dose-related increases in the incidence of pheochromocytomas or hyperplasia.

The NOAEL for fosetyl-al in the chronic rat study was 8,000 ppm. A subsequent mechanistic study in rats conducted with dietary levels of 8,000, 30,000 and 50,000 ppm demonstrated that the massive doses of 30,000 and 50,000 ppm fosetyl-al alter calcium/phosphorous homeostasis resulting in severe acute renal injury, similar to that observed in the chromic rat study, and the formation of calculi in kidneys, ureters, and bladder. Under conditions of chronic exposure, these effects could lead to the formation of bladder tumors as seen in the chronic rat study. At 8,000 ppm, no evidence of renal injury was observed, a result consistent with the absence of bladder tumors. Thus, the bladder tumors induced by fosetyl-al were the result of acute renal injury followed by a chronic toxic reaction rather than a true carcinogenic effect. An carcinogenicity study in rats was conducted with monosodium phosphite administered via dietary mixture at levels of 2,000, 8,000, and 32,000 ppm. No evidence of carcinogenicity was observed in this study.

ii. *Mouse.* A 2–year feeding/carcinogenicity study was conducted in mice fed diets containing fosetyl-al at 0, 2,500, 10,000, or 20,000/30,000 ppm. The 20,000 ppm dose was increased to 30,000 ppm during week 19 of the study. The NOAEL for all effects was 20,000/30,000 ppm (3,000/4,500 milligrams/kilogram (mg/kg/day)). There were no carcinogenic effects observed under the conditions of this study.

iii. EPA's Carcinogenicity Peer Review Committee (CPRC) concluded in their report of June 29, 1993 that the pesticidal use of fosetyl-al is unlikely to pose a carcinogenic hazard for humans given that: (a) Tumors develop in rats under extreme conditions that are unlikely to be achieved other than under laboratory conditions (at a dose in excess of the EPA dose limit for carcinogenicity studies); (b) tumors in rats are believed to develop only at doses that produce stones; (c) human dietary exposure to fosetyl-al is only about one-500,000th of the NOAEL for stone formation in the rat (the most sensitive experimental model); and (d) the dose of fosetyl-al which can be absorbed dermally by applicators is also probably too low to result in stone formation. Therefore, a cancer dietary exposure analysis for fosetyl-al is not performed.

2. *Animal metabolism.* Rat metabolism studies showed that most of the radiolabel rapidly appeared in exhaled carbon dioxide. There was also some radiolabel excreted in the urine as phosphite, along with a smaller amount as the unchanged parent compound. It appears that fosetyl-al is essentially completely absorbed after ingestion and extensively hydrolyzed to carbon dioxide which is exhaled. The phosphite is excreted in the urine without further oxidation to phosphate. Aluminum does not appear to be absorbed to a significant extent from the gastrointestinal tract.

3. *Metabolite toxicology.* There are no metabolites of toxicological concern. The tolerances are established for the parent only, that is fosetyl-al.

4. *Endocrine disruption.* No evidence of estrogenic or androgenic effects were noted in any study with fosetyl-al. No adverse effects on mating or fertility indices and gestation, live birth, or weaning indices were noted in a three-generation rat reproduction study at doses well above EPA's limit of 1,000 mg/kg/day. Therefore, Bayer CropScience concludes that fosetyl-al does not have any effect on the endocrine system.

C. Aggregate Exposure

1. *Dietary exposure.* EPA has established the chronic reference dose (RfD) for fosetyl-al at 2.5 mg/kg/day. This reference dose (RfD) is based on a NOAEL of 250 mg/kg/day from a 2–year feeding study in dogs and the use of a 100 fold safety factor to account for interspecies and intraspecies differences. No appropriate endpoint attributable to a single dose exposure was identified in oral toxicity studies. Therefore, an acute RfD was not established and there is no expectation of acute risk. Since no dermal or systemic toxicity was seen at the limit

dose following repeated dermal applications in the 21–day toxicity study using rats, no endpoint value was calculated for short- and intermediate-term exposure and risk. The Agency has concluded that fosetyl-al is unlikely to pose a carcinogenic hazard to humans. Therefore, a cancer exposure and risk assessment is not appropriate.

i. *Food*. For all currently registered uses of fosetyl-al, chronic food exposure for various subgroups of the U.S. population was estimated by EPA through the use of the Dietary Exposure Evaluation Model (DEEM) software. The DEEM analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide continuing surveys of food intake by individuals. As the risk estimate was low for even the most highly exposed subpopulation, no anticipated residues were used. One hundred percent crop treated and tolerance level residues were assumed for all crops. EPA has concluded that exposure to fosetyl-al from food utilizes 4.0% of the chronic population adjusted dose (cPAD) for the U.S. population, 5% of the cPAD for infants, and 8% of the cPAD for children 1–6 years old, the subpopulation at greatest exposure. Based on the results of this conservative analysis, exposure to fosetyl-al residues from the proposed uses is expected to be minimal. Bayer CropScience concludes that dietary exposure to fosetyl-al resulting from the currently registered uses and the proposed use of the product will be well below the Agency's level of concern.

ii. *Drinking water*. The potential for ground water and/or surface water contamination by fosetyl-al and its degradates is expected to be very low, in most cases, due to the rapid degradation of the compound in soil to non-toxic degradates under both aerobic and anaerobic conditions. Under aerobic laboratory conditions, the half-life of fosetyl-al is between 1 and 1.5 hours in loamy sand, silt loam, and clay loam and 20 minutes in sandy loam soil. The degradation proceeds through the hydrolysis of the ethyl ester bond, resulting in the formation of phosphorous acid and ethanol. The ethanol is further degraded into carbon dioxide. Based on the short half-life of fosetyl-al and the known fate of phosphates under anaerobic conditions, EPA determined that an anaerobic soil metabolism study was not necessary. An anaerobic aquatic soil metabolism study was conducted. When anaerobic conditions were established by flooding soil, the half-life was 40 hours with silty clay loam, and 14 hours with sandy loam soil. Bayer CropScience expects that potential fosetyl-al residues in drinking water are not a significant contribution to aggregate exposure.

2. *Non-dietary exposure*. Fosetyl-al is currently registered for residential use on turf and ornamental plants. Chronic exposure is not expected for residential uses. There is also no expectation of acute risk. No appropriate endpoint attributable to a single dose exposure was identified in oral toxicity studies and consequently, an acute RfD cannot be calculated. No endpoint value is calculable for short- and intermediate-term exposure and a risk analysis cannot be performed since no dermal or systemic toxicity was seen at the limit dose following repeated dermal applications in the 21–day toxicity study using rats. The Agency has previously concluded that fosetyl-al is unlikely to pose a carcinogenic hazard to human. Therefore, a cancer exposure and risk assessment is not appropriate. Thus, Bayer CropScience concludes that the ornamental and turf uses do not add significantly to the aggregate exposure for fosetyl-al.

D. Cumulative Effects

Effects associated with fosetyl-al are unlikely to be cumulative with any other compound. The formation of calculi and bladder tumors in rats is the only significant toxicological effect observed with fosetyl-al. These effects were observed in rat only at a dose which not only exceeds estimated human exposure by several orders of magnitude but is in excess of the OPP dose limit for carcinogenicity studies. Therefore, an aggregate assessment based on common mechanisms of toxicity is not appropriate as exposure to humans will be well below the levels producing calculi and bladder tumors in rats. Further, considering the rapid elimination of fosetyl-al in the rat metabolism study, any effects associated with fosetyl-al are unlikely to be cumulative with any other compound. Based on these reasons, only the potential risks of fosetyl-al are considered in the exposure assessment.

E. Safety Determination

1. *U.S. population*. Chronic risk estimates associated with exposure to fosetyl-al in food and water are expected to be well below the Agency's level of concern. The Tier I chronic exposure analysis performed by the Agency for all currently registered food uses shows that exposure to fosetyl-al utilizes 4.0% of the cPAD for the U.S. population, 5% of the cPAD for infants, and 8% of the cPAD for children 1–6 years old, the subpopulation at greatest exposure. This analysis was conducted assuming 100% crop treated and tolerance level residue values for all crops. The contribution of fosetyl-al residues in surface water and ground water to chronic aggregate exposure is expected to be minimal. Therefore, Bayer CropScience concludes that even when considering the potential incremental risk resulting from the proposed use on green onion, there is a reasonable certainty that no harm will result from aggregate exposure to fosetyl-al residues.

2. *Infants and children*. No indication of increased susceptibility of rat or rabbit fetuses to *in utero* and/or postnatal exposure was noted in the developmental and reproductive toxicity studies. The Agency has previously determined that no additional safety factor to protect infants and children is necessary for this product.

Using the conservative assumptions described in the exposure section above, aggregate exposure to fosetyl-al from currently registered food uses will utilize up to 8% of the RfD for children 1–6 years old, the subpopulation at greatest exposure. Even when considering the potential incremental dietary risk resulting from the proposed use on green onion, the potential for exposure to residues in drinking water and from non-dietary, non-occupational exposure, the aggregate exposure to fosetyl-al is expected to be well below the level of concern. Bayer CropScience concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to fosetyl-al residues.

F. International Tolerances

There are no Codex Alimentarius Commission (CODEX) maximum residue limits established for residues of fosetyl-al in or on green onion.

[FR Doc. 02–33107 Filed 12–31–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7431–9]

Federal Agency Hazardous Waste Compliance Docket

AGENCY: Environmental Protection Agency.

ACTION: Notice of sixteenth update of the Federal Agency Hazardous Waste Compliance Docket, pursuant to CERCLA section 120(c).

SUMMARY: Section 120(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by

the Superfund Amendments and Reauthorization Act of 1986 (SARA), requires the Environmental Protection Agency (EPA) to establish a Federal Agency Hazardous Waste Compliance Docket. The docket is to contain certain information about Federal facilities that manage hazardous waste or from which hazardous substances have been or may be released. (As defined by CERCLA section 101(22), a release is any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment.) CERCLA requires that the docket be updated every six months, as new facilities are reported to EPA by Federal agencies. The following list identifies the Federal facilities to be included in this sixteenth update of the docket and includes facilities not previously listed on the docket and reported to EPA since the last update of the docket, 67 FR 44200, July 2, 2002, which was current as of January 31, 2002. SARA, as amended by the Defense Authorization Act of 1997, specifies that, for each Federal facility that is included on the docket during an update, evaluation shall be completed in accordance with a reasonable schedule. Such site evaluation activities will help determine whether the facility should be included on the National Priorities List (NPL) and will provide EPA and the public with valuable information about the facility. In addition to the list of additions to the docket, this notice includes a section that comprises revisions (that is, corrections and deletions) of the previous docket list. This update contains 8 additions and 11 deletions since the previous update, as well as numerous other corrections to the docket list. At the time of publication of this notice, the new total number of Federal facilities listed on the docket is 2,228.

DATES: This list is current as of August 12, 2002.

FOR FURTHER INFORMATION CONTACT: Electronic versions of the docket may be obtained at *http://www.epa.gov/compliance/cleanup/federal/index.html.*

SUPPLEMENTARY INFORMATION:

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1.0 Introduction
2.0 Revisions of the Previous Docket
3.0 Process for Compiling the Updated Docket
4.0 Facilities Not Included
5.0 Facility Status Reporting
6.0 Information Contained on Docket Listing

1.0 Introduction

Section 120(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 United States Code (U.S.C.) 9620(c), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), required the establishment of the Federal Agency Hazardous Waste Compliance Docket. The docket contains information on Federal facilities that is submitted by Federal agencies to the U.S. Environmental Protection Agency (EPA) under sections 3005, 3010, and 3016 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6925, 6930, and 6937, and under section 103 of CERCLA, 42 U.S.C. 9603. Specifically, RCRA section 3005 establishes a permitting system for certain hazardous waste treatment, storage, and disposal (TSD) facilities; RCRA section 3010 requires waste generators and transporters and TSD facilities to notify EPA of their hazardous waste activities; and RCRA section 3016 requires Federal agencies to submit biennially to EPA an inventory of hazardous waste sites that the Federal agencies own or operate. CERCLA section 103(a) requires that the National Response Center (NRC) be notified of a release. CERCLA section 103(c) requires reporting to EPA the existence of a facility at which hazardous substances are or have been stored, treated, or disposed of and the existence of known or suspected releases of hazardous substances at such facilities.

The docket serves three major purposes: (1) To identify all Federal facilities that must be evaluated to determine whether they pose a risk to human health and the environment sufficient to warrant inclusion on the National Priorities List (NPL); (2) to compile and maintain the information submitted to EPA on such facilities under the provisions listed in section 120(c) of CERCLA; and (3) to provide a mechanism to make the information available to the public.

The initial list of Federal facilities to be included on the docket was published on February 12, 1988 (53 FR 4280). Updates of the docket have been published on November 16, 1988 (54 FR 46364); December 15, 1989 (54 FR 51472); August 22, 1990 (55 FR 34492); September 27, 1991 (56 FR 49328); December 12, 1991 (56 FR 64898); July 17, 1992 (57 FR 31758); February 5, 1993 (58 FR 7298); November 10, 1993 (58 FR 59790); April 11, 1995 (60 FR 18474); June 27, 1997 (62 FR 34779); November 23, 1998 (63 FR 64806); June 12, 2000 (65 FR 36994); December 29, 2000 (65 FR 83222), October 2, 2001 (66 FR 50185), and July 1, 2002 (67 FR 44200). This notice constitutes the sixteenth update of the docket.

Today's notice is divided into three sections: (1) Additions, (2) deletions, and (3) corrections. The additions section lists newly identified facilities that have been reported to EPA since the last update and that now are being included on the docket. The deletions section lists facilities that EPA is deleting from the docket. The corrections section lists changes in information about facilities already listed on the docket.

The information submitted to EPA on each Federal facility is maintained in the docket repository located in the EPA Regional office of the Region in which the facility is located (*see* 53 FR 4280 (February 12, 1988) for a description of the information required under those provisions). Each repository contains the documents submitted to EPA under the reporting provisions and correspondence relevant to the reporting provisions for each facility. Contact the following docket coordinators for information on Regional docket repositories:

Gerardo Millán-Ramos (HBS), US EPA Region 1, #1 Congress St., Suite 1100, Boston, MA 02114–2023, (617) 918–1377

Helen Shannon (ERRD), US EPA Region 2, 290 Broadway, 18th Floor, New York, NY 10007–1866, (212) 637–4260

Alida Karas (ERRD), US EPA Region 2, 290 Broadway, New York, NY 10007–1866, (212) 637–4276

Cesar Lee (3HS50), US EPA Region 3, 1650 Arch Street, Philadelphia, PA 19107, (215) 814–3205

Gena Townsend (4WD–FFB), US EPA Region 4, 61 Forsyth St., SW., Atlanta, GA 30303, (404) 562–8538

Laura Ripley (SE–5J), US EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 886–6040

Philip Ofosu (6SF–RA), US EPA Region 6, 1445 Ross Avenue, Dallas, TX 75202–2733, (214) 665–3178

D. Karla Asberry (FFSC), US EPA Region 7, 901 N. Fifth Street, Kansas City, KS 66101, (913) 551–7595

Stan Zawistowski (EPR–F), US EPA Region 8, 999 18th Street, Suite 500, Denver, CO 80202–2466, (303) 312–6255

Philip Armstrong (SFD–9–1), US EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972–3098

Ken Marcy (ECL–115), US EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101, (206) 553–2782

Monica Lindeman (ECL, SACU2), US EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101, (206) 553–5113

2.0 Revisions of the Previous Docket

Following is a discussion of the revisions of the previous docket, including additions, deletions, and corrections.

2.1 Additions

Today, 8 facilities are being added to the docket, primarily because of new information obtained by EPA (for example, recent reporting of a facility pursuant to RCRA sections 3005, 3010, or 3016 or CERCLA section 103). SARA, as amended by the Defense Authorization Act of 1997, specifies that, for each Federal facility that is included on the docket during an update, evaluation shall be completed in accordance with a reasonable schedule.

Of the eight facilities being added to the docket, none are facilities that have reported to the NRC the release of a reportable quantity (RQ) of a hazardous substance. Under section 103(a) of CERCLA, a facility is required to report to the NRC the release of a hazardous substance in a quantity that equals or exceeds the established RQ. Reports of releases received by the NRC, the U.S. Coast Guard (USCG), and EPA are transmitted electronically to the Transportation Systems Center at the U.S. Department of Transportation (DOT), where they become part of the Emergency Response Notification System (ERNS) database. ERNS is a national computer database and retrieval system that stores information on releases of oil and hazardous substances. Facilities being added to the docket and facilities already listed on the docket for which an ERNS report has been filed are identified by the notation ''103(a)'' in the ''Reporting Mechanism'' column.

It is EPA's policy generally not to list on the docket facilities that are small-quantity generators (SQG) and that have never generated more than 1,000 kilograms (kg) of hazardous waste in any single month. If a facility has generated more than 1,000 kg of hazardous waste in any single month (that is, if the facility is an episodic generator), it will be added to the docket. In addition, facilities that are SQGs and have reported releases under CERCLA section 103 or hazardous waste activities pursuant to RCRA section 3016 will be listed on the docket and will undergo site evaluation activities, such as a PA and, when appropriate, an SI. All such facilities will be listed on the docket, whether or not they are SQGs pursuant to RCRA. As a result, some of the facilities that EPA is adding to the docket today are SQGs that had not been listed on the docket but that have reported releases or hazardous waste activities to EPA under another reporting provision.

In the process of compiling the documents for the Regional repositories, EPA identified a number of facilities that had previously submitted PA reports, SI reports, Department of Defense (DoD) Installation Restoration Program (IRP) reports, or reports under another Federal agency environmental restoration program, but do not appear to have notified EPA under CERCLA section 103. Section 120(c)(3) of CERCLA requires that EPA include on the docket, among other things, information submitted under section 103. In general, section 103 requires persons in charge of a facility to provide notice of certain releases of hazardous substances. The reports under various Federal agency environmental restoration programs may contain information regarding releases of hazardous substances similar to that provided pursuant to section 103. EPA believes that CERCLA section 120(c) authorizes the agency to include on the docket a facility that has provided information to EPA through documents such as a report under a Federal agency environmental restoration program, regardless of the absence of section 103 reporting. Therefore, some of the facilities that EPA is adding today are being placed on the docket because they have submitted the documents described above that contain reports of releases of hazardous substances.

EPA also includes privately owned, government-operated (POGO) facilities on the docket. CERCLA section 120(c) requires that the docket contain information submitted under RCRA sections 3005, 3010, and 3016 and CERCLA section 103, all of which impose duties on operators as well as owners of facilities. In addition, other subsections of CERCLA section 120 refer to facilities ''owned or operated'' by an agency or other instrumentality of the Federal government. That terminology clearly includes facilities that are operated by the Federal government, even if they are not owned by it. Specifically, CERCLA section 120(e), which sets forth the duties of the Federal agencies after a facility has been listed on the NPL, refers to the Federal agency that ''owns or operates'' the facility. In addition, the primary basis for assigning responsibility for conducting PAs and SIs, as required when a facility is listed on the docket, is Executive Order 12580, which assigns that responsibility to the Federal agency having ''jurisdiction, custody, or control'' over a facility. An operator may be deemed to have jurisdiction, custody, or control over a facility.

2.2 Deletions

Today, 11 facilities are being deleted from the docket for various reasons, such as incorrect reporting of hazardous waste activity, change in ownership, and exemption as an SQG under RCRA (40 CFR 262.44). Facilities being deleted no longer will be subject to the requirements of CERCLA section 120(d).

2.3 Corrections

Changes necessary to correct the previous docket were identified by both EPA and Federal agencies. The changes needed varied from simple changes in addresses or spelling to corrections of the recorded name and ownership of a facility. In addition, some changes in the names of facilities were made to establish consistency in the docket. Many new entries are simply corrections of typographical errors. For each facility for which a correction has been entered, the original entry (designated by an ''O''), as it appeared in the February 12, 1988 notice or subsequent updates, is shown directly below the corrected entry (designated by a ''C'') for easy comparison.

3.0 Process for Compiling the Updated Docket

In compiling the newly reported facilities for the update being published today, EPA extracted the names, addresses, and identification numbers of facilities from four EPA databases—ERNS, the Biennial Inventory of Federal Agency Hazardous Waste Activities, the Resource Conservation and Recovery Information System (RCRIS), and the Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS)—that contain information about Federal facilities submitted under the four provisions listed in CERCLA section 120(c).

Extensive computer checks compared the current docket list with the information obtained from the databases identified above to determine which facilities were, in fact, newly reported and qualified for inclusion on the update. In spite of the quality assurance efforts EPA has undertaken, state-owned or privately owned facilities that are not operated by the Federal government may have been included. Such problems are caused by procedures historically used to report and track data on Federal facilities; EPA is working to resolve them. Representatives of Federal

agencies are asked to write to EPA's docket coordinator at the following address if revisions of this update information are necessary: Augusta K. Wills, Federal Agency Hazardous Waste Compliance Docket Coordinator, Federal Facilities Enforcement Office (Mail Code 2261A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20004.

4.0 Facilities Not Included

As explained in the preamble to the original docket (53 FR 4280), the docket does not include the following categories of facilities (note, however, that any of these types of facilities may, when appropriate, be listed on the NPL):

- Facilities formerly owned by a Federal agency and now privately owned will not be listed on the docket. However, facilities that are now owned by another Federal agency will remain on the docket and the responsibility for conducting PAs and SIs will rest with the current owner.
- SQGs that have never produced more than 1,000 kg of hazardous waste in any single month and that have not reported releases under CERCLA section 103 or hazardous waste activities under RCRA section 3016 will not be listed on the docket.
- Facilities that are solely transporters, as reported under RCRA section 3010, will not be listed on the docket.

5.0 Facility Status Reporting

EPA has expanded the docket database to include information on the NFRAP status of listed facilities. Indicating NFRAP status allows easy identification of facilities that, after submitting all necessary site assessment information, were found to warrant no further involvement on the part of EPA at the time of the status change. Accordingly, the docket database includes the following facility status codes:

U=Undetermined
N=No further remedial action planned (NFRAP)

NFRAP is a term used in the Superfund site assessment program to identify facilities for which EPA has found that currently available information indicates that listing on the NPL is not likely and further assessment is not appropriate at the time. NFRAP status does not represent an EPA determination that no environmental threats are present at the facility or that no further environmental response action of any kind is necessary. NFRAP status means only that the facility does not appear, from the information available to EPA at this time, to warrant listing on the NPL and that, therefore, EPA anticipates no further involvement by EPA in site assessment or cleanup at the facility. However, additional CERCLA response actions by the Federal agency that owns or operates the facility, whether remedial or removal actions, may be necessary at a facility that has NFRAP status. The status information contained in the docket database is the result of Regional evaluation of information taken directly from CERCLIS. (CERCLIS is a database that helps EPA Headquarters and Regional personnel manage sites, programs, and projects. It contains the official inventory of all CERCLA (NPL and non-NPL) sites and supports all site planning and tracking functions. It also integrates financial data from preremedial, remedial, removal and enforcement programs.) The status information was taken from CERCLIS and sent to the Regional docket coordinators for review. The results of those reviews were incorporated into the status field in the docket database. Subsequently, an updated list of facilities having NFRAP status (those for which an ''N'' appears in the status field) was generated; the list of updates since the previous publication of the docket is being published today.

Important limitations apply to the list of facilities that have NFRAP status. First, the information is accurate only as of August 12, 2002. Second, a facility's status may change at any time because of any number of factors, including new site information or changing EPA policies. Finally, the list of facilities that have NFRAP status is based on Regional review of CERCLIS data, is provided for information purposes only, and should not be considered binding upon either the Federal agency responsible for the facility or EPA.

The status information in the docket database will be reviewed and a new list of facilities classified as NFRAP will be published at each docket update.

6.0 Information Contained on Docket Listing

As discussed above, the update information below is divided into three separate sections. The first section is a list of new facilities that are being added to the docket. The second section is a list of facilities that are being deleted from the docket. The third section comprises corrections of information included on the docket. Each facility listed for the update has been assigned a code(s) that indicates a more specific reason(s) for the addition, deletion, or correction. The code key precedes the lists.

SARA, as amended by the Defense Authorization Act of 1997, specifies that, for each Federal facility that is included on the docket during an update, evaluation shall be completed in accordance with a reasonable schedule. Therefore, all facilities on the additions list to this fifteenth docket update must submit a PA and, if warranted, an SI to EPA. The PA must include existing information about a site and its surrounding environment, including a thorough examination of human, food-chain, and environmental targets, potential waste sources, and migration pathways. From information in the PA or other information coming to EPA's attention, EPA will determine whether a follow-up SI is required. An SI augments the data collected in a PA. An SI may reflect sampling and other field data that are used to determine whether further action or investigation is appropriate. This policy includes any facility for which there is a change in the identity of the responsible Federal agency. The reports should be submitted to the Federal facilities coordinator in the appropriate EPA Regional office.

The facilities listed in each section are organized by state and then grouped alphabetically within each state by the Federal agency responsible for the facility. Under each state heading is listed the name and address of the facility, the Federal agency responsible for the facility, the statutory provision(s) under which the facility was reported to EPA, and the correction code(s).

The statutory provisions under which a facility reported are listed in a column titled ''Reporting Mechanism.'' Applicable mechanisms are listed for each facility: for example 3010, 3016, and 103(c).

The complete list of Federal facilities that now make up the docket and the complete list of facilities classified as no further remedial action planned (NFRAP) are not being published today. However, the lists are available to interested parties and can be obtained at *http://www.epa.gov/compliance/cleanup/federal/index.html* or by calling the HQ Docket Coordinator at (202) 564–2468. As of today, the total number of Federal facilities that appear on the docket is 2,228.

Dated: December 19, 2002.

David J. Kling,

Director, Federal Facilities Enforcement Office.

Docket Revisions

Categories of Revisions for Docket Update by Correction Code

Categories for Deletion of Facilities

(1) Small-Quantity Generator

(2) Not Federally Owned
(3) Formerly Federally Owned
(4) No Hazardous Waste Generated
(5) (This correction code is no longer used.)
(6) Redundant Listing/Site on Facility
(7) Combining Sites Into One Facility/ Entries Combined
(8) Does Not Fit Facility Definition
(9) (This correction code is no longer used.)
(10) (This correction code is no longer used.)
(11) (This correction code is no longer used.)
(12) (This correction code is no longer used.)
(13) (This correction code is no longer used.)
(14) (This correction code is no longer used.)

Categories for Addition of Facilities

(15) Small-Quantity Generator With Either a RCRA 3016 or CERCLA 103 Reporting Mechanism
(16) One Entry Being Split Into Two/ Federal Agency Responsibility Being Split
(17) New Information Obtained Showing That Facility Should Be Included
(18) Facility Was a Site on a Facility That Was Disbanded; Now a Separate Facility
(19) Sites Were Combined Into One Facility
(19A) New Facility

Categories for Corrections of Information About Facilities

(20) Reporting Provisions Change
(20A) Typo Correction/Name Change/ Address Change
(21) Changing Responsible Federal Agency (New Responsible Federal Agency Must Submit proof of previously performed PA, which is subject to approval by EPA)
(22) Changing Responsible Federal Agency and Facility Name (New Responsible Must Submit proof of previously performed PA, which is subject to approval by EPA)
(23) New Reporting Mechanism Added at Update
(24) Reporting Mechanism Determined to Be Not Applicable After Review of Regional Files

Note: Further information on definitions of categories can be obtained by calling Augusta K. Wills, the HQ Docket Coordinator at (202) 564–2468.

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #16—ADDITIONS

Facility name	Address	City	State	Zip code	Agency	Reporting mechanism	Code
FS-Tongass NF: Tonka Log Transfer Facility.	7.75 Mi SW of Petersburg.	Petersburg	AK	99833	Agriculture	3010	19A
FWS—AK Maritime NWR.	Yakak Peninsula SW.	Adak	AK	99546	Interior	103c	19A
Cape Yakak AWS Site Former Lowry Training Annex Air Force EOD Range.	½ Mile North of East Quincy Ave on Watkins Road.	Aurora	CO	80019	Air Force	103c	19A
FS-Targhee NF: Chemical Warfare Service Test Site.	Fremont County	Island Park	ID	83429	Agriculture	103c	19A
BLM-Gllenns Ferry Strychnine Site.	T5S R10E SEC20 NESE.	Glenns Ferry	ID	83623	Interior	3010	19A
BIA-Coeur D'Alene Field Office.	Agency Rd 4 Mi W of Hwy 95.	Plummer	ID	83851–0408	Interior	3010	19A
Sundance Air Force Station–Gatr Site.	Seven Miles North By Northwest of Sundance.	Sundance	WY	82729	Air Force	103c	19A
Sundance Air Force Station Operations Area.	7 Miles North by Northwest of Sundance.	Sundance	WY	82729	Air Force	103c	19A

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #16—DELETIONS

Facility name	Address	City	State	Zip code	Agency	Reporting mechanism	Code
Bonanza Mining District.		Bonanza	CO	81149	Agriculture	103c 3016	6
US National Photo Interpretation Center.	1st & M St SE	Washington	DC	20374	National Imagery and Mapping.	3010	7
Ames Lab #1	1915 N. Scholl Road, Iowa State University.	Ames	IA	50011–3020	Energy	3016	1

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #16—DELETIONS—Continued

Facility name	Address	City	State	Zip code	Agency	Reporting mechanism	Code
Clairborne Range, England Air Force Base.	LA Hwy 488 13m SW of Alexandria.	Alexandria	LA	71301	Agriculture	3010	2
Mark Twain National Forest.	401 Fairgounds Road.	Rolla	MO	65401	Agriculture	103c 3010	4
Flying J Petroleums Inc Williston Refine.	1 Mi E of Williston Hwy 1804.	Williston	ND	58801		103c	2
Hallam Nuclear Power Facility.	NE¼ Sec 19 T7N R6E.	Hallam	NE	68368	Energy	103c	3
Dona Anna Range Camp Mates.	20 Miles East	Las Cruces	NM	88001	Army	3016	6
Franklin D Roosevelt Library.	511 Albany Post Rd.	Hyde Park	NY	12538	General Services Administration.	3010	4
Niagara Station ..		Youngstown	NY	14174	General Services Administration.	103c	1
USCG—Station Jones Beach.	Westend Boat Basin off Ocean.	Freeport	NY	11520–5001	Transportation	3010	1

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #16—CORRECTIONS

	Facility name	Address	City	State	Zip code	Agency	Reporting mechanism	Code
c	Chugach NF: Grantie Mine.	T10N R7E S9, SM, NR Port Wells Bay, 20 MI N of.	Whittier	AK	99693	Agriculture	103c	20A
o	Chugach NF: Grantie Mine.	T10 R7 S9 Seward Meridian.	Port Wells	AK	99664	Agriculture	103c.	
c	Tongass NF: Gold Standard Mine.	W Side Helm Bay, 10 MI SE of Meyers Chuck On.	Meyers Chuck	AK	99903	Agriculture	103c	20A
o	Tongass NF: Gold Standard Mine.	W Side of Helm Bay, 25 MI N of City.	Ketchikan	AK	99919	Agriculture	103c.	
c	North River White Alice Communications.	T18S R10W S36 KRM.	Unalakleet	AK	99684	Air Force	3016 103c	20A, 23
o	North River White Alice Communications.	8 MI E of Unalakleet.	Unalakleet	AK	99684	Air Force	3016.	
c	Alaska Tok Fuel Terminal.	7 MI W of Tok, Alaska Hwy 2.	Tok	AK	99780	Army	3010 103c	12
o	Alaska Tok Fuel Terminal.	7 MI W of Tok, Alaska Hwy 2.	Tok	AK	99780	Army	3010.	
c	BLM-Kogru River Dewline Site.	West Side of Harrison Bay 60 MI NW of Nuiqsut.	Nuiqsut	AK	99789	Interior	103c	20A
o	BLM-Kogru River Dewline Site.	West Side of Harrison Bay.	Barrow & Prudhoe Bay	AK	99723	Interior	103c.	
c	CG-Edna Bay Entrance Light.	Edna Bay, 32 MI NW of City.	Craig	AK	99921	Transportation	3010 103c	23
o	CG-Edna Bay Entrance Light.	Edna Bay, 32 MI NW of City.	Craig	AK	99921	Transportation	3010.	
c	Plumas NF Whitehorse Landfill.	T23N R8AE S6, TA24N R8E S7.	Quincy	CA	95971	Agriculture	103a 103c	23
o	Plumas NF Whitehorse Landfill.	T23N R8AE S6, TA24N R8E S7.	Quincy	CA	95971	Agriculture	103a 103c.	
c	Lake Tahoe Basin MU: Meyers Landfill.	870 Emerald Bay Rd.	South Lake Tahoe	CA	96150	Agriculture	103a 103c	23
o	Lake Tahoe Basin MU: Meyers Landfill.	870 Emerald Bay Rd.	South Lake Tahoe	CA	96150	Agriculture	103a.	
c	BLM-Swansea Site.	T 16S, R. 36E., Sec 24, SE SW, Mt Diablo M.	Keeler	CA	93530	Interior	103c 3016	20A

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #16—CORRECTIONS—Continued

	Facility name	Address	City	State	Zip code	Agency	Reporting mechanism	Code
o	BLM-Swansea Site.	T 16S, R. 36E., Sec 24, SE SW, Mt Diablo M.	Keeler	CA		Interior	103c 3016.	
c	NPS-Golden Gate National Recreation.	Building 201 Fort Mason.	San Francisco	CA	94123	Interior	103c	20A
o	NPS-Golden Gate National Recreation.	Building 201 Fort Mason.	San Francisco	CA		Interior	103c.	
c	BLM-Stateline Dump (Landfill).	10 M E of Town of Tulelake.	Tulelake	CA	96134	Interior	3016 103c	20A
o	BLM-Stateline Dump (Landfill).	of Tulelake		CA		Interior	3016 103c.	
c	Boeing North American, Inc.	12214 Lakewood Blvd.	Downey	CA	90241	NASA	3010 103c	23
o	Boeing North American, Inc.	12214 Lakewood Blvd.	Downey	CA	90241	NASA	3010.	
c	NASA Santa Susana Field Laboratory.	Woodlsey Canyon Road.	Simi Valley	CA	91304	NASA	3005 3010 3016 103c	20A
o	USNASA Boeing SSFL Area II.	Santa Susana Field Lab NASA.	Simi Hills	CA	91311	NASA	3005 3010 3016 103c	
c	Oakland Naval Supply Center, Alameda.	2155 Mariner Square Loop.	Alameda	CA	94501	Navy	103c 3010 3005	20A
o	Oakland Naval Supply Center, Alameda.		Alameda	CA	94501	Navy	103c 3010 3005	
c	Former NAVFAC Engineering Field.	900 Commodore Drive.	San Bruno	CA	94066	Navy	103c	20A
o	Western Division, Naval Facilities.	900 Commodore Drive.	San Bruno	CA		Navy	103c.	
c	Grand Junction Office.	2597 B 3/4 Road	Grand Junction	CO	81503	Energy	3016 103c 3005 3010	20A
o	Grand Junction Projects Office.	3597 B–3/4 RD PO2567.	Grand Junction	CO	81502–5504	Energy	3016 103c 3005 3010	
c	BLM-San Miguel Landfill #2.	T44N R17W Sec 18.	Slick Rock	CO	81333	Interior	103c	20A
o	BLM-San Miguel Landfill #2.	T44N R17W Sec 18.	Slick Rock	CO		Interior	103c.	
c	BLM-Walden Landfill.	Approximately 3 MI. NE of Walden.	Walden	CO	80480	Interior	103c	20A
o	BLM-Walden Landfill.	T9N R79W Sec 24, 6THPM.	Walden	CO		Interior	103c.	
c	Army Engine Plant Stratford.	550 South Main Street.	Stratford	CT	06497	Army	3005 3010 3016 103c	20A
o	Stratford Army Engine Plant.	550 South Main Street.	Stratford	CT	06497	Army	3005 3010 3016 103c	
c	Former NUSC New London Laboratory.	900 Bank Street	Fort Trumbull	CT	06320	Navy	3010 103c 103a.	20A
o	New London Naval Underwater Systems.	New London Laboratory.	New London	CT	06320	Navy	3010 103c 103a	
c	National Imagery and Mapping Agency.	1st St & M St SE	Washington	DC	20374	National Imagery and	3010	22
o	National Photographic.	1st St & M St SE	Washington	DC	20374	EPA	3010.	
c	Miami Coast Guard Air Station.	OPA Locka Airport	Opa Locka	FL	33054	Transportation	103c	20A
o	Miami Coast Guard Air Station.	OPA Locka Airport	Opa Locka	FL		Transportation	103c 3010.	
c	Lualualei National Response Team.	Lualualei Valley Oahu Island.	Wahiawa	HI	96786	Navy	103c	20A
o	Lualualei National Response Team.	Lualualei Valley Oahu Island.	Lualualei	HI		Navy	103c.	
c	Sac City Army Reserve Center.	1801 Gishwiller Rd	Sac City	IA	50583	Army	3010 103c	23
o	Sac City Army Reserve Center.	1801 Gishwiller Rd	Sac City	IA	50583	Army	3010.	

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #16—CORRECTIONS—Continued

	Facility name	Address	City	State	Zip code	Agency	Reporting mechanism	Code
c	Waverly (EX) Air Station Z–81.	1 MI S of Waverly	Waverly	IA	50677	Army	103c	20A
o	Waverly (EX) Air Station (ARNG).	1 MI S of Waverly	Waverly	IA		Army	103c.	
c	Caribou NF: S Mabey Canyon.	T8S R44E S10, 11, 14 & 15 BM.	Conda	ID	83230	Agriculture	103c	20A
o	Caribou NF: S Mabey Canyon Cross Valley.	T8S R44E S10, 11, 14 & 15 BM.	Conda	ID	83230	Agriculture	103c.	
c	FS-Lazy C H Ranch.	Star Rt 1, 15 MI SW of City.	Montpelier	ID	83254	Agriculture	3010 103c	23
o	FS-Lazy C H Ranch.	Star Rt 1, 15 MI SW of City.	Montpelier	ID	83254	Agriculture	3010.	
c	BLM-Cream Can Junction Pesticide.	T5S R26E S35 SW¼ SW¼ BM.	Minidoka	ID	83343	Interior	3010 103c	20A, 23
o	BLM-Cream Can Junction.	T5S R26E S35 SW¼ SW¼ BM.	Minidoka	ID	83343	Interior	3010.	
c	BLM-Dobson Pass.	T48N R4E S1 Lot 9.	Wallace	ID	83873	Interior	3010 103c	23
o	BLM-Dobson Pass.	T48N R4E S1 Lot 9.	Wallace	ID	83873	Interior	3010.	
c	Army Reserve Personnel Command.	East of Intersection of D St & 1st St.	Granite City	IL	62040	Army	3010 103c	20A, 23
o	Army Reserve Personnel Command.	Rte 3 & Neidringhaus.	Granite City	IL	62040	Army	3010.	
c	Hoosier NF: Branchville Site.	811 Constitution Avenue.	Bedford	IN	47421	Agriculture	103c 3016	20A
o	Wayne-Hoosier NF: Branchville Site.	811 Constitution Avenue.	Bedford	IN	47421	Agriculture	103c 3016.	
c	Carl J. Shelter Army Reserve Center.	2300 10th Street	Lake Charles	LA	70601	Army	3010 103c	23
o	Carl J. Shetler Army Reserve Center.	2300 10th St	Lake Charles	LA	70601	Army	3010.	
c	Natick Lab. Army Research,.	Kansas St.	Natick 0	MA	01760	Army	3010 3016 103c	20A
o	Natick Research Development and.	Kansas St.	Natick	MA	01760	Army	3010 3016 103c	
c	Nyanza Chemical Waste Dump.	Megunko Rd	Ashland	MA	01721	EPA	3010	20A
o	Nyanza Superfund Site.	Megunko Rd	Ashland	MA	01721	EPA	3010.	
c	Doi Parker River Refuge.	Northern Boulevard, Plum Island.	Newburyport	MA	01950	Interior	3016 103c	20A
o	FWS-Parker River National Wildlife.	Northern Boulevard, Plum Island.	Newburyport	MA	01950	Interior	3016 103c.	
c	U.S. Postal Service.	135 A Street	Boston	MA	02210	Postal Service	3010 103c	20A
o	Boston Postal Service.	135 A Street	Boston	MA	02210	Postal Service	3010 103c.	
c	U.S. Postal Service Incoming Mail Center.	307 Becham St	Chelsea	MA	02150	Postal Service	103c	20A
o	Chelsea Postal Service Incoming Mail.	307 Becham St	Chelsea	MA	02150	Postal Service	103c.	
c	U.S. Coast Guard Buoy, Depot South.	Trotter Road	South Weymouth	MA	02190	Transportation	3005 3010 103c	20A
o	South Weymouth, Coast Guard Buoy.	Trotter Road	South Weymouth	MA	02190	Transportation	3005 3010 103c	
c	Naval Communication, Unit Washington.	Dangerfield & Commo Road.	Clinton	MD	20735	Navy	103c 103a 3010.	20A, 23
o	Cheltenham Naval Communications Unit.		Cheltenham	MD	20623	Navy	103a.	

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #16—CORRECTIONS—Continued

	Facility name	Address	City	State	Zip code	Agency	Reporting mechanism	Code
c	Bloodsworth Island Bombardment Range.	Chesapeake Bay, 4 MI. South of Crocheron.	Crocheron	MD	21627	Navy	103c	20A
o	Bloodsworth Archipelago.	N Potomac Runs Chesapea.	N/A	MD		Navy	103c.	
c	US Coast Guard Yard.	Hawkins Point Rd	Baltimore	MD	21226	Transportation	3010 103c	20A
o	Baltimore Coast Guard Yard.	Hawkins Pt Rd	Baltimore	MD	21226	Transportation	3010 103c.	
c	Maine Air National Guard-BIA.	Bangor Int'l Arprt Rt 222/Geofrey Blvd.	Bangor	ME	04401	Air Force	103c	20A
o	Bangor Maine Air National Guard-BIA.	Bangor Int'l Arprt Rt 222/Geofrey Blvd.	Bangor	ME	04401	Air Force	103c.	
c	U.S. Defense Fuel Support Point Casco.	RT 123	Harpswell (South)	ME	04079	Defense Logistics	3010 3016 103c	20A
o	Casco Bay Defense Fuel Support Point.	RT 123	Harpswell (South)	ME	04079	Defense Logistics	3010 3016 103c	
c	U.S. Defense Fuel Support Support Point.	Trundy Road Box 112.	Searsport	ME	04974	Defense Logistics	3010 3016 103c	20A
o	Searsport Defense Fuel Support Point.	Trundy Road Box 112.	Searsport	ME	04974	Defense Logistics	3010 3016 103c	
c	Brunswick Naval Air Station.	1251 Orion Street	Brunswick	ME	04011–5009	Navy	3005 3010 3016 103c	20A
o	Naval Air Station Brunswick.	1251 Orion Street	Brunswick	ME	04011–5009	Navy	3005 3010 3016 103c	
c	Cutler Naval Computer & Telecommunication AM.	Off Rt 191	Cutler	ME	04626–9608	Navy	3010 3016 103c	20A
o	Cutler Naval Computer &.	Off Rt 191	East Machias	ME	04630	Navy	3010 3016 103	
c	Former Gouldsboro NSGA Operations Site.	Route 195	Gouldsboro	ME	04624	Navy	103c	20A
o	Gouldsboro Naval Security Group.	Bldg 41 (Operations site).	Gouldsboro	ME	04624	Navy	103c.	
c	South Portland Coast Guard Base.	259 High St	South Portland	ME	04106	Transportation	3010 103c	20A
o	U.S. Coast Guard Base South Portland.	259 High St	South Portland	ME	04106	Transportation	3010 103c	
c	Desoto National Forest Access Roads.	100 W. Capitol St., Suite 1141.	Jackson	MS	39269	Agriculture	103c 3016	20A
o	Desoto National Forest Access Roads.	100 W. Capitol St., Suite 1141.	Jackson	MS	39269	Agriculture	103c 3016	
c	Belton Communication Facility.	SE¼ & Part SW¼, Sec 25, T46N, R33W.	Belton	MO	64012	Energy	103c	20A
o	Belton Communication Facility.	Hwy 71 at Belton 2.5 Miles 187th Street.	Belton	MO		Energy	103c	
c	BLM-Londonderry Mine/ Maxville Tailings.	NW¼ SW¼ Sec. 4 T8N R13W.	Maxville	MT	82007	Interior	103c	20A
o	BM-Londonderry Mine.	NW¼ SW¼ Sec. 4 T8N R13W.	Maxville	MT		Interior	103c	
c	U.S. Army Cold Regions Research and.	Route 10	Hanover	NH	03755	Army	103c 3016 103a	20A
o	Cold Regions Research Laboratory.	Route 10	Hanover	NH	03755	Army	103c 3016 103a	
c	Boulder CY Engineering Lab (BR-.	500 Date St.	Boulder City	NV	89005	Interior	3005 3010 103c	20A
o	BM-Date Street Complex (Boulder City.	500 Date St.	Boulder City	NV	89005	Interior	3005 3010 103c	

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #16—CORRECTIONS—Continued

	Facility name	Address	City	State	Zip code	Agency	Reporting mechanism	Code
c	Gus Kefurt Army Reserve Center.	399 Miller Street ...	Youngstown	OH	44507–1591	Army	3010 103c	23
o	Gus Kefurt Army Reserve Center.	399 Miller Street ...	Youngstown	OH	44507	Army	3010	
c	U.S. Armed Forces Reserve Center.	1101 North 6th Street.	Broken Arrow	OK	74012	Army	3010 103c	23
o	Broken Arrow Army Reserve Center—20.	1101 N 6th Ste 4 ..	Broken Arrow	OK	74012	Army	3010	
c	Tracy W. Young U.S. Army Reserve.	805 West Hartford Avenue.	Ponca City	OK	74601	Army	3010 103c	20A, 23
o	Ponca City Army Reserve Center.	805 West Hartford Ave.	Ponca City	OK	74601	Army	3010	
c	Bia-Caddo County Landfill #1.	SE/4 Sec 7 T5N R11W SW/4 Sec 8.	Apache	OK	73006	Interior	103c	20A
o	Bia-Caddo County Landfill #1.	SE/4 Sec 7 T5N R11W SW/4 Sec 8.	Apache	OK		Interior	103c	
c	Bia-Caddo County Landfill #5.	W/2 SW/4 Sec 16 T6N R11.	Apache	OK	73006	Interior	103c	20A
o	Bia-Caddo County Landfill #5.	W/2 SW/4 Sec 16 T6N R11.	Apache	OK		Interior	103c	
c	Bia-Caddo County Landfill #2.	S2 SE4 Sec 4 T7N R13W.	Carnegie	OK	73015	Interior	103c	20A
o	Bia-Caddo County Landfill #2.	S2 SE4 Sec 4 T7N R13W.	Carnegie	OK		Interior	103c	
c	Bia-Caddo County Landfill #3.	NE/4 NE4 Sec 10 T7N R13W.	Carnegie	OK	73015	Interior	103c	20A
o	Bia-Caddo County Landfill #3.	NE/4 NE4 Sec 10 T7N R13W.	Carnegie	OK		Interior	103c	
c	Bia-Caddo County Landfill #4.	W2 NW4 Sec 35 T8N R13W.	Carnegie	OK	73015	Interior	103c	20A
o	Bia-Caddo County Landfill #4.	W2 NW4 Sec 35 T8N R13W.	Carnegie	OK		Interior	103c	
c	Bia-Caddo County Landfill #6.	SE4 SE4 Sec 34 T9N R12.	Fort Cobb	OK	73038	Interior	103c	20A
o	Bia-Caddo County Landfill #6.	SE4 SE4 Sec 34 T9N R12.	Fort Cobb	OK		Interior	103c	
c	Bia-Caddo County Landfill #7.	SW4 NE4 Sec 14 T9N R12W.	Fort Cobb	OK	73038	Interior	103c	20A
o	Bia-Caddo County Landfill #7.	SW4 NE4 Sec14 T9N R12W.	Fort Cobb	OK		Interior	103c	
c	BIA-Caddo County Landfill #8.	NE4 NE4 Sec 22 T9N R12W.	Fort Cobb	OK	73038	Interior	103c	20A
o	BIA-Caddo County Landfill #8.	NE4 NE4 Sec 22 T9N R12W.	Fort Cobb	OK	.....	Interior	103c	
c	Elk Creek Dam Project.	Elk Creek Rd, 4.8 MI NE OF, Trail.	Trail	OR	97541	Corps of Engineers, Civil	103c	20A
o	Elk Creek Dam ..	27 MI N of City	Medford	OR	97503	Corps of Engineers, Civil	103c	
c	Albany Research Center.	1450 SW Queen Ave.	Albany	OR	97321	Energy	3010 3016	22
o	BM-Albany Research Center.	1450 SW Queen Ave.	Albany	OR	97321	Interior	3010 3016 ..... 103c	
c	BLM-Glass Buttes Mine & Retorts Site.	3 MI S of Milepost 82 off Hwy 20, T23S R23E S27&34, & T24S R23E S3, WM, 20 MI.	Brothers	OR	97712	Interior	103a 103c	23
o	BLM-Glass Buttes.	3 MI S of Milepost 82 off Hwy 20, 20 MI SE of.	Brothers	OR	97712	Interior	103a	
c	U.S. Army Reserve Maintenance Facility.	Albion Road	Smithfield	RI	02917	Army	103c	20A
o	Smithfield Army Reserve Maintenance.	Albion Road	Smithfield	RI	02917	Army	103c.	
c	Black Hills NF: Spokane Munitions.	R6E, T25, SW¼, Sec 26.	Spokane	SD	57730	Agriculture	103c3016	20A

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #16—CORRECTIONS—Continued

	Facility name	Address	City	State	Zip code	Agency	Reporting mechanism	Code
o	Black Hills NF: Spokane Munitions.	RGE, T25, SW¼, Sec 26.	Spokane	SD		Agriculture	103c 3016	
c	Manti-Lasal NF: Bears Ears #11 Rex Group.		Old La Sal	UT	84530	Agriculture	3016 103c	20A
o	Manti-Lasal NF: Bears Nars-Rex Group.		Old La Sal	UT	84530	Agriculture	3016 103c	
c	Manti-Lasal NF: Brushy Basin #31 Alias Pretty.		Old La Sal	UT	84530	Agriculture	103c 3016	20A
o	Manti-Lasal NF: Brushy Basin #31.		Old La Sal	UT	84530	Agriculture	103c 3016	
c	BLM-Worland Landfill.	West of Wyoming Street 433.	Worland	WY	82401	Interio	103c	20A
o	BLM-Worland Landfill.	T47NR93WSEC23	Worland	WY		Interior	103c	
c	BLM-Birch Creek Site.	State Rt.235 at Calpet.	Calpet	WY	82923	Interior	103c	20A
o	BLM-Birch Creek Site.	T27NR13WSEC34	Worland	WY		Interior	103c	
c	BLM-Old Lysite Landfill.	Badwater Road	Lysite	WY	82642	Interior	103c	20A
o	BLM-Old Lysite Landfill.	T30NR9WSEC1		WY		Interior	103c	
c	BLM-Boulder Landfill.	Wyoming State Rt 23–106.	Sublette	WY	82923	Interior	103c	20A
o	BLM-Boulder Landfill.	T31NR108WSEC3	Boulder	WY		Interior	103c	
c	BLM-South Bighorn County Landfill.	Off of US 20	Greybull	WY	82410	Interior	103c	20A
o	BLM-South Bighorn County Landfill.	T52NR93WSEC20		WY		Interior	103c	
c	U.S. Army Ethan Allen Firing Range.	Lee River Road	Jericho	VT	05465	Army	3010103c	20A
o	Ethan Allen Firing Range.	Lee River Road	Jericho	VT	05465	Army	3010103.	

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #16 NFRAP STATUS UPDATES

Facility name	Address	City	State	Zip code	Agency	Reporting mechanism
Fresno Horticultural Field Station.	2021 South Peach Ave	Fresno	CA	93727	Agriculture	3016 103c
Former NAVFAC Engineering Field.	900 Commodore Drive	San Bruno	CA	94066	Navy	103c
San Diego Naval Medical Center.	34800 Bob Wilson Dr, Suite 1800.	San Diego	CA	92314–5001	Navy	103a 103c 3010
Bloomfield Naval Weapons Industrial.	Old Windsor Avenue, P.O. Box 2.	Bloomfield	CT	06002	Navy	103c
New London Naval Submarine Base.	Route 12 Crystal Lake Road.	Groton	CT	06349	Navy	3005 3010 3016 103c
Hoosier NF: Branchville Site.	811 Constitution Avenue.	Bedford	IN	47421	Agriculture	103c 3016
Carl J. Shelter Army Reserve Center.	2300 10th Street	Lake Charles	LA	70601	Army	3010 103c
Truro Inst STP	Off Aldrich Rd	N Truro	MA	02666	Air Force	103c 3010
Massachusetts Air National Guard.	Skyline Dr	Worcester	MA	01605	Air Force	103c
Fort Devens	Buena Vista St.	Ayer-Shirley	MA	01432	Army	3005 3010 3016 103c 103a
Lt John A. Ferra US Army Reserve Center.	North St	Danvers	MA	01923	Army	103c
Natick Lab. Army Research, Development.	Kansas St.	Natick	MA	01760	Army	3010 3016 103c
Materials Technology Laboratory.	405 Arsenal St	Watertown	MA	02172	Army	3005 3010 3016 103c 103a

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #16 NFRAP STATUS UPDATES—Continued

Facility name	Address	City	State	Zip code	Agency	Reporting mechanism
Nyanza Chemical Waste Dump.	Megunko Rd	Ashland	MA	01721	EPA	3010
DOI Parker River Refuge	Northern Boulevard Plum Island.	Newburyport	MA	01950	Interior	3016 103c
Bedford Naval Weapons Industrial Reserve.	Hartwell Road	Bedford	MA	01730	Navy	3016 103c 103a
South Weymouth Naval Air Station.	Nas S. Weymouth Pwd Code 72.3.	South Weymouth	MA	02190	Navy	3005 3010 3016 103c
U.S. Coast Guard Buoy Depot South Weymouth.	Trotter Road	South Weymouth	MA	02190	Transportation	3005 3010 103c
Boston Veterans Affairs Hospital.	150 S Huntington Rd	Boston	MA	02130	Veterans Affairs	103c
Maine Air National Guard-Bia.	Bangor Int'l Arprt Rt 222/Geofrey Blvd.	Bangor	ME	04401	Air Force	103c
Loring Air Force Base	42 CSG/CC	Limestone	ME	04751	Air Force	3005 3010 3016 103c 103a
Auburn Training Site Organizational Maint.	Stevens Mill Road	Auburn	ME	04210	Army	3016
Caswell Training Site	5 Miles	Caribou	ME	04750	Army	3016
Brunswick Naval Air Station.	1251 Orion Street	Brunswick	ME	04011–5009	Navy	3005 3010 3016 103c 103a
Cutler Naval Computer & Telecommunication AM.	Off Rt 191	Cutler	ME	04626–9608	Navy	3010 3016 103c
Portsmouth Naval Shipyard.	Seavy Island	Kittery	ME	03904	Navy	3005 3010 3016 103c 103a
Hiawatha NF: Byers Lake Resort.	1.22 mi W & 1.22 mi N of Stueben.	W Section of Schoolcraft City.	MI	49829	Agriculture	103c 3016
Battle Creek Medical Center.	5600 Armstrong Road	Battle Creek	MI	49016	Veterans Affairs	3010
Desoto National Forest Access Roads: Road 415.	100 W. Capital St., Suite 1141.	Jackson	MS	39269	Agriculture	3016 103c
Pease Air Force	509 CSG/CC	Portsmouth	NH	03801	Air Force	3005 3010 3016 103c
U.S. Army Cold Regions Research and.	Route 10	Hanover	NH	03755	Army	103c 3016 103a
Keene Army Reserve Center.	682 Main Street	Keene	NH		Army	103c
Grenier Field Army Reserve Center.	Galaxy Drive	Manchester	NH		Army	103c
Otter Brook Lake Property.	Old Concord Rd	Keene	NH	03431	Corps of Engineers, Civil.	103c
Surry Mountain Shooting Range.	East Surry Rd	Surry	NH	03431	Corps of Engineers, Civil.	103c
Manchester Medical Center Ash Dump.	718 Smyth Road	Manchester	NH	03104	Veterans Affairs	103c
Manchester Housing and Development.	83 Trahan Street	Manchester	NH	03103		3010
Fort Bliss Air Defense Center.	McGregor Range FAW 10.	McGregor Range	NM	88003	Army	3005 3010
Ross Aviation, Inc	Hangar 481	Kirtland AFB	NM	87117	Energy	103c 3016
U.S. Postal Service—JAF Bldg.	8th Ave & 33rd Street	New York	NY	10199	Postal Service	3010
U.S. Armed Forces Reserve Center.	1101 North 6thO='.' Street.	Broken Arrow	OK	74012	Army	3010 103c
Tracy W. Young, U.S. Army Reserve.	805 West Hartford Avenue.	Ponca City	OK	74601	Army	3010 103c
North Smithfield Nike Control Area.	274 Old Oxford Road	North Smithfield	RI	02876	Air Force	103c
U.S. Army Reserve Maintenance Facility.	Albion Road	Smithfield	RI	02917	Army	103c
Davisville Naval Construction Battalion.	Off Sanford Road	North Kingstown	RI	02871	Navy	3016 103c 103a 3010 3005.
Manti-Lasal NF: Brushy Basin #31 Alias Pretty.		Old La Sal	UT	84530	Agriculture	103c 3016
Manti-Lasal NF: Mt. Linnaeus #1 Laura.		Old La Sal	UT	84530	Agriculture	103c 3016

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #16 NFRAP STATUS UPDATES—Continued

Facility name	Address	City	State	Zip code	Agency	Reporting mechanism
Manti-Lasal NF: Bears Ears #11 Rex Group Alias.	.....	Old La Sal	UT	84530	Agriculture	103c 3016 .....
Chester Army Reserve Center.	Route 11	Chester	VT	.....	Army	103c .....
T.S. Ethan Allen Air Force Base, RS.	Bldg. #5, Camp Johnson.	Colchester	VT	05446	Army	3016 .....

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BILLING CODE 6560–50–P

FEDERAL COMMUNICATONS COMMISSION

[WC Docket No. 02–314; FCC 02–332]

Application by Qwest Communications International Inc., Pursuant to Section 271 of the Telecommunications Act of 1996, For Authorization To Provide In-Region, InterLATA Service in the States of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington and Wyoming

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission grants the section 271 application of Qwest Communications International Inc. for authority to enter the interLATA telecommunications market in the states of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington, and Wyoming. The Commission grants Qwest's application based on its conclusion that Qwest has satisfied all of the statutory requirements for entry, and opened its local exchange markets to full competition.

DATES: Effective January 2, 2003.

FOR FURTHER INFORMATION CONTACT: Michael Carowitz, Attorney-Advisor, Wireline Competition Bureau, at 202–418–0026 or via the Internet at *mcarowit@fcc.gov*. The complete text of this Memorandum Opinion and Order is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. Further information may also be obtained by calling the Wireline Competition Bureau's TTY number: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order (MO&O) in WC Docket No. 02–314, FCC 02–332, adopted December 20, 2002, and released December 23, 2002. This full text may be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*. It is also available on the Commission's Web site at *http://www.fcc.gov/Bureaus/Common_Carrier/in-region_applications/verizon_vt/welcome.html*.

Synopsis of the Order

1. *History of the Application.* On September 30, 2002, Qwest filed an application, pursuant to section 271 of the Telecommunications Act of 1996, with the Commission to provide in-region, interLATA service in the states of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington and Wyoming.

2. *The State Commissions' Evaluations.* The Colorado Public Utilities Commission (Colorado Commission), the Idaho Public Utilities Commission (Idaho Commission), the Iowa Utilities Board (Iowa Board), the Montana Public Service Commission (Montana Commission), the Nebraska Public Service Commission (Nebraska Commission), the North Dakota Public Service Commission (North Dakota Commission), the Public Service Commission of Utah (Utah Commission), the Washington Utilities and Transportation Commission (Washington Commission), and the Wyoming Public Service Commission (Wyoming Commission), (collectively, state commissions), following an extensive review process over a number of years, advised Commission that Qwest met the checklist requirements of section 271 and has taken the statutorily required steps to open its local markets in each state to competition. Consequently, the state commissions recommended that the Commission approve Qwest's in-region, interLATA entry in its evaluations.

3. *The Department of Justice's Evaluation.* The Department of Justice filed its evaluation of Qwest's Application on October 22, 2002. It recommended approval of the application subject to Qwest's submission of supplemental evidence addressing certain pricing issues.

Primary Issues in Dispute

4. *Compliance with section 271(c)(1)(A).* The Commission concludes that Qwest demonstrates that it satisfies the requirements of section 271 (c) (1) (A) based on the number of interconnections agreements it has implemented with competing carriers in all nine states.

5. *Checklist Item 2—Unbundled Network Elements.* Based on the record, the Commission finds that Qwest has provided ''nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)'' of the Act in compliance with checklist item 2.

6. *Operating Support Systems (OSS).* The Commission finds that Qwest provides non-discriminatory access to its OSS. The Commission also concludes that Qwest provides nondiscriminatory access to its OSS—the systems, databases, and personnel necessary to support network elements or services. Nondiscriminatory access to OSS ensures that new entrants have the ability to order service for their customers and communicate effectively with Qwest regarding basic activities such as placing orders and providing maintenance and repair services for customers. The Commission finds that, for each of the primary OSS functions (pre-ordering, ordering, provisioning, maintenance and repair, and billing, as well as change management), Qwest provides access to its OSS in a manner that enables competing carriers to perform the functions in substantially the same time and manner as Qwest does or, if no appropriate retail analogue exists within Qwest's systems, in a manner that permits competitors a meaningful opportunity to compete. In particular, the Commission finds that

Qwest provides access to loop qualification information consistent with requirements in the *UNE Remand Order*. In addition, regarding specific areas where the Commission identifies issues with Qwest's OSS performance in the nine-state region—order processing notifiers, accuracy of manual processing, flow-through, and billing accuracy—these problems are not sufficient to warrant a finding of checklist noncompliance.

7. *UNE Combinations.* Pursuant to section 271(c)(2)(B)(ii) and BOC must demonstrate that it provides nondiscriminatory access to network elements in a manner that allows requesting carriers to combine such elements and that the BOC does not separate already combined elements, except at the specific request of the competing carrier. The Commission concludes, based on the performance data in the record, that Qwest meets its obligation to provide access to UNE combinations in compliance with the Commission's rules.

8. *Pricing of Unbundled Network Elements.* Checklist item 2 states that a BOC must provide ''nondiscriminatory access to network elements in accordance with sections 251(c) (3) and 252(d) (1)'' of the Act. Section 251(c)(3) requires incumbent LECs to provide ''nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory.'' Section 252(d) (1) provides that a state commission's determination of the just and reasonable rates for network elements, must be nondiscriminatory, based on the cost of providing the network elements, and may include a reasonable profit. Pursuant to this statutory mandate, the Commission has determined that prices for UNEs must be based on the total element long run incremental cost (TELRIC) of providing those elements. Based on the evidence in the record, the Commission finds that Qwest's UNE rates in Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington, and Wyoming are just, reasonable, and nondiscriminatory, and are in accordance with section 252(d)(1). Thus, Qwest's UNE rates in these states satisfy checklist item 2. Qwest has taken a different approach to pricing issues compared to other BOCs whose applications we previously have approved under section 271. Qwest made a series of voluntary rate reductions in Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington, and Wyoming prior to filing its section 271 applications. Those reductions were specifically calculated to produce rates that would enable those states to pass a benchmark comparison to rates in Colorado. The Commission first evaluated Qwest's UNE rates in Colorado and found them to be TELRIC-compliant. The Commission next conducted a benchmark analysis comparing Qwest's Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington, and Wyoming UNE rates to the Colorado UNE rates. This analysis compares the difference between the benchmark state's rates and Colorado's rates to the difference between the benchmark state's and Colorado's costs according to the Synthesis Model. Because the percentage differences between Qwest's Colorado rates and the benchmark state rates do not exceed the percentage differences between Qwest's Colorado costs and the benchmark state's costs according to the Synthesis Model, the Commission found that Qwest's rates in Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington, and Wyoming satisfy our benchmark analysis.

Other Checklist Items

9. *Checklist Item 1—Interconnection.* Based on the evidence in the record, the Commission concludes that Qwest provides interconnection in accordance with the requirements of section 251(c) (2) and as specified in section 271 and applied in the Commission's prior orders. Based on its review of the record, the Commission concludes, that Qwest complies with the requirements of this checklist item. In reaching this conclusion, the Commission examined Qwest's performance in providing collocation and interconnection trunks to competing carriers, as it has done in prior section 271 proceedings.

10. *Checklist Item 4—Unbundled Local Loops.* Qwest provides unbundled local loops in accordance with the requirements of section 271 and the Commission's rules. The Commission's conclusion is based on its review of Qwest's performance for all loop types, which include voice grade loops, xDSL-capable loops, and high capacity loops, as well as hot cut provisioning and our review of Qwest's processes for line sharing and line splitting.

11. *Checklist Item 5—Unbundled Local Transport.* Section 271(c)(2)(B)(v) of the competitive checklist requires a BOC to provide ''[l]ocal transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services.'' Based on our review of the record, the Commission concludes that Qwest complies with the requirements of this checklist item.

12. *Checklist Item 6—Unbundled Local Switching.* Based on the Commission's review of the record, it concludes that Qwest demonstrates that it provides: (1) line-side and trunk-side facilities; (2) basic switching functions; (3) vertical features; (4) customized routing; (5) shared truck ports; (6) unbundled tandem switching; (7) usage information for billing exchange access; and (8) usage information for billing for reciprocal compensation in compliance with checklist item 6.

13. *Checklist Item 7—911/E911 Access and Directory Assistance/ Operator Services.* Based on the Commission's review of the record, it finds that Qwest provides non-discriminatory access to 911 and E911 services and access to directory assistance services to allow the other carrier's customers to obtain telephone numbers and operator call completion services in compliance with checklist item 7.

14. *Checklist Item 10—Databases and Signaling.* Section 271(c)(2)(B)(x) of the 1996 Act requires a BOC to provide nondiscriminatory access to databases and associated signaling necessary for call routing and completion. Qwest states that it provides competitive LECs in each of the five application states with unbundled, nondiscriminatory access to its signaling network, including signaling links and transfer points, and to Qwest's call-related databases and service management systems. Based on the evidence in the record, the Commission finds that Qwest complies with the requirements of checklist item 10.

15. *Checklist Item 11—Number Portability.* Section 251(b)(2) requires all LECs to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission. Qwest states that it satisfies the requirements of checklist item 11 as it complies with the Commission's (a) long term number portability (''LNP'') implementation schedule; (b) performance criteria; (c) technical, operational, architectural and administrative requirements and (d) cost recovery rules for number portability. Based on the evidence in the record, the Commission concludes that Qwest has satisfied the requirements of checklist item 11.

16. *Checklist Item 14—Resale.* Based on the record in this proceeding, the Commission concludes that Qwest demonstrates that it makes telecommunications services available for resale in accordance with the requirements of section 251(c)(4) and section 252(d)(3), and thus satisfies the requirements of checklist item 14.

17. *Remaining Checklist Items.* An applicant for section 271 authority must demonstrate that it complies with checklist item 3 (poles, ducts, and conduits), item 8 (white pages), item 9 (numbering administration), item 12 (local dialing parity), and item 13 (reciprocal compensation). Based on the evidence in this record, the Commission concludes that Qwest complies with the requirements of all of the checklist items: 3, 8, 9, 12, and 13.

Other Statutory Requirements

18. *Section 272 Compliance.* Commission standards for compliance with Section 272 are set forth in the *Accounting Safeguards Order* (61 FR 41208, August 7, 1996) and the *Non-Accounting Safeguards Order* (61 FR 39397, July 29, 1996). Together, these safeguards discourage and facilitate the detection of improper cost allocation and cross-subsidization between the BOC and its section 272 affiliate and ensure that BOCs do not discriminate in favor of these section 272 affiliates. Based on the record, the Commission concludes that Qwest and QLDC, its section 272 affiliate, have demonstrated compliance with the requirements of section 272.

19. *Public Interest Analysis.* The Commission concludes that approval of this application is consistent with the public interest. From the Commission's extensive review of the competitive checklist, which embodies the critical elements of market entry under the Act, it finds that barriers to competitive entry in the application states' local exchange markets have been removed, and that these local exchange markets are open to competition. It further finds that the record confirms the Commission's view that BOC entry into the long distance market will benefit consumers and competition if the relevant local exchange market is open to competition consistent with the competitive checklist. Notwithstanding its concern about discrimination in interconnection agreements and potential violations of the Act as a result, the Commission finds that Qwest's previous failure to file certain interconnection agreements with the application states does not warrant a denial of this application. The Commission concludes that concerns about any potential ongoing checklist violation (or discrimination) are met by Qwest's submission of agreements to the commissions of the application states pursuant to section 252 and by each state acting on Qwest's submission of those agreements. Based on the limited circumstances established in the record, the Commission does not find that the allegations concerning Qwest's compliance with section 271 relate to openness of the local telecommunications markets to competition. Instead, it defers any enforcement action pending the Enforcement Bureau's investigation of the matter.

20. *Section 271(d) (6) Enforcement Authority.* Working with the state commissions, the Commission intends to closely monitor Qwest's post-approval compliance to ensure that Qwest continues to meet the conditions required for section 271 approval. It stands ready to exercise its various statutory enforcement powers quickly and decisively in appropriate circumstances to ensure that the local market remains open in each of the states.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 02–33043 Filed 12–31–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Extension of Information Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The FDIC is soliciting comment concerning its information collection titled, ''Privacy of Consumer Financial Information (12 CFR 332).''

DATES: You should submit written comments by March 3, 2003.

ADDRESSES: You should direct comments and requests for further information to Steven F. Hanfit, (202) 898–3907, Legal Division (Consumer and Compliance Unit), Room MB–3064, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. All comments should refer to the OMB control number 3064–0136. Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. to 5 p.m.

A copy of the comments should also be sent to the OMB Desk Officer for the FDIC: Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503, or by e-mail to *jlackeyj@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: The FDIC is proposing to extend OMB approval of the following information collection:

Title: Privacy of Consumer Financial Information (12 CFR 332).

OMB Control Number: 3064–0136.

Description: This submission covers a collection for an existing regulation.

The Gramm-Leach-Bliley Act (Pub. L. 106–102) requires the information collection, and mandates that the federal banking agencies issue regulations as necessary to implement notice requirements and restrictions on a financial institution's ability to disclose nonpublic personal information about consumers to nonaffiliated third parties.

The information collection requirements in part 332 are as follows:

Section 332.4(a) requires a bank to provide an initial notice to consumers that accurately reflects its privacy policies and practices.

Section 332.5(a) requires a bank to provide a notice annually to customers during the continuation of the customer relationship that accurately reflects the bank's privacy policies and practices.

Section 332.7(a)(1) requires a bank to provide a clear and conspicuous notice to each of its consumers that accurately explains the right to opt out. The notice must state that the bank discloses or reserves the right to disclose nonpublic personal information to certain categories of nonaffiliated third parties; that the consumer has the right to opt out of that disclosure; and a reasonable means by which the consumer may exercise the opt out right. Section 332.10(c) states that a bank may allow a consumer to select certain nonpublic personal information or certain nonaffiliated third parties with respect to which the consumer wishes to opt out (partial opt-out).

Section 332.8(a) requires a bank to provide consumers with a revised notice of the bank's policies and procedures and a new opt out notice, if the bank wishes to disclose information in a way that is inconsistent with the notices previously given to a consumer.

Part 332 also contains affirmative actions that consumers must take to exercise their rights. In order for consumers to prevent banks from

sharing their information with nonaffiliated parties, they must opt out (§§ 332.7(a)(2)(ii), 332.10(a)(2) and 332.10(c)).

Consumers also have the right at any time during their continued relationship with the bank to change or update their opt out status with the bank (§§ 332.7(f) and (g)).

These information collection requirements ensure bank compliance with applicable Federal law.

The most recently published (65 FR 8783) estimation of the number of the paperwork burden associated with this collection follows:

Estimated Number of Respondents: 5,764.

Estimated Total Annual Responses: 5,764.

Estimated Time Per Response: 43 hours (disclosure burden, includes initial notice).

Estimated Burden Hours Per Response: 2 Hours (reporting burden)

Frequency of Response: Annually.

Estimated Total Annual Burden: 259,380 hours.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated at Washington, DC this 24th day of December, 2002.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 02–33044 Filed 12–31–02; 8:45 am]

BILLING CODE 6714–01–M

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 16, 2003.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Russell W. Davis, David M. Davis, both of Mount Vernon, Illinois, James K. Davis, Salem, Illinois, the David M. Davis Family Trust, James K. Davis Family Trust, and Lynne M. Mills Family Trust, all of Mount Vernon, Illinois; to retain 76.74 percent of Dix Bancshares, Inc., and thereby indirectly retain voting shares of First State Bank of Dix, both of Dix, Illinois.

In connection with this notice, David M. Davis, Mount Vernon, Illinois; to acquire direct and indirect control of 53.90 percent of Dix Bancshares, Inc., and for James K. Davis, Salem, Illinois, to acquire direct and indirect control of 44.10 percent of Dix Bancshares, Inc.

Board of Governors of the Federal Reserve System, December 26, 2002.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 02–33045 Filed 12–31–02; 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 27, 2003.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309–4470:

1. Buford Banking Group, Inc., Buford, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Lanier Community Bank (in organization), Buford, Georgia.

2. F.N.B. Corporation, Naples, Florida; to acquire up to 20 percent of the voting shares of Sun Bancorp, Inc., and thereby indirectly acquire Sun Bank, both of Selinsgrove, Pennsylvania.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Century Bancshares, Inc., Gainesville, Missouri; to acquire 24.8 percent of Ozarks Heritage Financial Group, Inc., Gainesville, Missouri, and thereby indirectly acquire Bank of Plato, Plato, Missouri.

2. Ozarks Heritage Financial Group, Inc., Gainesville, Missouri; to become a bank holding company by acquiring 100 percent of Community First Financial Corporation, Plato, Missouri, and thereby indirectly acquire Community First Financial Corporation and its subsidiary, Bank of Plato, both of Plato, Missouri.

Board of Governors of the Federal Reserve System, December 26, 2002.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 02–33046 Filed 12–31–02; 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 28, 2003.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Century Bancshares, Inc., Gainesville, Missouri; to acquire 24.8 percent of Ozarks Heritage Financial Group, Inc., Gainesville, Missouri, and thereby indirectly acquire Community First Financial Corporation and its subsidiary, Bank of Plato, both of Plato, Missouri.

2. Ozarks Heritage Financial Group, Inc., Gainesville, Missouri; to become a bank holding company by acquiring 100 percent of Community First Financial Corporation, Plato, Missouri, and thereby indirectly acquire Bank of Plato, Plato, Missouri.

Board of Governors of the Federal Reserve System, December 27, 2002.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 02–33140 Filed 12–31–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of November 6, 2002

In accordance with § 271.25 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on November 6, 2002.[1]

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. To further its long-run objectives, the Committee in the immediate future seeks conditions in reserve markets consistent with reducing the federal funds rate to an average of around 1¼ percent.

By order of the Federal Open Market Committee, December 23, 2002.

Vincent R. Reinhart,

Secretary, Federal Open Market Committee.

[FR Doc. 02–33141 Field 12–31–02; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Meeting of the President's Council on Bioethics on January 16–17, 2003

AGENCY: The President's Council on Bioethics, HHS.

ACTION: Notice.

SUMMARY: The President's Council on Bioethics will hold its ninth meeting, at which it will discuss, among other things the ethics of organ procurement and the role of the U.S. Food and Drug Administration (FDA) in public policy related to biotechnology. Subjects discussed at past Council meetings include: human cloning; embryonic stem cell research; the patentability of human organisms; extratherapeutic powers to enhance or improve human mood, memory, and muscles; research to extend the human lifespan; current and projected uses of preimplantation genetic diagnosis and screening (PGD); new techniques for choosing the sex of children; prospects for inheritable genetic modification (IGM); international models of biotech regulation; and the use of stimulants and related drugs to affect the behavior of children.

DATES: The meeting will take place Thursday, January 16, 2003, from 9 a.m. to 5:15 p.m. ET; and Friday, January 17, 2003, from 8:30 a.m. to 12:30 p.m. ET.

ADDRESSES: Grand Hyatt Washington at Washington Center, 1000 H Street, NW, Washington, DC 20001.

Public Comments: The meeting agenda will be posted at *http://www.bioethics.gov.* Members of the public may submit written statements for the Council's records. Please submit statements to Ms. Diane Gianelli, Director of Communications (tel. 202/296–4669 or e-mail *info@bioethics.gov*). The public may also express comments during the time set aside for this purpose, beginning at 11 a.m. ET, on Friday, January 17, 2003. Comments will be limited to no more than five minutes per speaker or organization. Please give advance notice of such statements to Ms. Gianelli at the phone number given above, and be sure to include name, affiliation, and a brief description of the topic or nature of the statement.

FOR FURTHER INFORMATION CONTACT: Diane Gianelli, 202/296–4669, or visit *http://www.bioethics.gov.*

Dated: December 23, 2002.

Dean Clancy,

Executive Director, The President's Council on Bioethics.

[FR Doc. 02–33116 Filed 12–31–02; 8:45 am]

BILLING CODE 4161–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary; Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI)

[1] Copies of the Minutes of the Federal Open Market Committee meeting on November 6, 2002, which includes the domestic policy directive issued at the meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

and the Assistant Secretary for Health have taken final action in the following case:

Michael E. Ganz, M.D., Case Western Reserve University: Based on the report of an investigation conducted by Case Western Reserve University (CWRU Report) and additional analysis conducted by ORI in its oversight review, the U.S. Public Health Service (PHS) found that Dr. Ganz, Associate Professor of Medicine, CWRU, engaged in scientific misconduct by falsification and fabrication of research in grant application R01 DK058674–01A2, ''The role of protein kinase C and shuttling proteins in diabetic kidney disease,'' submitted to the National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), National Institutes of Health (NIH).

Specifically, PHS found that Dr. Ganz engaged in scientific misconduct by:

(1) Falsifying Figure 16 in NIH grant application R01 DK058674–01A2 by claiming that photomicrographs of glomeruli were from a streptozotocin model of induced diabetes in rat, while the photomicrographs were actually from tissue of human or other primate origin;

(2) Falsifying Figure 16 of this NIH grant application by claiming that six photomicrographs all represented glomeruli from different animals, whereas they actually were from only three different glomeruli, with each glomerulus being shown in two images with different orientations and/or magnifications; and

(3) Falsifying and fabricating documents, purportedly showing the source of the falsified Figure 16 in the NIH grant application, which the Respondent provided to the CWRU inquiry committee.

The research was significant because it was designed to develop a therapy to prevent the progressive glomerular hypertrophy and matrix deposition that occur with the renal disease associated with diabetes in animals and humans.

Dr. Ganz has entered into a Voluntary Exclusion Agreement in which he has voluntarily agreed for a period of five (5) years, beginning on December 18, 2002:

(1) To exclude himself from any contracting or subcontracting with any agency of the United States Government and from eligibility for, or involvement in, nonprocurement transactions (*e.g.*, grants and cooperative agreements) of the United States Government referred to as ''covered transactions'' as defined in 45 CFR part 76 (Debarment Regulations); and

(2) To exclude himself from serving in any advisory capacity to PHS including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant.

FOR FURTHER INFORMATION CONTACT: Director, Division of Investigative Oversight, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852, (301) 443–5330.

Chris B. Pascal,

Director, Office of Research Integrity.

[FR Doc. 02–33079 Filed 12–31–02; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02060]

National Cancer Prevention and Control Program Notice of Availability of Funds; Amendment 2

A notice announcing the availability of fiscal year (FY) 2002 funds for cooperative agreements for the National Cancer Prevention and Control Program (NCPCP) was published in the **Federal Register** April 23, 2002, Volume 67, Number 78, pages 19932–19950. The notice is amended as follows:

Delete Sections A. through F., page 19932, first column, through page 19934, second column. The information provided in these sections will be replaced in an open season announcement that will be published annually.

Page 19934, first and second column, section ''G.2 Availability of Funds'', delete all specific dollar amounts listed. New dollar amounts will be published in the annual open season announcement.

Page 19935, first column, section ''G.2.d Funding Preference'', delete the phrase ''There are no funding preferences applicable to this component'' and replace it with the phrase ''Funding preference may be given to applicants from the prior year's applications who were considered Approved but Unfunded (ABU). Those applicants will be named in the annual open season announcement.''

Page 19937, first column, section ''G.4.a.(3)(b)'', delete the phrase ''letters of support must be (in a separate tabbed section of the application) that indicate the nature and extent of existing or planned collaborative support'' and replace it with the phrase ''letters of support that indicate the nature and extent of existing or planned collaborative support may be included in the appendices.''

Page 19937, third column, section ''G.4.a(7)(b) Travel'', first paragraph, correct the typographical error ''NCPCP'' to read ''NCCCP.''

Page 19938, first column, section ''G.4.b'', second paragraph, after the phrase ''For each proposal, the following information should be submitted:'' insert the phrase ''An Executive Summary consisting of a brief summary of proposed project, including goals, objectives, and description of who will complete the work.''

Page 19938, second column, section ''G.5.a'', delete the phrase ''(1 of 2)'' from the header. Delete the first sentence ''In addition to the general guidance provided in Section J-Other Requirements, the first two required progress reports should include a description of :'' and replace it with ''In addition to the guidance provided in Section J-Progress Reports 1 and 2 should include a description of:''

Page 19939, second column, section ''G.6.a.(3)(f)'', delete this entire section.

Page 19939, second column, section ''H.2. Availability of Funds'', delete all specific dollar amounts listed. New dollar amounts will be published in the annual open season announcement.

Page 19939, third column, section ''H.2.b.(1)'', reads ''Not less than 60 percent of cooperative agreement funds must be spent for screening, tracking, follow-up* * *'''' Delete the term ''tracking'' and replace it with ''case management.''

Page 19940, third column, section ''H.4.Content'', second paragraph, delete ''* * * 65 double spaced pages * * *'' and replace it with ''* * * 53 double spaced pages * * *''

Page 19941, second column, section ''H.4.a.(4)(f) Overall measures of success/effectiveness'', second paragraph, delete ''* * * fiscal year 2002–2003 * * *'' and replace with ''* * * proposed project year * * *''

Page 19941, third column, section ''H.4.a.(5)(a) Travel'', insert the following requirements:

H.4.a.(5)(a)[5] Up to two staff members to participate in the NCCDPHP Annual Chronic Disease Conference (4 days).

H.4.a.(5)(a)[6] On alternating years, starting with 2003, up to two staff members to participate in the National Cancer Conference in Atlanta (5 days).

Page 19943, third column, section ''I.1. Eligible Applicants'', third paragraph, add the following sentences: ''However, after five consecutive years of NPCR funding as planning, applicants are expected to have achieved progress toward the Enhancement level of operations. If applicants have not been able to achieve

this level of progress toward meeting NPCR standards, they may wish to designate another organization to operate the State or Territory's cancer registry.''

Page 19943, third column, section ''I.2. Availability of Funds'', delete all specific dollar amounts listed. New dollar amounts will be published in the annual open season announcement.

Page 19944, first column, first paragraph, delete the phrase ''* * * original five year project period.'' and replace it with ''* * * original project period.''

Page 19944, third column, section ''I.3.a.(1)'' contains a note. After the first sentence in the notation, add the sentence ''Benign brain-related tumors will be included in the required data collection set for cases diagnosed on or after January 1, 2004.''

Page 19944, third column, and Page 19945, first column, section ''I.3.a.(2) Collect all required data items.'', delete the first paragraph and replace with ''A complete listing of required and supplementary/recommended data to be collected or derived for invasive and in-situ cancers diagnosed on or after January 1, 2003 can be found in NAACCR Standards for Cancer Registries, Volume II Data Standards and Data Dictionary, Chapter IX; Required Status Table.''

Page 19945, first column, section ''I.3.a.(5)'', second sentence, add the word ''demonstrated'', so that the sentence reads ''Performance will be measured by the extent to which the program has documented and demonstrated their ability to store required data.''

Page 19945, second column, section ''I.3.a.(11)'', second paragraph, delete the first sentence and replace with ''Annually link registry files with those of the State's NBCCEDP.''

Page 19946, second column, section ''I.4.a.(4)(c)[1]'', after the first sentence, add ''In addition, please include a listing of any NPCR required data items that are not currently being collected. For each item not being collected, include an explanation of why it is not being collected.''

Page 19946, second column, section ''I.4.a.(4)(c)[2]'', delete the first sentence.

Page 19946, second column, section ''I.4.a.(4)(c)[3]'', last sentence, delete ''quarter for applicants currently funded by NPCR.'', and replace with ''year from the assessment of the NPCRCSS data submission.''

Page 19946, second column, section ''I.4.a.(4)(c)[4]'', first sentence, add the phrase ''if available'' so that the sentence reads, ''An assessment of the quality of data for diagnosis years 1995 through 2001, if available, and a description of the method for measuring specific quality indicators.''

Page 19946, third column, section ''I.4.a.(4)(d)'', after the first sentence, add the sentence ''(Note: Inclusion of an annual report will not be counted against the 20 page limit for appendices.)''

Page 19947, first column, section ''I.4.a.(5)(a)'', after the first sentence, add the sentence ''A copy of the organizational chart indicating the placement of the proposed program, abbreviated (one page) resumes for the designated staff, and job descriptions for the proposed staff should be included in the application as an appendix.''

Page 19947, first column, section ''I.4.a.(5)(d)'', delete the second sentence.

Page 19947, third column, section ''I.4.a.(9)(a)'', add the following phrase to the end of the sentence, ''to be achieved with the requested funding.''

Page 19947, third column, section ''I.4.a.(9)(e)'', delete the phrase ''* * * responsible for activities.'' and replace it with ''* * * responsible for each activity.''

Page 19947, third column, section ''I.4.a.(9)(i)[1]'', delete the sentence '' If appropriate, the plan may include improving the completeness or quality of past years * * *''

Page 19948, first column, section ''I.4.a.(10)(b)[3]'', delete the first sentence and replace with ''Travel funds for up to two persons to make one, two-day, trip to Atlanta, GA for a reverse site visit.''

Page 19948, second column, section ''I.5.a.'', in the header, correct the spelling of the word ''Requirements.''

Page 19948, second column, section ''I.5.a.(1)'', correct the third sentence to read ''Cumulative data will be requested from the reference year to 12 months past the close of the most recent diagnosis year.''

Page 19948, second column, section ''I.5.a.(2)'', second paragraph, first sentence, delete ''* * * NPCR's Planning Program's attainment of goals * * *'' and replace with '' * * * an NPCR Planning Program's attainment of goals * * *''

Page 19948, second column, section ''I.5.a.(2)(b)'', second paragraph, delete the third sentence and replace with ''Applications must be received by February 28 of the fiscal year in which the applicant wishes to be considered for Enhancement funding.''

Page 19949, second column, section ''J.1.a.(3)'', first sentence. Delete this sentence.

Page 19949, second column, section ''J.1.a.(4)(b) NBCCEDP:'', delete the sentence and replace with ''An example that demonstrates the impact of the NBCCEDP, and updated list of the screening and diagnostic procedures paid for by the program, the amount paid and the maximum amount allowed by Medicare within the State. Also include an updated letter of assurance regarding Medicaid coverage for CBE, screening mammograms, Pap smears and pelvic exams.''

Page 19949, second column, section ''J.1.a.(4)(b) NPCR:'', correct typographical error in section title. Section title should read ''J.1.a.(4)(c) NPCR:'' Before the first sentence in this section, add the sentence ''A hard copy of the State's most recent annual report on cancer incidence is required.''

Page 19950, first column, first paragraph, add the sentence ''Updated contact information and appendices will be published annually in the open season announcement.''

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–33073 Filed 12–31–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0109]

Agency Information Collection Activities; Announcement of OMB Approval; Dissemination of Information on Unapproved/New Uses for Marketed Drugs, Biologics, and Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Dissemination of Information on Unapproved/New Uses for Marketed Drugs, Biologics, and Devices'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 16, 2002 (67 FR 58429), the agency announced that the proposed information collection had been submitted to OMB for review

and clearance under section 3507 of the PRA (44 U.S.C. 3507). An agency may not conduct or sponsor and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0390. The approval expires on November 30, 2005. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: December 26, 2002.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 02–33138 Filed 12–31–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0308]

Agency Information Collection Activities; Announcement of OMB Approval; Current Good Manufacturing Practices and Related Regulations for Blood and Blood Components; and ''Lookback'' Requirements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Current Good Manufacturing Practices and Related Regulations for Blood and Blood Components; and 'Lookback' Requirements'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

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 the **Federal Register** of October 8, 2002 (67 FR 62727), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0116. The approval expires on November 30, 2005. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: December 26, 2002.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 02–33139 Filed 12–31–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0518]

Preparation for International Conference on Harmonisation Meetings in Tokyo, Japan, Including Progress on Implementation of the Common Technical Document and Update on New Topics

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of meeting.

SUMMARY: The Food and Drug Administration is announcing the following meeting: ''Preparation for ICH Meetings in Tokyo, Japan, February 3 through 6, 2003, Including Progress on Implementation of the Common Technical Document (CTD) and Update on New Topics'' to solicit information and receive comments on the International Conference on Harmonisation of Technical Requirements for the Registration of Pharmaceuticals for Human Use (ICH) as well as the upcoming meetings in Tokyo, Japan. The purpose of the meeting is to solicit public input prior to the next Steering Committee and Expert Working Group meetings in Tokyo, Japan, February 2003, at which discussion of the CTD and the future of ICH will continue.

Date and Time: The meeting will be held on January 21, 2003, from 10:30 a.m. to 2 p.m. Submit registration material by January 14, 2003.

Location: The meeting will be held at 5630 Fishers Lane, rm. 1066, Rockville, MD 20875.

Contact Person: Kimberly L. Topper, Center for Drug Evaluation and Research, Food and Drug Administration, 5630 Fishers Lane, Rockville, MD 20857, 301–827–7001, FAX 301–827–6801, e-mail: Topperk@cder.fda.gov.

SUPPLEMENTARY INFORMATION: The ICH was established in 1990 as a joint regulatory/industry project to improve, through harmonization, the efficiency of the process for developing and registering new medicinal products in Europe, Japan, and the United States without compromising the regulatory obligations of safety and effectiveness.

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 medical product development among regulatory agencies. ICH was organized to provide an opportunity for harmonization initiatives to be developed with input from both regulatory and industry representatives. ICH is concerned with harmonization among three regions: The European Union, Japan, the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industries Associations, the Japanese Ministry of Health, Labor 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 representatives of the observers: WHO, Health Canada and the European Free Trade Area. The ICH process has achieved significant harmonization of the technical requirements for the approval of pharmaceuticals for human use in the three ICH regions.

The current ICH process and structure can be found at the following Web site: http://www.ich.org.

Registration and Requests for Oral Presentations: Send registration information (including name, title, firm name, address, telephone, and fax number), and written material and requests to make oral presentations, to the contact person by January 14, 2003.

Interested persons may present data, information, or views orally or in writing, on issues pending at the public meeting. Oral presentations from the public will be scheduled between approximately 11:30 a.m. and 1 p.m. Time allotted for oral presentations may

be limited to 10 minutes. Those desiring to make oral presentations should notify the contact person by January 14, 2003, and submit a brief statement of the general nature of the evidence or arguments they which to present, the names and addresses, phone number, fax, and e-mail of proposed participants, and an indication of the approximate time requested to make their presentation.

If you need special accommodations due to a disability, please contact Kimberly L. Topper at least 7 days in advance.

Agenda: The agenda for the public meeting will be made available on January 14, 2003, at the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, under docket number 02N–0518.

Transcripts: Transcripts of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting at a cost of 10 cents per page.

Dated: December 26, 2002.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 02–33075 Filed 12–31–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Health Professions and Nurse Education Special Emphasis Panel; Notice of Partially Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Health Professions and Nurse Education Special Emphasis Panel meetings by teleconference. The meetings will be partially closed to the public. The public can join the open session of the meetings in person at the address listed below. The closed session of the meetings is in accordance with the provision set forth in section 552(b)(c)(6), Title 5 U.S.C., and the Determination by the Associate Administrator for Management and Program Support, Health Resources and Services Administration, pursuant to Pub. L. 92–463.

Name: Field Experience in Public Health Nursing in State and Local Health Departments for Baccalaureate Nursing Students (Section 831 D52).

Date and Time: January 6–10, 2003.; January 13–15, 2003.

Place: DHHS, Parklawn Building, 5600 Fishers Lane, Room 11A–33, Rockville, MD 20857.

Open on: January 6, 2003, 12 p.m. to 1 p.m.

Closed on: January 6–10, 2003, 1 p.m. to 6 p.m.; January 13–15, 2003, 1 p.m. to 6 p.m.

Name: Basic Nurse Education and Practice: Geriatric Nursing Knowledge and Experiences in Long Term Care Facilities for Nursing Students (Section 831 D53).

Date and Time: January 6–8, 2003.

Place: DHHS, Parklawn Building, 5600 Fishers Lane, Room 11A–33, Rockville, MD 20857.

Open on: January 6, 2003, 11 a.m. to 12 p.m.

Closed on: January 6, 2003, 12 a.m. to 6 p.m.; January 7–8, 2003, 12 p.m. to 6 p.m.

Purpose: The Health Professions and Nurse Education Special Emphasis Panel shall advise the Associate Administrator for Health Professions on the technical merit of grants to improve the training, distribution, utilization, and quality of personnel required to staff the Nation's health care delivery system.

Agenda: The open portion of each meeting will cover introductions, opening remarks, housekeeping details, and an orientation to the review process. The closed portion of each meeting will involve the review, discussion, and evaluation of grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

For Further Information Contact: Anyone wishing to obtain a roster of members or other relevant information should write or contact Ms. Wilma Johnson, Acting Director, Office of Peer Review, Bureau of Health Professions, Parklawn Building, Room 11A–33, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–6339.

Dated: December 26, 2002.

Jon L. Nelson,

Associate Administrator for Management and Program Support.

[FR Doc. 02–33078 Filed 12–31–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability. Final Restoration Plan and Environmental Assessment

AGENCY: U.S. Fish and Wildlife Service, U.S. Department of the Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish & Wildlife Service (Service), on behalf of the U.S. Department of the Interior (DOI), as a Natural Resource Trustee (Trustee), announces the release of the Final Restoration Plan and Environmental Assessment (RP/EA) for the Charles George Land Reclamation Trust Superfund Site in Tyngsborough, Massachusetts. The Final RP/EA describes the Trustees' selected action to restore natural resources injured as a result of chemical contamination at the Charles George Landfill.

ADDRESSES: Requests for copies of the Final RP/EA may be made to: Laura Eaton-Poole, U.S. Fish and Wildlife Service, New England Field Office c/o Great Meadows National Wildlife Refuge, Weir Hill Road, Sudbury, Massachusetts 01776. Copies are also available on the Internet at: *http://greatmeadows.fws.gov/charlesgeorge.html.*

FOR FURTHER INFORMATION CONTACT: Laura Eaton-Poole, U.S. Fish and Wildlife Service, New England Field Office c/o Great Meadows National Wildlife Refuge, Weir Hill Road, Sudbury, Massachusetts 01776. Interested parties may also call 978–443–4661, extension 17, or send e-mail to *Laura_Eaton@fws.gov* for further information.

SUPPLEMENTARY INFORMATION: Under the authority of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 as amended, commonly known as Superfund, (42 U.S.C. 9601 *et seq.*). ''* * * [Trustees] may assess damages to natural resources resulting from a discharge of oil or a release of a hazardous substance * * * and may seek to recover those damages.'' Natural resource damage assessments are separate from the cleanup actions undertaken at a hazardous waste site, and provide a process whereby the Trustees can determine the proper compensation to the public for injury to natural resources.

Three natural resource trustees settled with the Potentially Responsible Parties for injuries to natural resources due to releases of hazardous substances from the Charles George Landfill Superfund Site: DOI recovered $299,916 for injuries to migratory birds that use wetlands; National Oceanic Atmospheric Administration recovered $134,624 for potential injuries to anadromous and catadromous fish in the Merrimack River; and the Commonwealth of Massachusetts recovered $918,900 for injuries to wetlands and groundwater. The total recovery of damages and future oversight expenses for all the Trustees was $1,353,440. The three Trustees signed a memorandum of Agreement (MOA) in recognition of the common interests to restore, replace and/or acquire the equivalent natural resources

which were injured, destroyed, or lost by the releases of hazardous substances. The MOA provides a framework for the development of a Trustee Council that cooperatively develops and implements a Restoration Plan.

The Final RP/EA is being released in accordance with Section 111(i) of CERCLA, 42 U.S.C. 9611(i) and the National Environmental Policy Act (NEPA). The Final RP/EA describes a number of natural resource restoration, acquisition, and protection alternatives identified by the Charles George natural Resources Trustee Council (Trustee Council), and evaluates each of the possible alternatives based on all relevant consideration. The Trustee Council's Preferred Alternative has three parts: (1) The settlement funds will be used to protect properties adjacent to or near the areas of impact; (2) the settlement funds will be used to contribute to the anadromous fish restoration effort in the Merrimack River Watershed through the funding of stocking and monitoring of herring in the Concord River in Massachusetts, and contributing to the funding of the construction of a fish ladder at a dam on the Concord River which is an impediment to upstream migration of migratory fish; and (3) pending engineering estimates that determine that the work is cost-effective, the Upper Flint Pond Dam will be repaired to prevent migration of contaminated sediments into the Merrimack River. Details regarding the proposed projects are contained in the Final RP/EA.

The Final Revised Procedures for the DOI in implementing the NEPA were published in the **Federal Register** on January 16, 1997. Under those procedures, the DOI has determined that the Preferred Alternative will not have significant environmental effects as described in the Draft RP/EA an the attached Finding of No Significant Impact statement. Accordingly, the Preferred Alternative described in the draft RP/EA will not require preparation of an Environmental Impact Statement.

Author: The primary author of this notice is Laura Eaton-Poole, U.S. Fish and Wildlife Service, New England Field Office, c/o Great Meadows National Wildlife Refuge, Weir Hill Road, Sudbury, Massachusetts 01776.

Authority: The authority for this action is the Comprehensive Environmental response, Compensation, and Liability Act (CERCLA) of 1980 as amended, commonly known as Superfund, (42 U.S.C. 9601 *et seq.*).

Dated: October 18, 2002.

Mamie A. Parker,

Regional Director, Region 5, U.S. Fish and Wildlife Service.

[FR Doc. 02–32257 Filed 12–31–02; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Notice of Availability for Public Comment of the Draft Decision on Implementation of Section 3406(b)(2) of the Central Valley Project Improvement Act (CVPIA) (Hereinafter Draft (b)(2) Decision), Central Valley Project (CVP), California

AGENCY: Bureau of Reclamation and Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of Availability for public comment.

SUMMARY: CVPIA Section 3406(b)(2) authorized and directed the Secretary to dedicate and manage annually eight hundred thousand (800,000) acre-feet of Central Valley Project yield for the primary purpose of implementing the fish, wildlife, and habitat restoration purposes and measures authorized by CVPIA; to assist the State of California in its efforts to protect the waters of the San Francisco Bay/Sacramento San Joaquin Delta Estuary; and to help to meet such obligations as may be legally imposed upon the Central Valley Project under State or Federal law following the date of enactment of CVPIA, including but not limited to additional obligations under the Federal Endangered Species Act.

The U.S. Department of the Interior through the U.S. Bureau of Reclamation (Reclamation) and the U.S. Fish and Wildlife Service has developed the Draft (b)(2) Decision to implement CVPIA

Section 3406(b)(2). Public comment on the Draft (b)(2) Decision is invited at this time.

DATES: Submit written comments on the Draft (b)(2) Decision on or before February 3, 2003.

ADDRESSES: Copies of the Draft (b)(2) Decision may be retrieved from the Web site at *http://www.mp.usbr.gov/cvpia/3406b2/index.html.* Copies may also be requested by contacting Lynnette Wirth at (916) 978–5102 or via her email address *lwirth@mp.usbr.gov,* or by writing her at the below address.

Written comments on the Draft (b)(2) Decision should be addressed to the Bureau of Reclamation, Attention: Lynnette Wirth, MP–140, 2800 Cottage Way, Sacramento, CA 95825.

FOR FURTHER INFORMATION CONTACT: For additional information, please contact Lynnette Wirth at (916) 978–5102, or e-mail *lwirth@mp.usbr.gov.*

SUPPLEMENTARY INFORMATION: We are inviting the public to comment on Interior's Draft (b)(2) Decision. Interior has been dedicating and managing water pursuant to Section 3406(b)(2) beginning in 1993, the first water year following passage of the CVPIA. Since enactment of the statute, Interior has pursued ways to utilize (b)(2) water in conjunction with reoperation and water acquisitions to meet the goals of the CVPIA. Through this decision, Interior seeks to exercise Secretarial discretion to implement Section 3406(b)(2) in accordance with the language of CVPIA, the intent of Congress, as well as to make this decision consistent with the rulings of the *District Court in San Luis & Delta Mendota Water Authority, et al* v. *United States,* (CIV F 97–6140 OWW DLB) ((b)(2) litigation). This decision incorporates parts of the October 5, 1999, Final Decision upheld by the District Court, modifies others and adds new components. The intent of these changes is to simplify and clarify the accounting process for (b)(2) uses and to integrate its dedication and management with CVP operations for other CVP purposes.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, and we will honor such requests to the extent allowed by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowed by law. If you wish Interior to withhold your name and/or address, you must state this prominently at the beginning of your comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Dated: December 12, 2002.

Kirk C. Rodgers,

Regional Director, Mid-Pacific Region.

[FR Doc. 02–33111 Filed 12–31–02; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response Compensation and Liability Act (''CERCLA'')

Notice is hereby given that a proposed consent decree in *United States* v. *Aerosystems, et al.,* Civ. No. 89–1780 (D.N.J.), was lodged with the United States District Court for the District of New Jersey on December 10, 2002 (''Consent Decree''). The Consent Decree resolves the liability of all of the defendants, against whom the United States asserted a claim on behalf of the United States Environmental Protection Agency (''EPA'') under sections 106 and 107(a) of the Comprehensive Environmental Response, Compresentation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9606 and 9607(a), and the New Jersey Uniform Fraudulent Transfer Act, N.J.S. §§ 25:2–20 *et seq* for injunctive relief and recovery of costs incurred by the United States in connection with the Metaltec/Aerosystems Superfund Site, located in Franklin, New Jersey.

This is an ability to pay settlement based upon expert review of financial documentation provided to the United States by the defendants. This settlement calls for the liquidation of the Superfund Site property, in addition to an up-front cash payment to the United States of $60,000.00 and an additional $480,000.00 in installment payments over the next five years. These funds will be deposited into a special account to pay for response activities at the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Aerosystems, et al.,* DOJ Ref. #90–11–3–416.

The proposed Consent Decree may be examined at the office of the United States Attorney for the District of New Jersey, 502 Federal Building, 970 Broad Street (contact Assistant United States Attorney Susan Cassell); and the Region II Office of the Environmental Protection Agency, 290 Broadway, New York, New York 10007–1866 (contact Assistant Regional Counsel, Amelia Wagner). A copy of the proposed Consent Decree may be obtained by mail from the Consent Decree Library, PO Box 7611. Washington, DC 20044–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy please refer to the referenced case and enclose a check in the amount of $10.00 (25 cents per page reproduction costs) for the Consent Decree, payable to the U.S. Treasury.

Ronald Gluck,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–33082 Filed 12–31–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree; National Marine Sanctuaries Act

Notice is hereby given that the United States, on behalf of the United States District Court for the Southern District of Florida, in *United States* v. *Great Lakes Dredge and Dock Company,* Civil Action No. 97–2510, consolidated with 97–10075, on December 4, 2002. This Consent Decree resolves the claims of the United States against Great Lakes Dredge and Dock Company (''Great Lakes''), pursuant to the National Marine Sanctuaries Act, 16 U.S.C. 1431, *et seq.* The Consent Decree concerns the grounding of a vessel owned by Coastal Marine Towing and the dragging of a dredge pipe for 13 miles through the Florida Keys National Marine Sanctuary west of Marathon, Florida.

The Consent Decree provides that Great Lakes will purchase an annuity from Allstate Life Insurance Company (''Allstate'') which will provide for the payment of $969,000 to the National Oceanic and Atmospheric Administration (''NOAA'') over a period of five years from December 16, 2002. The funds will be used by NOAA to repay damage assessment costs, compensatory or loss use values, and for the primary on-site restoration of the grounding site. The Consent Decree further provides that the United States covenants not to bring a civil action or take administrative action against Great Lakes pursuant to the NMSA for violations of the Act alleged in the Amended Complaint.

The Department of Justice will receive, for a period of 30 days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environmental and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Great Lakes Dredge and Dock Company,* DOJ #90–11–3–1636.

The proposed Consent Decree may be examined at the United States Attorney's Office, Southern District of Florida, 99 NE. 4th St., Suite 328, Miami, FL 33132. A copy of the proposed Consent Decree may be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044. In requesting a copy, please refer to the reference number given above and enclose a check in the amount of $8.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Ellen M. Mahan,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–33080 Filed 12–31–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Agreement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended

Notice is hereby given that a proposed Settlement Agreement, with respect to a Proof of Claim filed by the United States in *In re Irving Tanning Co.,* Case No. 01–10586 (Bankr. D. Me.), was lodged on December 17, 2002, with the United States Bankruptcy Court for the District of Maine. The proposed Settlement Agreement resolves claims of the United States against Irving Tanning Company (''Irving'') at the Peter Cooper Landfill Site located in the Village of Gowanda, New York and at the Peter Cooper (Markhams) Site located in Dayton, New York, under the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9601 *et seq.* The Settlement Agreement includes a covenant not to sue by the United States under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607.

Under the proposed Settlement Agreement, the Proof of Claim filed by the United States on March 15, 2002, will be treated as an allowed unsecured claim in the amount of $140,000. The Settlement Agreement provides that this allowed claim will be paid in accordance with the treatment of Class 7 claims pursuant to the Plan of Reorganization approved by the Bankruptcy Court on August 13, 2002. The amount of the dividend to be paid with respect to this allowed claim will depend upon the total amount of

allowed unsecured claims and the total amount of money available to the unsecured creditors.

The Department of Justice will receive, for a period of up to thirty days from the date of this publication, comments relating to the proposed Settlement Agreement. Any comments should be addressed to Donald G. Frankel, Trial Attorney, Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice, One Gateway Center, Suite 616, Newton, Massachusetts 02458 and should refer to *In re Irving Tanning Co.,* D.J. Ref. #90–11–2–06887/3.

The proposed Settlement Agreement may be examined at EPA Region 2, 290 Broadway, New York, NY 10007–1866 (contact George Shanahan, 212–637–3171). A copy of the Settlement Agreement may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $2.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ronald G. Gluck,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–33083 Filed 12–31–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Under 28 CFR 50.7 and 42 U.S.C. 9622(d), notice is hereby given that on December 19, 2002, a proposed Consent Decree (''Consent Decree'') in *United States* v. *NL Industries, Inc. et al.,* Civil Action No. 91–CV–578–JLF, was lodged with the United States District Court for the Southern District of Illinois.

The United States filed the above-referenced civil action under sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended (''CERCLA''), against NL Industries, Inc. (''NL'') and others in 1991. The complaint seeks injunctive relief to compel defendants to perform remedial actions at the NL Industries/Taracorp Superfund Site, as well as civil penalties and punitive damages for failure to comply with a 1990 administrative order issued pursuant to section 106 of CERCLA. In addition, the complaint seeks to recover response costs incurred by the United States in connection with the Site.

Under the proposed consent decree. In additon, NL will pay $29.78 million to the Superfund within 30 days of entry of the consent decree. In addition, NL will pay up to an additional $710,000 to the Superfund, depending on the outcome of an audit of certain response costs relating to the Site. Finally, the proposed consent decree requires NL to pay a penalty of $1 million for failure to comply with the 1990 administrative order. Because another group of potentially responsible parties committed to complete the implementation of remedial action at the Site, the proposed consent decree does not include any requirements for NL to perform remedial action.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *NL Industries, Inc., et al.,* D.J. Ref. 90–11–3–608A.

The Consent Decree may be examined at the Office of the United States Attorney, Nine Executive Drive, Fairview Heights, Illinois 62208–1344, and at U.S. EPA Region 5, 77 West Jackson Boulevard, Chicago, IL 60604. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $8.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

William D. Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–33084 Filed 12–31–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Stipulation and Order of Judgment Under the Clean Air Act

Notice is hereby given that on December 12, 2002, a proposed Stipulation and Order for Judgment, (Stipulation) in *United States* v. *Sierra Rock, et al.,* Civil Action No. S–00–2117 GEB DAD was lodged with the United States District Court for the Eastern District of California.

In this action the United States sought civil penalties and injunctive relief for violation of the Clean Air Act against Defendants Sierra Rock, and Loring and Thelma Brunius as owners and operators of the Weber Creek Quarry, located in El Dorado County, California. The complaint alleges that defendants are liable for violating section 114(a)(1), and (3), and 113 (b)(1) of the Clean Air Act and the California State Implementation Plan (California SIP) by failing to adequately respond to an Administrative Order requiring compliance with an Information Request, and for violating numerous provisions of the California SIP and defendants' operating permits, especially as they relate to the duty to control and suppress dust during quarry operations. Pursuant to the Stipulation between the parties, Defendants agree to pay a civil penalty of $69,729. Because of defendants' limited ability to pay, the civil penalty will be made in three installments over a two-year period and interest will accrue on the delayed installment payments. In addition, defendants agree to implement specific and substantial injunctive provisions aimed at reducing dust at the quarry.

The Department of Justice will receive for a period of 30 days from the date of this publication comments relating to the Stipulation. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *U.S.* v. *Sierra Rock, et al.,* D.J. Ref. 90–5–2–1–07194.

The Stipulation may be examined at the Office of the United States Attorney, 501 ''I'' Street, 10th Floor, Sacramento, CA 95814, and at U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, California, 94105. A copy of the Stipulation may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $3.00 (25 cents

per page reproduction cost) payable to the U.S. Treasury.

Ellen M. Mahan,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–33081 Filed 12–31–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response Compensation and Liability Act (''CERCLA'')

Notice is hereby given that a proposed consent decree in *United States and State of Rhode Island* v. *Town of South Kingstown, R.I., and Town of Narragansett, R.I.*, Civil Action 02–535 ML (D.R.I.), was lodged with the United States District Court for the District of Rhode Island on December 19, 2002 (''Consent Decree''). The Consent Decree resolves the claims of the United States and the State of Rhode Island (the ''State'') against the Town of South Kingstown, R.I., and the Town of Narragansett, R.I. (the ''Towns''), for past response costs and for implementation of the source control remedy at the Rose Hill Regional Landfill Superfund Site (''Rose Hill Landfill Site'' or ''Site''). The United States' claims are under section 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. 9606, 9607, and the State's claims are under section 107 of CERCLA, 42 U.S.C. 9607, and R.I.G.L. chapters 23–18.9, 23–19.1, and 23–19.14. The Rose Hill Landfill Site is located in the Village of Peace Dale, Town of South Kingstown, Washington County, Rhode Island.

Under the Consent Decree, the Towns will pay $4,000,000, plus interest from March 31, 2002, to a Superfund special account in settlement of past costs incurred by the United States and future costs relating to the Operable Unit One—Source Control (''OU1'') remedy to be incurred by the United States. The OU1 remedy provides for excavation of the bulky waste at the Site and consolidating the bulky waste onto the solid waste area, followed by capping of the waste, along with leachate collection, landfill gas treatment, institutional controls, and monitoring. The Consent Decree provides that the State will implement the OU1 remedy and be responsible for 50% of the cost of construction and 100% of the cost of operation and maintenance of that remedy. Under the Consent Decree, the Towns are to eventually reimburse the State for 30 percent of the State's OU1 remedy costs through a combination of cash payments and in-kind operation and maintenance services.

Furthermore, the Consent Decree resolves the Towns' liability to the United States and the State for natural resource damages relating to the Rose Hill Landfill Site, subject to a reopener for unknown conditions and new information. The Towns will pay $122,000 to the National Oceanic and Atmospheric Administration (''NOAA'') and $3,000 to the Department of the Interior (''DOI'') in settlement of Federal claims for natural resources damages and/or natural resource damage assessment costs. The Towns will also repair or replace the Indian Run Reservoir Dam and the Asa Pond Dam, both in the Town of South Kingstown, R.I., in settlement of the State's claims for natural resource damages.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, written comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States and State of Rhode Island* v. *Town of South Kingstown, R.I., and Town of Narragansett, R.I.*, DOJ Ref. #90–11–3–06626.

Under R.I.G.L. § 23–19.14–11, the State will also receive, for a period of fourteen (14) days, written comments relating to the proposed Consent Decree. Comments should be addressed to the Director, Rhode Island Department of Environmental Management, 235 Promenade Street, Providence, Rhode Island 02908, and should refer to *United States and State of Rhode Island* v. *Town of South Kingstown, R.I., and Town of Narragansett, R.I.*

The proposed Consent Decree may be examined at the office of the United States Attorney for the District of Rhode Island, Fleet Center, 50 Kennedy Plaza, Providence, R.I. 02903 (contact Assistant United States Attorney, Michael P. Iannotti); the Region I Office of the U.S. Environmental Protection Agency, One Congress Street, Suite 1100, Boston, MA 02114–2023 (contact Senior Enforcement Counsel, Amelia Welt Katzen); and the office of the Rhode Island Department of Environmental Management, 235 Promenade Street, Providence, Rhode Island 02908 (contact Senior Legal Counsel, John A. Langlois). A copy of the proposed Consent Decree may be obtained by mail from the Consent Decree Library, PO Box 7611, Washington, DC 20044–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $21.25 (25 cents per page reproduction costs) for the Consent Decree, without appendices, or $150.25 (25 cents per page reproduction costs) for the Consent Decree, with appendices, payable to the U.S. Treasury.

Ronald G. Gluck,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–33085 Filed 12–31–02; 8:45 am]

BILLING CODE 4410–15–M

NATIONAL COUNCIL ON DISABILITY

Cultural Diversity Advisory Committee Meeting (Teleconference)

Time and Date: 3:00 p.m. EST, February 10, 2003.

Place: National Council on Disability, 1331 F Street, NW, Suite 850, Washington, DC.

AGENCY: National Council on Disability (NCD).

Status: All parts of this meeting will be open to the public. Those interested in participating in this meeting should contact the appropriate staff member listed below. Due to limited resources, only a few telephone lines will be available for the conference call.

Agenda: Roll call, announcements, reports, new business, adjournment.

CONTACT PERSON FOR MORE INFORMATION: Gerrie Drake Hawkins, Ph.D., Program Specialist, National Council on Disability, 1331 F Street NW., Suite 850, Washington, DC 20004; 202–272–2004 (voice), 202–272–2074 (TTY), 202–272–2022 (fax), ghawkins@ncd.gov (e-mail).

Cultural Diversity Advisory Committee Mission: The purpose of NCD's Cultural Diversity Advisory Committee is to provide advice and recommendations to NCD on issues affecting people with disabilities from culturally diverse backgrounds. Specifically, the committee will help identify issues, expand outreach, infuse participation, and elevate the voices of underserved and unserved segments of this nation's population that will help NCD develop federal policy that will address the needs and advance the civil and human rights of people from diverse cultures.

Dated: December 26, 2002.

Mark S. Quigley,

Director of Communications and Acting Executive Director.

[FR Doc. 02–33086 Filed 12–31–02; 8:45 am]

BILLING CODE 6820–MA–P

NUCLEAR REGULATORY COMMISSION

Notice of Availability of Draft Review Standard for Early Site Permit Applications

The U.S. Nuclear Regulatory Commission (the Commission) has published a draft review standard for early site permit (ESP) applications. The ESP process is intended, under Title 10 of the Code of Federal Regulations (10 CFR) Part 52, to permit resolution of site-related issues regarding possible future construction and operation of a nuclear power plant at a site that is the subject of the ESP application. The draft review standard is primarily intended to guide the Commission staff in its review of an ESP application, with a secondary purpose of informing potential applicants for an ESP and other stakeholders of information the staff needs to perform its review. The Commission is publishing this draft version of the review standard for public comment and interim use. The Commission plans to issue a final version of the review standard by the end of 2003.

The draft review standard is available electronically for public inspection in the NRC Public Document Room located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS # ML023530045). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* (the Public Electronic Reading Room).

Any interested party may submit comments on the draft review standard for consideration by the NRC staff. To be certain of consideration, comments on the draft review standard must be received by March 31, 2003. Comments received after the due date will be considered if it is practical to do so, but the NRC staff is able to assure consideration only for comments received on or before this date. Written comments on the review standard should be sent to:

Director, New Reactor Licensing Project Office, Office of Nuclear Reactor Regulation, Mailstop O–4D9A, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001. Comments may be hand-delivered to the NRC at 11555 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays. Comments may be submitted electronically by the Internet to the NRC at *esprs@nrc.gov.* All comments received by the Commission, including those made by Federal, State, and local agencies, Indian tribes, or other interested persons, will be made available electronically at the Commission's Public Document Room in Rockville, Maryland or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS).

FOR FURTHER INFORMATION, CONTACT: Mr. Michael L. Scott, Project Manager, New Reactor Licensing Project Office, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Mr. Scott may be contacted at (301) 415–1421 or by e-mail at *mls3@nrc.gov.*

Dated at Rockville, Maryland, this 26th day of December 2002.

For the Nuclear Regulatory Commission.

James E. Lyons,

Director, New Reactor Licensing Project Office, Office of Nuclear Reactor Regulation.

[FR Doc. 02–33113 Filed 12–31–02; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration (HSBC Bank plc, To Withdraw From Listing and Registration Its $500M 7.625% Subordinated Notes (Due June 15, 2006) and $300M 6.95% Subordinated Notes (Due March 15, 2011)) From the New York Stock Exchange, Inc. File No., 1–87110

December 27, 2002.

HSBC, a public limited company incorporated under the laws of England and Wales (''Issuer'' or ''Company''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2d(d) thereunder,[2] to withdraw its $500m 7.625% Subordinated Notes (due June 15, 2006) and $300m 6.95% Subordinated Notes (due March 15, 2011) (together, the ''Debt Securities''), from listing and registration on the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'').

The Issuer stated in its application that is has complied with all applicable laws in effect in the state of California, in which it is incorporated, and with the NYSE's rules governing an issuer's voluntary withdrawal of a security from listing and registration. The Issuer's application relates solely to the Security's withdrawal from listing on the NYSE and from registration under section 12(d) of the Act[3] and shall not affect its obligation to be registered under section 12(g) of the Act.[4]

The Board of Directors (''Board'') of the Issuer approved a resolution on November 27, 2002 to withdraw the Issuer's Debt Securities from listing on the NYSE. In making the decision to withdraw its Debt Securities from the NYSE, the Board states that it intends to withdraw its Debt Securities from listing on the NYSE as they are not widely held in the United States and the ongoing burdens associated with maintaining the listing are considered onerous and of little benefit to investors. In addition, the Board states that it intends to consolidate, as far as possible, the listings of all its debt securities on a single stock exchange and be subject to the ongoing reporting requirements of that exchange. All the terms and conditions of the Debt Securities will remain unchanged. The Company intends to list the Debt Securities on the London Stock Exchange (the ''LSE'') and they are expected to begin trading on December 20, 2002.

Any interested person may, on or before January 21, 2003 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the NYSE and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 02–33117 Filed 12–31–02; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47091; File No. SR–NYSE–2002–55]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Dissemination of Liquidity Quotations

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 28, 2002, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On December 20, 2002, the Exchange filed an amendment to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.[4]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules to permit the display and use of quotations in stocks traded on the Exchange to show additional depth in the market for those stocks. The additional quotations will be referred to as ''liquidity quotes.'' Below is the text of the proposed rule change. Proposed new language is *italicized*; proposed deletions are in brackets.

* * * * *

Dissemination of Quotations

Rule 60 (a)(1) For purposes of this rule, the terms ''quotation vendor'', ''bid'', ''offer'', ''reported security'', ''quotation size'', ''published bid'', ''published offer'', ''published quotation size'', ''make available'', ''aggregate quotation size'' and ''specified persons'' shall have the meaning given to them in SEC Rule 11Ac1–1.

(2) For the purposes of this rule and SEC Rule 11Ac1–1 as applied to the Exchange and members on the Floor, the term ''responsible broker or dealer'' shall mean, with respect to any bid or offer for any reported security made available by the Exchange to quotation vendors, the specialist in such reported security, who shall be the responsible broker or dealer to the extent of the quotation size he specifies.

(b) Each member who is a responsible broker or dealer on the Floor shall, in addition to meeting his obligations as set forth in paragraph (c) of SEC Rule 11Ac1–1 as applicable to such member under this rule, also abide by such rules and procedures adopted by the Exchange, in order to enable the Exchange to meet its quotation dissemination requirements under paragraph (b) of SEC Rule 11Ac1–1 as applicable to the Exchange under this rule.

(c) With respect to paragraph (b) of SEC Rule 11Ac1–1, the Exchange shall, at all times it is open for trading, collect, process and make available to quotation vendors the highest bid and the lowest offer, and the quotation size or the aggregate quotation size associated therewith, in each reported security in accordance with paragraphs (e) *and (g)* below (excluding any such bid or offer which is executed immediately after being made in the crowd and any such bid or offer which is cancelled or withdrawn if not executed immediately after being made) except during any period when trading in such reported security has been suspended or halted, or prior to the commencement of trading in such reported security on any trading day. Bids and offers on the Exchange, and associated quotation sizes and aggregate quotations sizes, shall be collected, processed and made available to quotation vendors as follows:

(1) Normal Mode—Unless otherwise designated pursuant to the provisions of subparagraphs (c)(2), the market on the Floor for each reported security shall be considered to be in a ''normal mode''. While such market is in a normal mode, only the specialist shall determine the size to be communicated to the Reporter and shall be deemed the ''responsible broker or dealer'' with respect to any bid or offer made available by the Exchange to quotation vendors.

(2) Non-Firm Mode—With respect to subparagraph (b)(3) of SEC Rule 11Ac1–1, a Floor Governor, Senior Floor Official, or Executive Floor Official (or two Floor Officials in the event a Floor Governor, Senior Floor Official, or Executive Floor Official is not available) shall have the power to determine that the level of trading activity or the existence of unusual market conditions are such that the Exchange is incapable of collecting, processing and making available to quotation vendors bids, offers and quotation sizes with respect to one or more reported securities in a manner which accurately reflects the current state of the market on the Floor. Such officials are sometimes referred to in this subparagraph (2) as the ''Initiating Official(s)''. Upon making of such a determination, the specialist shall designate the market in such security to be in a ''non-firm mode'', which shall remain in effect for a period not to exceed 30 minutes pending review as described below.

Whenever a Floor Governor, Senior Floor Official, or Executive Floor Official or two Floor Officials make any such determination with respect to any reported security, he or they shall immediately notify the Market Surveillance Division of the Exchange. During any period that the market in a reported security is in a non-firm mode, members on the Floor shall be relieved of their obligations under SEC Rule 11Ac1–1 as applicable to such members under this Rule 60 with respect to such reported security, but the specialist shall report bids and offers or revised bids and offers in such reported security, for publication, on a ''best efforts'' basis.

During any period that the market in a reported security is in a non-firm mode, the Initiating Official(s) shall

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated December 19, 2002 (''Amendment No. 1''). Amendment No. 1 replaces the filing in its entirety and provides, in the proposed rule text and the purpose section of the filing, further details on the display of additional quotations in stocks to show market depth.

[4] The Commission has received one comment letter on the proposed rule change. *See* letter from Thomas F. Secunda, Bloomberg, L. P., to Jonathan G. Katz, Secretary, Commission, dated December 16, 2002 (''Bloomberg Letter''). The commenter notes that the NYSE intends to disseminate liquidity quotations under the vendor and subscriber contracts that govern NYSE OpenBook service. The commenter believes that these contracts should be filed as a proposed rule change, pursuant to Section 19(b) of the Act. 15 U.S.C. 78s(b). The commenter also believes that these contracts inappropriately discriminate against vendors and that the dissemination of liquidity quotations under such agreements raises greater substantive issues than those raised by the NYSE's restrictions on redissemination of its NYSE's OpenBook service because liquidity quote information is ''* * * as critical as the national best bid and offer to those wishing to submit orders.''

The Commission notes that in approving the NYSE's OpenBook service, the Commission did not also consider and approve the vendor agreements because such agreements were not a part of the NYSE's OpenBook proposal. Indeed, in its order approving the NYSE's OpenBook service, the Commission stated that the NYSE's restrictions on vendor redissemination and enhancement, integration or consolidation of OpenBook data are on their face discriminatory, and may raise fair access issues under the Act. *See* Securities Exchange Act Release No. 45138 (December 18, 2001), 66 FR 66491 (December 26, 2001). We do not believe that it is necessary to resolve the issue of whether the contracts need to be filed under 19(b) prior to publishing this proposed rule change for comment because the NYSE's proposal on liquidity quotations, like its previous proposal on the OpenBook service, does not include, and therefore does not seek approval of, the agreements to which the commenter objects.

monitor the activity or condition which formed the basis for his or their determination. No more than 30 minutes after such market has been designated to be in a non-firm mode, the specialist shall review the condition of such market with the Initiating Official(s). In the event that the Initiating Official(s) are not available, the specialist shall review such condition with another Floor Governor, Senior Floor Official, or Executive Floor Official (or two Floor Officials if a Floor Governor, Senior Floor Official, or Executive Floor Official is not available). Continuation of the non-firm mode for longer than 30 minutes shall require the reaffirmation of the reviewing Floor Governor, Senior Floor Official, or Executive Floor Official or Floor Officials. Such review and reaffirmation shall occur not less frequently than every 30 minutes thereafter while the non-firm mode is in effect.

When the Exchange is once again capable of collecting, processing and making available to quotation vendors bids, offers, quotations sizes and aggregate quotation sizes with respect to a reported security that is in a non-firm mode in a manner which accurately reflects the current state of the market on the Floor, the Initiating Official(s) or, in the event he or they are not available, another Floor Governor, Senior Floor Official, or Executive Floor Official (or two Floor Officials if a Floor Governor, Senior Floor Official, or Executive Floor Official is not available) shall immediately renotify the Market Surveillance Division and the specialist in such reported security shall designate the market therein to be in a normal mode. Members on the Floor shall thereupon once again be obligated under SEC Rule 11Ac1–1 as applicable to such members under this Rule 60 with respect to such reported security.

(d) *In addition, the Exchange may disseminate a ''liquidity bid'' (at a price and size below the highest bid) and/or a ''liquidity offer'' (at a price and size above the lowest offer). The liquidity bid and liquidity offer shall reflect all trading interest represented in the highest bid and lowest offer, as well as trading interest (represented by orders on the specialist's book, members in the Crowd, and the specialist as dealer) executable at prices down to (in the case of a liquidity bid) the liquidity bid price, or up to (in the case of a liquidity offer) the liquidity offer price. Depending on market conditions in any particular security, the highest bid or offer and the liquidity bid or offer may be the same. The liquidity bid and offer shall be ''firm quotations'' available for orders to trade with. The specialist shall be the ''responsible broker-dealer,'' for all liquidity bids and offers. The Exchange shall not disseminate a liquidity bid or offer during any period when trading in the subject security has been suspended or halted, or prior to the commencement of trading in such security on any trading day. The provisions of Rule 60(c)(1) and (2) shall be applicable to liquidity bids and liquidity offers.*

(i) *Execution of Market Orders When Liquidity Bid or Offer Is Disseminated*

In the case of a market order to sell of a size greater than the highest bid size, the order shall be executed against such highest bid (or crossed by the specialist if agent for the order) with the balance of the order being executed (to the extent possible based on the size of the liquidity bid) at the higher of the liquidity bid price or the price at which orders on the book would not be traded-through. Auction market crossing procedures should be followed, as appropriate, to ensure proper execution of orders. The same principles apply in the case of a market order to buy.

(ii) *Execution of Limit Orders When Liquidity Bid or Offer Is Disseminated*

In the case of a limit order to sell whose size is greater than the highest bid size, but which is limited to a price executable at or above the liquidity bid price, the order shall be executed first against the highest bid price (or crossed by the specialist if agent for the order), with the balance of the order being executed (to the extent possible based on the size of the liquidity bid) within its limit price at a price at which orders on the book would not be traded-through. Auction market crossing procedures should be followed, as appropriate, to ensure proper execution of orders. The same principles apply in the case of a limit order to buy.

(iii) *Execution of XPress Orders When Liquidity Bid or Offer Is Disseminated*

An XPress order may be priced at either the highest bid or offer price if XPress eligible) or the liquidity bid or offer price (if XPress eligible). An XPress order priced at the highest bid or offer price shall be executed in accordance with the Exchange's XPress order execution procedures. An XPress order to buy priced at the liquidity offer price shall be executed at the lower of the liquidity offer price or the price at which the XPress order can be filled without trading through orders on the book, unless price improvement can be offered to the XPress order in accordance with the Exchange's XPress order execution procedures. The same principles shall apply in the case of an XPress order to sell priced at the liquidity bid price.

If the specialist receives two XPress orders within a nearly simultaneous time frame, one priced at the best bid (offer), and the other priced at the liquidity bid (offer), both orders shall be executed in accordance with the Exchange's procedures for the execution of XPress orders. Both orders shall be exposed to the Crowd for price improvement. Those portions of the orders that do not receive price improvement shall be executed against the XPress bids (offers), which may not then be traded against by other members pursuant to the Exchange's procedures for the execution of XPress orders.

(e) *Autoquoting of highest bid/lowest offer and automated adjustment of size of liquidity bid and offer. The Exchange will autoquote the NYSE's highest bid or lowest offer whenever a limit order is transmitted to the specialist's book at a price higher (lower) than the previously disseminated highest (lowest) bid (offer). When the NYSE's highest bid or lowest offer has been traded with in its entirety, the Exchange will autoquote a new bid or offer reflecting the total size of orders on the specialist's book at the next highest (in the case of a bid) or lowest (in the case of an offer) price. The size of any liquidity bid or offer shall be systemically increased to reflect any additional limit orders transmitted to the specialist's book at prices ranging from the liquidity bid or offer price to the highest bid (lowest offer). The size of any liquidity bid or offer shall be systematically decreased to reflect the execution of any limit orders on the specialist's book at prices ranging from the liquidity bid or offer price to the highest bid (lowest offer). However, de minimis increases or decreases in the size of limit orders on the book, as determined by the specialist, will not result in automated augmenting or decrementing of the size of the liquidity bid or offer where such bid or offer continues to reflect the actual size of limit orders on the book.*

In any instance where the specialist disseminates a proprietary bid (offer) of 100 shares on one side of the market, the bid or offer on that side of the market shall not be autoquoted. In such an instance, any better-priced limit orders received by the specialist shall be manually displayed, unless they are executed at a better price in a transaction being put together in the auction market at the time that the order is received.

[(d)] *(f)* In addition to meeting its obligations as set forth in paragraph (b) of SEC Rule 11Ac1–1 as applicable to

the Exchange under this Rule 60, the Exchange shall make available to quotation vendors and shall communicate to other specified persons the appropriate mode identifier in effect as to each reported security which shall, in the case of the initiation and termination of non-firm modes, effect the requisite notification and re-notification of specified persons under subparagraph (b)(3) of SEC Rule 11Ac1–1.

[(e)] *(g)* (1) Each specialist shall promptly report in each reported security in which he is registered the highest bid and lowest offer made in the trading crowd in such security and the associated quotation size that he wishes to make available to quotation vendors.

(2) Each specialist who is a responsible broker or dealer on the Floor shall:

(i) Promptly report as to the reported security whenever a bid, offer or quotation size he previously reported is to be revised; and

(ii) Promptly report as to the reported security whenever a bid and/or offer he previously reported is to be cancelled or withdrawn.

Supplementary Material

.10 No specialist shall be deemed to be a responsible broker or dealer with respect to a published bid or offer that is erroneous as a result of an error or omission made by the Exchange or any quotation vendor. If a published bid or published offer is accurate but the published quotation size (or published aggregate quotation size, as the case may be) associated with it is erroneous as a result of an error or omission made by the Exchange or any quotation vendor, then the specialist who is responsible for the published bid or published offer shall be obligated to the extent set forth in paragraph (c) of Rule 11Ac1–1 but only to the extent of one unit of trading in the reported security in question.

.20 While the market for a reported security is in a ''normal mode'', the specialist shall honor any bid or offer then being displayed by quotation vendors which is erroneous, up to the quotation size then being so displayed, which has been displayed for six minutes or more on the Price Display Unit at the post. Provided, however, that the specialist shall not be required to honor such a bid or offer which is erroneous as to either price or size or both if:

(i) As a matter or record, an execution, cancellation or update of such bid or offer was in effect or in process;

(ii) In honoring such a bid or offer, the resulting transaction would violate applicable Exchange rules or federal regulations;

(iii) Equipment failure prevents the specialist from monitoring such bid or offer; or

(iv) The price sought upon such quotation is above the current bid or below the current offer, on the Floor, by (a) one-half point or more in the case of a reported security trading at $50 or less or (b) one point or more in the case of a reported security trading at more than $50.

* * * * *

Definitions of Orders

Rule 13

.40 The minimum number of shares for an XPress order is [15,000 shares] *(i) 15,000 shares for an XPress order seeking to trade with the best bid or offer, and (ii) the size of the liquidity bid or offer for an XPress order seeking to trade with such liquidity bid or offer. With respect to the best bid or offer, the* [The] published bid or offer must be at the same price for no less than 15,000 shares for at least 15 seconds in order to be indicated as an XPress Quote. *With respect to the liquidity bid or offer, the published bid or offer must be the same price for at least 15 seconds in order to be indicated as an XPress Quote.*

* * * * *

Miscellaneous Requirements

Rule 123A

Supplementary Material

.10 through .25—No Change.

.30 A specialist may accept one or more percentage orders.—When accepting more than one order, the specialist must make every effort to inform the entering brokers that they will be participating with another order or orders. Information of this type would alert brokers to the fact that each order will do less than 50% of the volume. When the specialist is handling more than one percentage order, each such order will be on parity with the other. When an odd amount of shares is involved, for example, 300 shares, and a specialist holds two percentage orders, he must give the extra 100 shares to the broker having priority on a time basis. Therefore, all percentage orders given to a specialist must be time-stamped by the specialist at his Post location.

If a specialist feels he cannot properly handle a number of percentage orders at one time, he should call in a Floor Official to discuss the situation.

If so instructed by the entering broker(s), percentage orders to buy will be converted into regular limit orders for transactions effected on ''minus'' or ''zero minus'' ticks. Conversely, if so instructed by the entering broker(s), percentage orders to sell will be converted into regular limit orders for transactions effected on ''plus'' or ''zero plus'' ticks.

Special Conversion Instructions. In addition to the conversion instructions discussed immediately above, the entering broker(s) may further instruct the specialist that he may, but shall not be required to, convert a percentage order to buy into a regular limit order for transactions effected on ''zero plus'' and ''plus'' ticks. Conversely, the entering broker(s) may further instruct the specialist that he may, but shall not be required to, convert a percentage order to sell into a regular limit order for transactions effected on ''zero minus'' or ''minus'' ticks. (These ticks are hereinafter collectively referred to as ''destabilizing ticks''.) Pursuant to these special conversion instructions, the specialist may convert a percentage order on a destabilizing tick only where *(i) the transaction for which the order is being converted is for less than 10,000 shares or a quantity of stock having a market value of less than $500,000 and the price at which the converted percentage order is to be executed is no more than 0.10 away from the last sale price; or (ii) the transaction for which the order is being converted is for 10,000 shares or more or a quantity of stock having a market value of $500,000 or more and the price at which the converted percentage order is to be executed is no more than 0.25 away from the last sale price.* [(i) the transaction for which the order is being converted is for 10,000 shares or more or a quantity of stock having a market value of $500,000 or more (whichever is less); and (ii) the price at which the converted percentage order is to be executed is no more than 0.25 point away from the last sale price; provided, however, that this price parameter may be modified, in appropriate cases, with the prior approval of a Floor Official and the written consent of the broker who entered the order.]

The specialist shall not execute a converted percentage order pursuant to the preceding paragraph at consecutively higher or lower prices such that consecutive up or down ticks (as the case may be), follow one another in rapid succession, unless he obtains the prior approval of a Floor Governor, Senior Floor Official, or Executive Floor Official. In determining whether to grant such prior approval, the Floor Governor, Senior Floor Official, or Executive Floor Official shall consider any changes in overall market conditions, and any changes in buying or selling interest in

the stock in question. Where a specialist reasonably believes, based on prevailing market conditions (for example, a brief period of time where there is an influx of buying/selling interest and a ''fast market'' condition) that it may be appropriate and necessary for him to convert percentage orders, on destabilizing ticks, in a series of trades which, while not consecutive, may be effected within a short period of time, the specialist shall first seek the approval of a Floor Governor, Senior Floor Official, or Executive Floor Official. In granting such approval, the Floor Governor, Senior Floor Official, or Executive Floor Official should, based on his evaluation of the buying/selling and contra-side interest in the market, determine a price a reasonable amount away from the market, to which price the specialist may convert percentage orders in a series of non-consecutive trades. As this price is approached, the specialist shall again consult with a Floor Governor, Senior Floor Official, or Executive Floor Official, who will re-evaluate the situation at that time. Any subsequent approvals by the Floor Governor, Senior Floor Official, or Executive Floor Official shall follow the principles discussed immediately above.

The specialist may convert a percentage order on a stabilizing tick to make a bid or offer in such size as he deems appropriate. The specialist may convert a percentage order on a destabilizing tick to make a bid or offer in such size as he deems appropriate to add size to prevailing bid or offer.

In addition, the specialist may, except as provided below, convert a percentage order on a destabilizing tick to establish a new bid in such size as he deems appropriate, (i) immediately following a transaction where such transaction has cleared the Floor of bids and offers, or (ii) to narrow the quotation spread, provided that no such bid may be more than 0.10 of a point higher than the last sale. The specialist's conversion of a percentage order to establish a new bid pursuant to (i) and (ii) above shall be further subject to the following conditions:

(1) Where the specialist has converted a percentage order to buy on a destabilizing tick [to participate in a transaction of at least 10,000 shares or in a transaction with a quantity of stock having a market value of $500,000 or more (whichever is less)] as otherwise permitted by this rule, he may not convert a percentage order to buy to establish a new bid at a price which is higher than the price of the transaction, unless there is an intervening transaction at a price that is independent of the price established by the specialist through the conversion of a percentage order.

(2) Where the specialist has converted a percentage order to buy to establish a new bid that is higher than the last sale price, with the result that a transaction is effected at the bid price, he may not convert a percentage order to buy to participate in a trade [of at least 10,000 shares or a quantity of stock having a market value of $500,000 or more (whichever is less)] as otherwise permitted by this rule, unless there is an intervening transaction at a price that is independent of the price established by the specialist through the conversion of a percentage order.

(3) Where the specialist has converted a percentage order to buy to establish a new bid that is higher than the last sale, he may not convert a percentage order to subsequently establish a higher bid, unless there is an intervening transaction at a price independent of the price established by the specialist through the conversion of a percentage order.

The same principles shall apply in the case of a specialist's conversion of percentage orders to sell. With the prior approval of a Floor Governor, Senior Floor Official, or Executive Floor Official, the specialist may convert a percentage order to make a destabilizing bid or offer at a price which would otherwise be prohibited under the limitations and conditions stated above.

Any percentage order or portion thereof converted to make a bid or offer shall be considered as a limit order on the book and will be ahead of other limit orders subsequently received by the specialist at that price, and any such bid or offer made pursuant to such order shall have the same standing in the market as would be provided any other bid or offer under the Exchange's auction market rules and procedures dealing with priority, parity, and precedence. Where the specialist has converted a percentage order to make or add to a bid (offer) as permitted by this rule, and subsequently additional buying or selling interest enters the market and establishes a different higher bid (lower offer), the original converted order or portion thereof shall retain its status on the book as a limit order at the price at which it was converted. However, unless the order has been converted at its maximum limit price, if a transaction is effected upon such higher bid (lower offer), and another bid (offer) is made at a price higher (lower) than such transaction, the original converted order or portion thereof shall be treated as a cancelled order on the book and revert to its original status as a percentage order subject to subsequent election or further conversion as permitted by this rule. Where the specialist has converted a percentage order to make or add to a bid or offer as permitted by this rule, and subsequently additional size is added to a prevailing bid or offer on the opposite side of the market from the converted percentage order, or a different bid or offer is established on the opposite side of the market from the converted percentage order, the specialist may cancel the converted order or portion thereof if he intends to reconvert the order to trade with the interest on the opposite side of the market, and such trade is otherwise permitted by this rule. The specialist must document the status of a converted percentage order on the book as a limit order at the price it was converted.

Notwithstanding the provisions of this Rule permitting percentage orders to be converted on destabilizing ticks, where a member holds orders of 10,000 shares or more or a quantity of stock having a market value of $500,000 or more (whichever is less) to buy or sell a particular stock which he proposes to cross at or within the prevailing market, the specialist may not, unless asked to do so by the member with the cross (assuming the cross is at or within the 0.25 point price parameter of this Rule), convert any percentage order on a destabilizing tick for execution in such proposed cross transaction unless the specialist can (at or within the 0.25 of a point price parameter specified in this Rule, and within the limit price of the order) provide a better price to one side or the other of the proposed cross.

When the specialist is holding one or more percentage orders with special instructions permitting conversions on destabilizing ticks as provided in this Rule, and a member who holds orders to buy and sell 10,000 shares or more or a quantity of stock having a market value of $500,000 or more (whichever is less) proposes to cross such orders at or within the prevailing market, the specialist shall not, unless asked to do so by the member with the cross, trade for his own account with either the bid or the offer side of such cross (as the case may be), where the effect of such proprietary trade would be to establish a new last sale price, and thereby extend the 0.25 point price parameter specified in this Rule.

In any situation where the specialist is taking or supplying for his own account the security named in a percentage order entrusted to him, the specialist and the entering broker shall comply with the procedures for

confirmation of transactions specified in Exchange Rule 91.10.

When converting a percentage order into a limit order, the specialist shall give priority to conventional limit orders on his book at that price on the same side of the market, which orders were entered before the conversion. This means that the converted percentage order may receive an execution at any particular price only after all such conventional limit orders on the book at that price are satisfied.

The entering broker may permit the specialist to be on parity with his order. However, when the specialist is handling more than one percentage order, he may not be on parity with any such order unless permission has been obtained from all brokers for whom he is holding percentage orders in the particular stock. If a specialist is on parity with one or more percentage orders, at no time may the specialist participate for his own account in an amount in excess of what each percentage order would receive, except that the specialist may participate for his own account to an extent greater than any particular percentage order where the size specified on such order has been satisfied. A specialist on parity with a percentage order remains subject to the limitations in Exchange Rule 104.10 as to transactions for his own account effected on destabilizing ticks. A specialist on parity with a percentage order shall inform the entering broker at the time the order is entered, whether or not he intends to buy or sell, as the case may be, along with the order. Specialists must make every effort to execute percentage orders in amounts which correspond as nearly as possible to the percentage specified therein.

The elected portion of a percentage order shall be handled as a new limited price order and shall take its place on the specialist's book as though it were a new order received at the time of the electing transaction. When a specialist holds more than one percentage order each individual order shall be elected to the extent of the full amount of the electing transaction; except that percentage orders held by a specialist shall not be elected by any portion of volume which results from the execution of a previously elected or converted portion of a percentage order that is on the same side of the market.

All percentage orders and special instructions related thereto, and any modifications or cancellations thereof shall be in writing. (See also Rule 13 and ''Records of Specialists'' at Rule 121.)

* * * * *

Automatic Execution of Limit Orders Against Orders Reflected in NYSE Published Quotation

Rule 1000 Only straight limit orders without tick restrictions are eligible for entry as auto ex orders. Auto ex orders to buy shall be priced at or above the price of the published NYSE offer. Auto ex orders to sell shall be priced at or below the price of the NYSE bid. An auto ex order shall receive an immediate, automatic execution against orders reflected in the Exchange's published quotation and shall be immediately reported as NYSE transactions, unless:

(i) The NYSE's published quotation is in the non-firm quote mode;

(ii) The NYSE's published quotation has been gapped for a brief period because of an influx of orders on one side of the market, and the NYSE's published quotation size is one hundred shares at the bid and/or offer;

(iii) With respect to a single-sided auto ex order, a better price exists in another ITS participating market center;

(iv) With respect to a single-sided auto ex order, the NYSE's published bid or offer is 100 shares;

(v) A transaction outside the NYSE's published bid or offer pursuant to Rule 127 is in the process of being completed, in which case the specialist should publish a 100-share bid and/or offer;

(vi) Trading in the subject security has been halted.

Auto ex orders that cannot be immediately executed shall be displayed as limit orders in the auction market. *An auto ex order equal to or greater than the size of the NYSE's published bid or offer shall trade against the entire published bid or offer, and a new bid or offer shall be published pursuant to Rule 60(e). The unfilled balance of the auto ex order shall be displayed as a limit order in the auction market.*

* * * * *

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 and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is required by SEC Rule 11Ac1–1 under the Act [5] to disseminate the highest bid and lowest offer in its market (*i.e.*, the ''best quote'' available for dissemination). The Exchange believes that the advent of decimal trading has resulted in many more price intervals which can be the best quote, with the result that the highest bid and lowest offer may not reflect the true depth of the market at prices reasonably related to the last sale.

The Exchange is proposing to address this issue by providing for the dissemination, in selected securities as appropriate, of a ''liquidity bid'' and a ''liquidity offer,'' which would reflect aggregated trading interest at a specific price interval below the best bid (in the case of a liquidity bid) or at a specific price interval above the best offer (in the case of a liquidity offer). The specific price interval above or below the best bid and offer, as well as the minimum size of the liquidity bid or offer, would be established by the specialist in the subject security. Liquidity bids and offers would include orders on the specialist's book, trading interest of brokers in the trading crowd, and the specialist's dealer interest, at prices ranging from the best bid (offer) down to the liquidity bid (up to the liquidity offer).

According to the Exchange, it would not be mandatory to disseminate a separate liquidity bid and/or offer. In certain instances, depending on the depth of the market, the Exchange represents that the best bid (offer) and the liquidity bid (offer) may converge. In such case, the Exchange would make available the same price and size both as the best (bid) offer over the Consolidated Quotation System (''CQS'') and as the liquidity bid (offer) via the Exchange's Common Access Point (''CAP''). In any event, all disseminated bids and offers (best and liquidity) would be deemed to be ''firm quotations'' that are available for interaction with trading interest. Orders seeking to trade against the best and liquidity bids/offers would be executed in accordance with NYSE auction procedures and NYSE procedures governing the execution of XPress orders.

The NYSE proposes to amend NYSE Rule 60 (''Dissemination of Quotations'') to provide for the dissemination of

[5] 17 CFR 240.11Ac1–1.

liquidity bids and offers. The proposed amended rule contains a discussion of how market and limit orders, as well as XPress orders, would be executed against best and liquidity bids and offers.

Market Orders

When a liquidity bid is published in addition to a best bid, a market order to sell of a size greater than the size of the best bid will be executed to the extent possible against the best bid (or the order will be crossed by the specialist when he or she is acting as agent for the order using the auction market procedures in NYSE Rule 76, which calls for the member to publicly bid and offer on behalf of the orders before making a transaction with him—or herself) with the balance of the sell order being executed at the higher price of the liquidity bid or at the price of other orders on the book below the best bid, but above the liquidity bid. For example, assume the best bid is $20.10 for 200 shares, while the liquidity bid is $20.05 for 10,000 shares, with no other bids in between the best and liquidity bids. If a market order to sell 1,000 shares is received by the specialist, 200 shares would trade at the best bid price of $20.10, and 800 shares would trade at $20.05, the liquidity bid price, unless the specialist in crossing the order obtains price improvement for it. If there were other bids on the book between the best and liquidity bids, the sell market order could receive executions at those prices. For example, if, in addition to the best and liquidity bids of $20.10 and $20.05 in the previous example, there were also a bid of $20.07 for 300 shares, the market order to sell would be executed as follows—200 shares at the best bid of $20.10, 300 shares at $20.07 and 500 shares at the liquidity bid of $20.05, unless the specialist in crossing the order obtains price improvement for it. Market orders to buy would follow the same principles using the best and liquidity offers.

Limit Orders

NYSE is proposing that similar procedures would be used for the execution of limit orders when there are liquidity bids and offers as well as best bids and offers. In that regard, when a liquidity bid is published in addition to a best bid, a limit order to sell of a size greater than the size of the best bid, but which is limited to a price executable at or above the liquidity bid price, would be executed first against the best bid (or crossed as explained above), with the balance of the order being executed within its limit price at a price at which orders on the book will not be traded through. For example, assume there is a best bid for 200 shares of $20.10 and a liquidity bid of $20.05 for 10,000 shares. In addition, there is a bid for 500 shares at $20.07. If a limit order to sell 1,000 shares at $20.05 is received by the specialist, it would be executed as follows—200 shares at $20.10, 500 shares at $20.07 and 300 shares at the liquidity bid of $20.05. In all these examples, however, as with market orders, the specialist would follow NYSE auction market crossing procedures in an effort to obtain price improvement for the order. Limit orders to buy would follow the same principles.

Execution of XPress Orders

An XPress order is an order of a specified minimum size that is to be executed against a displayed XPress quote, or at an improved price, if obtainable. In order to be indicated as an XPress quote, a published bid or offer must be for no less than the minimum share size, currently 15,000 shares, at the same price for no less than 15 seconds.

With respect to liquidity quotes, the Exchange proposes to amend Supplementary Material .40 of NYSE Rule 13 (''Definitions of Orders'') to provide that a liquidity bid or offer, regardless of size, will be XPress eligible if it has been published for at least 15 seconds. The Exchange expects that the size of liquidity bids and offers will be of a size that represents significant interest for a stock and will, in many stocks, be greater than 15,000 shares. However, where the share size of the liquidity bid or offer does not equal 15,000 shares, the Exchange believes that institutional interest in trading at the liquidity price may still be present, and that utilizing the XPress trading protocol will be an appropriate way for this interest to access such displayed greater liquidity. A liquidity quote will still be required to be at the same liquidity price for at least 15 seconds to be eligible as a quotation against which an XPress order may be executed.

Further, the Exchange proposes to amend NYSE Rule 60 to provide that an XPress order may be priced at either the best bid or offer price if XPress eligible (*i.e.*, for at least 15,000 shares for at least 15 seconds), or priced at the liquidity bid or offer price, if, again, XPress eligible. An XPress order to buy priced at the liquidity offer price will be either executed at that price, or a price that will allow an XPress order to be filled without trading through orders on the book. The Exchange represents that specialists will seek price improvement for XPress orders in accordance with the Exchange's procedures for the execution of XPress orders.

The Exchange proposes that if a specialist receives two XPress orders within a nearly simultaneous time frame, one priced at the best bid (offer), and the other priced at the liquidity bid (offer), both orders will be executed in accordance with the Exchange's procedures for the execution of XPress orders.[6] Both orders will also be exposed to the trading crowd for price improvement. Those portions of the orders that do not receive price improvement will be executed against the XPress bids (offers), which may not then be traded against by other members pursuant to the Exchange's procedures for the execution of XPress orders.

Automated Dissemination of Quotations

In conjunction with the dissemination of dual quotations, the Exchange proposes to provide for the automated dissemination of the best bid and offer as SuperDOT limit orders are received systemically. The Exchange notes that this is a change to the current practice whereby specialists are responsible for disseminating bids and offers. NYSE Rule 60 would be amended to provide that the Exchange will autoquote the NYSE's highest bid or lowest offer whenever a limit order is transmitted to the specialist's book at a price higher (lower) than the previously disseminated highest (lowest) bid (offer). When the NYSE's highest bid or lowest offer has been traded with in its entirety, the Exchange will autoquote a new bid or offer reflecting the total size of orders on the specialist's book at the next highest (in the case of a bid) or lowest (in the case of an offer) price. NYSE Rule 60 would also be amended to provide that autoquoting will include: (i) Adding size to the best and liquidity bids/offers as additional limit orders are received; and (ii) reducing the size of the best and liquidity bids/offers as limit orders on the book are executed or cancelled. However, the Exchange notes that *de minimis* increases or decreases in the size of limit orders on the book, as determined by the specialist, will not result in automated augmenting or decrementing of the size of the liquidity bid or offer where such bid or offer continues to reflect the actual size of limit orders on the book.

In any instance where the specialist disseminates a proprietary bid (offer) of 100 shares on one side of the market, the bid or offer on that side of the market shall not be autoquoted. In such an instance, any better-priced limit

[6] *See* Amendment No. 1, *supra* note 3.

orders received by the specialist shall be manually displayed, unless they are executed at a better price in a transaction being put together in the auction market at the time that the order is received.

In conjunction with autoquoting of bids and offers, NYSE Rule 1000 (''Automatic Execution of Limit Orders Against Orders Reflected in NYSE Published Quotation'') would be amended to provide that a NYSE Direct+® (''NYSE Direct+'') order equal to or greater than the size of the published bid/offer will exhaust the entire bid/offer, rather than decrease it to 100 shares as is the case today.[7] The purpose of this change is to facilitate the autoquoting of the next highest bid/lowest offer. The unfilled balance of the NYSE Direct+ order would be displayed in the auction market as a SuperDOT limit order.

The Exchange believes that the proposed automated dissemination of the best bid and offer suggests a need to amend Supplementary Material .30 to NYSE Rule 123A (''Miscellaneous Requirements'') to enable specialists to trade percentage orders against incoming SuperDOT orders. Currently, specialists may bid or offer (within $0.10 of the last sale) on behalf of a percentage order, and an incoming SuperDOT order may then trade against such bid or offer. The specialist may not ''reach across the market'' to trade a percentage order against a bid or offer in a ''destabilizing'' transaction (bid above the last sale or sell below the last sale) unless the trade is for at least 10,000 shares or a quantity of stock with a market value of at least $500,000. With the automating of SuperDOT bids and offers, specialists would not be permitted to interact with such orders on behalf of percentage orders as they do today because they cannot ''reach across the market'' to effect smaller size trades. Thus, the Exchange is proposing to amend NYSE Rule 123A.30 to permit specialists to ''reach across the market'' with percentage orders to effect trades of less than 10,000 shares or a quantity of stock having a market value of less than $500,000. Specialists could not ''reach across the market'' more than $0.10 from the last sale to effect these smaller size trades if the trade would be destabilizing. This $0.10 limitation is the same as the current limitation on making destabilizing bids or offers against which incoming orders may trade.

2. Statutory Basis

The Exchange believes that the statutory basis for this proposed rule change is in Section 6(b)(5) of the Act,[8] which requires that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change also supports the principles of Section 11A(a)(1) of the Act,[9] in that it seeks to assure the availability to market participants of information with respect to market interest in securities traded on the Exchange, and thereby promote economically efficient execution of securities transactions.

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

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 Exchange consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the file number in the caption above and should be submitted by January 23, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–33118 Filed 12–31–02; 8:45 am]

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[7] NYSE Rule 1001(c) currently provides that if executions of auto ex orders have traded with all trading interest reflected in the Exchange's published bid or offer, the Exchange will disseminate a bid or offer at that price of 100 shares until the specialist requotes that market. *See* Securities Exchange Act Release No. 43767 (December 22, 2000), 66 FR 834 (January 4, 2001) (SR–NYSE–2000–18). The NYSE Direct+ pilot was subsequently extended for an additional year, *see* Securities Exchange Act Release No. 45331 (January 24, 2002), 67 FR 5024 (February 1, 2002) (SR–NYSE–2001–50); and, recently extended until December 23, 2003, *see* Securities Exchange Act Release No. 46906 (November 25, 2002), 67 FR 72260 (December 4, 2002) (SR–NYSE–2002–47). The Exchange recognizes that the proposed language in NYSE Rule 1000 will have the effect of superseding the provisions of NYSE Rule 1001(c). The Exchange represents that it will submit an amendment to delete Rule 1001(c) before approval of the proposed rule change. The Exchange also represents that, if approved, amended NYSE Rule 1000 will be part of the pilot program for NYSE Direct+ rules.

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78k–1(a)(1).

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47089; File No. SR–NYSE–2002–43]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Arbitration

December 23, 2002.

On September 4, 2002, the New York Stock Exchange, Inc. 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: Increase the ceilings for claims eligible for simplified arbitration and arbitration claims between members to be decided by one arbitrator; clarify that both a filing fee and a hearing deposit must be submitted with a claim; increase a pre-hearing conference fee and the maximum adjournment fee; and make certain technical changes to fee schedules.

The proposed rule was published for comment in the **Federal Register** on November 20, 2002.[3] No comments were received on the proposal. In this order, the Commission is approving the proposed rule change.

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[4] and, in particular, with the requirements of section 6(b)(5).[5]

In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5)[6] of the Act in that it is designed to promote just and equitable principles of trade and is consistent with section 6(b)(4)[7] in that it provides for equitable allocation of reasonable dues, fees, and other charges.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (SR–NYSE–2002–43), is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

[FR Doc. 02–33123 Filed 12–31–02; 8:45 am]

BILLING CODE 8010–01–P

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 34–46824 (November 13, 2002), 67 FR 70098.

[4] 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).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200–30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47088; File No. SR–PCX–2002–78]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to a Six-Month Extension of the Automatic Execution System Incentive Pilot Program

December 24, 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 18, 2002, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in items I, II, and III below, which items have been prepared by the Exchange. The proposed rule change has been filed by the PCX as a ''non-controversial'' rule change under rule 19b–4(f)(6) of the Act.[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 PCX is proposing to extend the Automatic Execution System (''Auto-Ex'') Incentive Pilot Program for six months. The text of the proposed rule change is available at the Office of the Secretary, PCX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The PCX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On June 7, 2002, the Commission approved, on a six-month pilot basis, the Exchange's proposal to amend PCX rule 6.87, which governs the operation of Auto-Ex[4] to provide an Auto-Ex Incentive Program for apportioning Auto-Ex trades among Market Makers.[5] The pilot program is currently set to expire on December 24, 2002.[6]

The Auto-Ex Incentive Program allows the Exchange to assign Auto-Ex orders to logged-on Market Makers according to their percentage of their in-person agency[7] contracts traded in an issue (excluding Auto-Ex contracts traded) compared to all of the Market Maker in-person agency contracts traded (excluding Auto-Ex contracts) during the review period. The review period is determined by the Options Floor Trading Committee (''OFTC'') and may be for any period of time not in excess of two weeks.[8] The percentage distribution determined for a review period will be effective for the succeeding review period.

The Exchange is requesting an additional extension of the pilot program for six months from December 24, 2002, through June 24, 2003. The added time permits the Exchange to finalize a proposed amendment to its program in order that the participation percentages of Market Makers who are temporarily away from the trading floor may be reinstated in some fashion. Therefore, the Exchange believes that a six-month extension of the program is warranted.

[4] Auto-Ex is the Exchange's Automated Execution system feature of the Pacific Options Exchange Trading System (''POETS'') for market or marketable limit orders. POETS is the Exchange's automated trading system comprised of an options order routing system, Auto-Ex, an on-line limit order book system, and an automatic market quote update system. Option orders may be sent to POETS via the Exchange's Member Firm Interface (''MFI''). Market and marketable limit orders sent through the MFI will be executed by Auto-Ex if they meet order type and size requirements of the Exchange.

[5] *See* Securities Exchange Act Release No. 46115 (June 25, 2002), 67 FR 44494 (July 2, 2002).

[6] The proposed rule changes were, in part, based on CBOE rule 6.8 *Interpretations and Policies* .06(c) ''100 Spoke RAES Wheel''.

[7] Agency contracts are those contracts that are represented by an agent and do not include contracts traded between Market Makers in person in the trading crowd.

[8] The OFTC has set a two-week review period for all options classes and the OFTC will not vary the term of the review period except for exigent circumstances.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act,[9] in general, and furthers the objectives of section 6(b)(5),[10] in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, enhance competition and 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, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has been filed by the Exchange as a ''non-controversial'' rule change pursuant to section 19(b)(3)(A) of the Act [11] and rule 19b–4(f)(6) thereunder.[12] Because the foregoing proposed rule change, as amended: (1) Does not significantly affect the protection of investors or the public interest, (2) does not impose any significant burden on competition, and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act [13] and rule 19b–4(f)(6)[14] thereunder.

The Exchange has requested that the Commission waive the 30-day operative delay requirement, to permit the Exchange to implement the proposal immediately. Under rule 19b–4(f)(6)(iii), a proposed ''non-controversial'' rule change does not become operative for 30 days after the date of filing, unless the Commission designates a shorter time.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow for the continued operation of PCX's Auto-Ex Incentive Pilot Program without interruption.[15] For this reason, the Commission designates the proposed rule change to be effective and operative upon its filing with the Commission. 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the File No. SR–PCX–2002–78 and should be submitted by January 23, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

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[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[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] 17 CFR 240.19b–4(f)(6).

[15] For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rules impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47090; File No. SR–Phlx–2002–75]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to Its Payment for Order Flow Program

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 November 15, 2002, the Philadelphia Stock Exchange, Inc. (''Phlx'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III, below, which the Phlx has prepared. On December 23, 2002, the Phlx filed Amendment No. 1 to the proposed rule change, which replaced the original filing in its entirety. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change, as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend its schedule of dues, fees, and charges to reinstate an options payment for order flow program. The text of the proposed rule change is available at the principal offices of the Phlx 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 Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to generate a source of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

revenue that specialists may use to attract order flow to the Phlx, and to maintain and enhance the Phlx's competitive position. The Phlx notes that two other options exchanges currently have payment for order flow programs.[3]

The Phlx first instituted a payment for order flow fee in August 2000, imposing a $1.00 per contract fee, with some exceptions, on transactions of Phlx specialists and ROTs in the top 120 options on the Phlx.[4] The top 120 options were the 120 most actively traded equity options, based on national trading volume. The Phlx recalculated the list of top 120 options every six months, based on volume information that the Options Clearing Corporation provided.[5] The payment for order flow fee did not apply to index or foreign currency options. The Phlx later suspended the imposition of payment for order flow fees.[6]

The Phlx is now proposing to impose a payment for order flow fee, per-contract, per-issue, on the transactions of Phlx Registered Options Traders (''ROTs''),[7] as set forth in the Phlx's ROT Equity OptionPayment for Order Flow Charges Schedule and subject to the exceptions listed below. The fee would be assessed on ROTs on the top 120 most actively traded equity options in terms of the total number of contracts that are traded nationally, based on volume statistics provided by the Options Clearing Corporation.[8] Initially, for trade months November, December, and January, the payment for order flow fee assessed on ROTs would be $1.00 on the top-ranked option, the Nasdaq-100 Index Tracking Stock℠ (which trades under the symbol ''QQQ'').[9] The fee on the next 49 options would be $0.50, and the remaining top 120 options would be assessed $0.00.[10] After the January 2003 trade month, the Chairman of the Phlx would establish the fees in $0.05 increments after receiving recommendations from a payment for order flow subcommittee of the Finance Committee and a payment for order flow subcommittee of the Options Committee.[11]

In its original proposal, filed with the Commission on November 15, 2002, the Phlx proposed to impose a 500-contract cap per individual cleared side of a transaction. In this Amendment No. 1, which replaces the original filing in its entirety, the Phlx proposes to remove the 500 contract cap after December 31, 2002. Accordingly, the 500 contract cap would be in effect for trades executed on or after November 18, 2002 and settling through December 31, 2002. The Phlx believes that keeping the contract cap through December 31, 2002 should minimize member confusion as to the applicable date for the contract cap and will avoid making costly changes to the billing system for the last six trading days of the month of December. The Phlx intends to file a separate proposal pursuant to Section 19(b)(2) of the Act to impose the 500 contract cap for trades settling on or after January 2, 2003.

The proposed payment for order flow fee would not apply to transactions between: (1) A specialist and a ROT; (2) a ROT and a ROT; (3) a ROT and a firm;[12] and (4) a ROT and a broker-dealer.[13] The Phlx continues to believe that these are not the transactions the fee is designed to attract. Indeed, because the primary focus of the program is to attract order flow from customers, the proposed fee would not be imposed on the above-specified transactions. The payment for order flow fee would also not apply to index or foreign currency options.

The Phlx would bill and collect the fee on a monthly basis and account for the funds received from the ROTs by option. The specialist units would be able to use the funds collected in relation to a given option to make payments to order flow providers for the purpose of attracting options orders to the Phlx.[14] The specialist units for each option would establish the amounts to be paid to order flow providers in respect of order flow for that option. The specialist units would receive these funds after submitting a Phlx form identifying the amount of the requested funds.[15] Because the specialist units are not being charged the payment for order flow fee for their own transactions, they may not request reimbursement or payment for order flow funds in

[3] The Phlx states that two other options exchanges currently have payment for order flow programs. *See* Securities Exchange Act Release Nos. 46485 (September 10, 2002), 67 FR 58668 (September 17, 2002) (SR–PCX–2002–59); and 45857 (May 1, 2002), 67 FR 30988 (May 8, 2002) (SR–ISE–2002–12).

[4] *See* Securities Exchange Act Release No. 43177 (August 18, 2000), 65 FR 51889 (August 25, 2000) (SR–Phlx–00–77). Transactions in top 120 options that were excepted from the $1.00 fee were transactions between: (1) a specialist and a ROT; (2) a ROT and a ROT; (3) a specialist and a firm; (4) a ROT and a firm; (5) a specialist and a broker-dealer; and (6) a ROT and a broker-dealer. *See* Securities Exchange Act Release Nos. 43177 (August 18, 2000), 65 FR 51889 (August 25, 2000) (SR–Phlx–00–77); 43480 (October 25, 2000), 65 FR 66275 (November 3, 2000) (SR–Phlx–00–86 and SR–Phlx–00–87); and 43481 (October 25, 2000), 65 FR 66277 (November 3, 2000) (SR–Phlx–00–88 and SR–Phlx–00–89).

[5] For the period from April 2, 2001 through June 30, 2001, there was a total of 121 Options on the Exchange's list of the top 120 options when the QQQ options were added to the Exchange's payment for order flow fee program prior to the next six-month measuring period. *See* Securities Exchange Act Release No. 44237 (April 30, 2001), 66 FR 23308 (May 8, 2001) (SR–Phlx–2001–43).

[6] *See* Securities Exchange Act Release No. 44716 (August 16, 2001), 66 FR 44393 (August 23, 2001) (SR–Phlx–2001–73).

[7] ROT transactions include those identified as ''on-floor ROT orders'' entered through a hand-held device for execution on the Phlx trading floor. *See* Phlx Rule 1080.

[8] The measuring periods for the top 120 options would be calculated every three months. For example, for trade months November, December, and January, the measuring period to determine the top 120 options would be based on volume statistics from July, August, and September. The subsequent measuring period would be October, November, and December for trade months February, March, and April. This cycle would continue every three months. Members would be notified of the top 120 options and applicable fees approximately two weeks before the beginning of a new three-month trading period.

[9] The Nasdaq-100®, Nasdaq-100 Index®, Nasdaq®, The Nasdaq Stock Market®, Nasdaq-100 Shares℠, Nasdaq-100 Trust℠, Nasdaq-100 Index Tracking Stock℠, and QQQ℠ are trademarks or service marks of The Nasdaq Stock Market, Inc. (Nasdaq) and have been licensed for use for certain purposes by the Philadelphia Stock Exchange pursuant to a License Agreement with Nasdaq. The Nasdaq-100 Index® (the Index) is determined, composed, and calculated by Nasdaq without regard to the Licensee, the Nasdaq-100 Trust℠, or the beneficial owners of Nasdaq-100 Shares℠. The Phlx represents that Nasdaq has complete control and sole discretion in determining or calculating the Index or in modifying in any way its method for determining or calculating the Index in the future.

[10] To avoid confusion, the ROT Equity Option Payment for Order Flow Charges Schedule reflects only those options being charged more than $0.00.

[11] The Phlx will file with the Commission a proposed rule change addressed to any changes in its fee schedule. The subcommittees and Chairman of the Phlx may take into account the following factors when setting payment for order flow rates: (1) Trading volume per issue; (2) Phlx market share per option; (3) disposition of previous payment for order flow fees collected; (4) relative size of the trading crowd; and (5) other such information as deemed necessary.

[12] For purposes of this filing, a firm is defined as a proprietary account of a member firm, and not the account of an individual member. Therefore, if a ROT trades with a member firm that was effecting trades for its proprietary account and not on behalf of customers, the payment for order flow fee would not apply.

[13] For purposes of this filing, broker-dealer orders are orders, entered from other than the floor of the Phlx, for any account (i) in which the holder of beneficial interest is a member or non-member broker-dealer or (ii) in which the holder of beneficial interest is a person associated with or employed by a member or non-member broker-dealer. This includes orders for the account of an ROT entered from off-the-floor.

[14] The Phlx is using the terms ''specialist'' and ''specialist unit'' interchangeably here.

[15] The purpose of the form is to assist the Phlx in accurately accounting for and tracking funds transferred to specialists consistent with normal bookkeeping and auditing practices. The specialists will certify on the form that the funds requested and received are used to reimburse the specialist for payments made in connection with attracting order flow to the Phlx, consistent with this filing. However, as discussed below, all determinations concerning the amount that will be paid for orders and which order flow providers shall receive these payments will be made by specialists.

connection with any transactions to which they were a party.

Under the Phlx's proposed payment for order flow program, specialists would request reimbursement for funds that they have paid to order flow providers for order flow. Under the Phlx's original payment for order flow program, both specialists and ROTs paid the payment for order flow fee and then were reimbursed these funds at a later date. [16] Under that program, the specialist both expended funds to pay for order flow and also paid into the payment for order flow pool by paying the payment for order flow fee, only to request reimbursement at a later date, thereby reimbursing themselves, in part, for funds collected from themselves. The Phlx believes that this resulted in an unfair and unnecessary burden on specialists because they expended funds twice, until they were able to claim reimbursement.

Under the proposed program, the Phlx would not charge the specialists the payment for order flow. The Phlx believes that the proposed program would achieve an economic effect similar to the old program, without the financial burden on specialists. Under the terms of the proposed program, specialists may request reimbursement for payment for order flow funds in connection with any transactions to which they were not a party, based on the percentage of ROT monthly volume to total specialist and ROT monthly volume. For example, if the monthly volume in an option to which the specialist was a party was 100,000 contracts and the monthly volume in that same option to which ROTs were a party was 75,000 contracts, the specialist may receive up to 43 percent of the total requested reimbursement amount (75,000/175,000). This amount may be further limited by the amount collected in the payment for order flow pool for that option, as specialists may not receive more than the amount collected from the ROTs. The Phlx believes that this methodology should help to ensure that ROTs are not unfairly burdened by paying the payment for order flow fee.

In the proposed program, the specialists would make all determinations concerning the amount to be paid for orders and the order flow providers that should receive the payments. The specialists would account to the Phlx for the use they make of the funds. The Phlx believes that this would help it to determine the effectiveness of the proposed fee. In addition, the Phlx would provide certain administrative duties to assist the specialists, including keeping track of the number of qualified transactions [17] that firms execute on the Phlx and performing any necessary accounting functions.

In addition, in connection with its payment for order flow program, the Phlx intends to rebate to ROTs, on a monthly basis, the amount of payment for order flow fees that the specialists have not requested for use in paying order flow providers.[18] The amount to be refunded to each ROT would be based on the percentage of the total payment for order flow charges the ROT paid for each option during the rebate time period. The ROTs percentage of the total payment for order flow charges for each option would then be multiplied by the rebate amount. For example, if a ROT contributed 5% of the total payment for order flow charges for a particular option during the rebate time period, the ROT would receive 5% of that option's overall rebate amount for that month.

The Phlx will continue to implement a quality of execution program.[19] Any changes to the options to which this proposed fee applies, to the rate or rates at which the fee is assessed, or to the Phlx's disposition of funds generated by the fee will be the subject of separate filings with the Commission. The Phlx intends to implement the payment for order flow fee for trades executed on and after November 18, 2002.[20]

2. Statutory Basis

The Phlx believes that its proposal to amend its schedule of dues, fees, and charges is an equitable allocation of reasonable fees among Phlx members consistent with Section 6(b) of the Act [21] and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act.[22] The Phlx believes that the ROTs paying the proposed payment for order flow fee will also receive the benefits of increased order flow. Moreover, the Phlx believes that attracting more order flow to the Phlx should result in increased liquidity, tighter markets, and more competition among exchange members, and thereby serve to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market, and protect investors and the public interest, consistent with Section 6(b)(5) of the Act.[23]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Phlx received a petition signed by various Phlx members who requested a formal vote of the Phlx Board of Governors on the appropriateness of implementing ''payment for order flow'' and ''urge[d] the Board of Governors to vote against such implementation.''[24] As stated above, the Executive Committee, pursuant to delegated authority, authorized the filing of this proposed rule change.

The Phlx also received a letter from a Phlx member who questioned the procedures relating to the accounting by specialists for the funds that they receive from the Phlx, including that this information is not publicly available, and the possible appearance that one group of members is being favored over another group.[25] The Phlx believes that its accounting and certification procedures as discussed herein are necessary and appropriate and that the individual relationships between the specialists and order flow providers should remain confidential in order to preserve the integrity of the contractual business relationship between those parties. In addition, the Phlx believes that the proposed fee is an equitable allocation of fees among Phlx ROTs because the ROTs paying the payment for order flow fee should also receive the benefits of increased order flow. Also, specialists are not allowed to request reimbursement for payment for order flow funds in connection with any transactions to which they were a party.

The Phlx states that it has been and continues to be a vocal opponent to any exchange-sponsored payment for order flow programs. The Phlx believes,

[16] *See* Securities Exchange Act Release No. 43177 (August 18, 2000), 65 FR 51889 (August 25, 2000) (SR–Phlx–00–77)).

[17] The term ''qualified transactions'' refers to transactions by ROTs on which a payment for order flow fee is assessed.

[18] The Phlx will not rebate more than the amount that has actually been collected from the ROTs.

[19] *See e.g.*, Securities Exchange Act Release No. 43436 (October 11, 2000), 65 FR 63281 (October 23, 2000) (SR–Phlx–2000–83).

[20] This fee is not eligible for the monthly credit of up to $1,000 to be applied against certain fees, dues, and charges and other amounts that certain members owe to the Phlx. *See* Securities Exchange Act Release No. 44292 (May 11, 2001), 66 FR 27715 (May 18, 2001) (SR–Phlx–2001–49).

[21] 15 U.S.C. 78f(b).

[22] 15 U.S.C. 78f(b)(4) and 78f(b)(5).

[23] 15 U.S.C.78f(b)(5).

[24] Petition from Phlx members to the Chairman and the Board of Governors of the Phlx, dated October 2002.

[25] Correspondence from Gary R. Smolen to Meyer S. Frucher, dated November 12, 2002.

however, that it must reinstate a payment for order flow program to remain competitive. As previously discussed, two exchanges currently have a payment for order flow program.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Phlx has designated the proposal as changing a Phlx due, fee, or other charge. Accordingly, the proposed rule change, as amended, has become immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A)(ii) of the Act [26] and Rule 19b–4(f)(2) thereunder.[27] At any time within 60 days after the filing of Amendment No. 1 to the proposed rule change, the Commission may summarily abrogate the proposed 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, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2002–75 and should be submitted by January 23, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[28]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–33119 Filed 12–31–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47086; File No. SR–Phlx–2002–81]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Index Option Charges

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 18, 2002, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I 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.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its schedule of dues, fees and charges to increase the Options Floor Brokerage Assessment Fee (''Assessment Fee'') from 5% of a firm's monthly net floor brokerage income [3] to a tiered rate ranging from 5.5% to 7.5% of a firm's monthly net floor brokerage income, and to institute a monthly $100,000 cap on such assessment fee.[4] The revised Assessment Fee is scheduled to be implemented respecting transactions settling on or after January 2, 2003.[5] The text of the proposed rule change is set forth below. New text is in italics. Deleted text is in brackets.

SUMMARY OF EQUITY OPTION CHARGES

Option Comparison Charge I (applicable to all trades—except specialist trades):	
Registered Option Trader	$.03 per contract.
Firm/Proprietary [6]	$.04 per contract.
Customer Executions	No charge.
Option Transaction Charge I:	
Customer Executions	No charge.
Firm/Proprietary [7]	$.15 per contract.
Firm/Proprietary Facilitation Transaction [8]	$.08 per contract.
Registered Option Trader (on-floor)	$.16 per contract.
Specialist	$.18 per contract.
Broker/Dealer [9]	$.35 per contract.
Option Floor Brokerage Assessment I [5% of net floor brokerage income.]	
Monthly Net Floor Brokerage Income:	*Assessment*
First $0—$300,000	*5.5%*
Next $300,001—$500,000	*6.5% (excess over $300,000).*
Balance—Over $500,001	*7.5% (excess over $500,000).*

[26] 15 U.S.C. 78(s)(b)(3)(A)(ii).

[27] 17 CFR 240.19b–4(f)(2).

[28] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Floor Brokerage Transaction Fee (for both Equity and Index Options) will continue to apply to floor brokers executing transactions for their own member firms.

[4] *See* Exchange Rules 714 and 715.

[5] The Assessment Fee will continue to be eligible for the monthly credit of up to $1,000 to be applied against certain fees, dues and charges and other amounts owed to the Exchange by certain members. *See* Securities Exchange Act Release No. 44292 (May 11, 2001), 66 FR 27715 (May 18, 2001) (SR–Phlx–2001–49).

SUMMARY OF EQUITY OPTION CHARGES—Continued

Monthly Cap: $100,000.

[6] For the purpose of this Summary of Equity Option Charges, the Firm/Proprietary comparison or transaction charge applies to members for orders for the proprietary account of any member or non-member broker-dealer that derives more than 35% of its annual, gross revenues from commissions and principal transactions with customer. Firms will be required to verify this amount to the Exchange by certifying that they have reached this threshold and by submitting a copy of their annual report, which was prepared in accordance with Generally Accepted Accounting Principles (''GAAP''). In the event that a firm has not been in business for one year, the most recent quarterly reports, prepared in accordance with GAAP, will be accepted.

[7] *See supra* note 3.

[8] Equity Option Transaction Charges continue to apply to facilitation transactions involving Exchange-traded options subject to licensing agreements.

[9] For the purpose of this Summary of Equity Option Charges, this charge applies to members for orders, received from other than the floor of the Exchange, for any account (i) in which the holder of beneficial interest is a member or non-member broker-dealer or (ii) in which the holder of beneficial interest is a person associated with or employed by a member or non-member broker-dealer. This includes orders for the account of an ROT entered from off-floor.

Floor Brokerage Transaction Fee I

$.05 per contract, for floor brokers executing transactions for their own member firms

Specialist Deficit (Shortfall) Fee I

$.35 per contract for specialists trading any Top 120 Option if the cafollowing total national monthly contract volume for such Top 120 Option is not effected on the Phlx: 11% for the period January through March 2002; 12% for the period April through June 2002; 13% for the period July through September 2002; and 14% for the period October through December 2002.

Summary of Equity Option Charges

Specialist Deficit (Shortfall) Fee Credit

A credit of $.35 per contract may be earned by options specialists for all contracts traded in excess of the following volume thresholds in eligible issues for the monthly periods commencing September 1, 2001. These credits may be applied against previously imposed ''shortfall fees'' for the preceding six months for issues that in the month the deficit occurred, the equity option traded in excess of 10 million contracts per month: 11% for the period January through March 2002; 12% for the period April through June 2002; 13% for the period July through September 2002; and 14% for the period October through December 2002.

Real-Time Risk Management Fee I

$.0025 per contract for firms/members receiving information on a real-time basis

See Appendix A for additional fees.
I denotes fee eligible for monthly credit of up to $1,000.

SUMMARY OF INDEX OPTION CHARGES

Option Comparison Charge I (applicable to all trades—except specialist trades):		
Registered Option Trader	$.03 per contract.	
Firm (Proprietary and Customer Executions)	$.04 per contract.	
Option Transaction Charge I:		
Customer Executions:		
Market value less than $1.00[1]	$.20 per contract.	
Market value $1.00 or over[1]	$.40 per contract.	
Firm[2]	$.10 per contract.	
Registered Option Trader and Specialist	$.14 per contract.	
Option Floor Brokerage Assessment I [5% of net floor brokerage income.]		
Monthly Net Floor Brokerage Income:		*Assessment*
First $0—$300,000	*5.5%.*	
Next $300,001—$500,000	*6.5% (excess over $300,000).*	
Balance—Over $500,001	*7.5% (excess over $500,000).*	
Monthly Cap: $100,000.		

Floor Brokerage Transaction Fee I

$.05 per contract, for floor brokers executing transactions for their own member firms.

Real-Time Risk Management Fee I

$.0025 per contract for firms/members receiving information on a real-time basis

See Appendix A for additional fees.
I denotes fee eligible for monthly credit of up to $1,000.

[1] Block transaction for customer executions of 500 to 999 contracts and 1,000 contracts and more are eligible for a discount to such charges of 15% and 25% respectively from the stated rates upon submission to the Phlx of a customer option block discount request form with supportive documentation within thirty (30) days of monthly billing date.

[2] Non-clearing firm members' proprietary transactions are eligible for the ''firm'' rate based upon submission of a PHLX rebate request form with supportive documentation within thirty (30) days of invoice date.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to increase the Assessment Fee to generate revenue, which should help offset rising Exchange costs. The tiered structure and cap should generate additional income without being overly burdensome to the floor brokers. A description of the proposal is below:

Monthly Net Floor Brokerage Income	Assessment
First $0—$300,000	5.5%.
Next $300,001—$500,000	6.5% (excess over $300,000).
Balance Over $500,001	7.5% (excess over $500,000).

Monthly Cap: $100,000.

The tiered rate amount is applied to each tier of monthly net floor brokerage income separately; for instance, if the monthly net floor brokerage income is $400,000, then the first $300,000 is assessed at a rate of 5.5%, and the remainder ($99,999) is assessed at the rate of the next tier—6.5%.

The Exchange believes that the proposed tiered Assessment Fee structure is reasonable and equitable because the amount a floor broker is assessed is directly related to such floor broker's monthly net floor brokerage income, which roughly correlates to such floor broker's overall activity on the Exchange. Therefore, those floor brokers who use a greater percentage of the Exchange's resources are assessed at a higher level. In order to balance the increase in the Assessment Fee, the Exchange intends to cap such assessment at $100,000 per month.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Section 6(b)(4) of the Act,[11] in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among Exchange members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or charge imposed by the Exchange and, therefore, has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act [12] and Rule 19b–4(f)(2) thereunder.[13] 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 purpose 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 Exchange. All submissions should refer to File No. SR–Phlx–2002–81 and should be submitted by January 23, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–33120 Filed 12–31–02; 8:45 am]

BILLING CODE 8010–01–P

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

[12] 15 U.S.C. 78(s)(b)(3)(A)(ii).

[13] 17 CFR 240.19b–4(f)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47087; File No. SR–Phlx–2002–80]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Index Option Charges

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 18, 2002, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I 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.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its schedule of dues, fees and charges by: (1) increasing the Registered Option Trader (''ROT'') Index Option Transaction Charge from $0.14 per contract to $0.19 per contract; [3] and (2) assessing an Index Option Book Charge of $1000 per month on Phlx specialists in the Exchange's Sector Index Options (''Index Options''), except for the KBW Bank SectorSM (''BKXSM''), the Oil Service SectorSM (''OSXSM''), the Semiconductor SectorSM (''SOXSM'') and the Gold and Silver SectorSM (''XAUSM''), which will be assessed a $2,000 per month Index Option Book Charge.[4] Any newly-listed Index Options will be assessed at $1,000 per

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The $0.03 per contract Index Option Comparison Charge will continue to apply to ROT transactions.

[4] The Index Option Transaction Charge for Specialists will remain at $.14 per contract. The ROT Index Option Transaction Charge and the Index Option Book Charge will be eligible for the monthly credit of up to $1,000 to be applied against certain fees, dues and charges and other amounts owed to the Exchange by certain members. *See* Securities Exchange Act Release No. 44292 (May 11, 2001), 66 FR 27715 (May 18, 2001) (SR–Phlx–2001–49).

month, beginning with the first full month of trading.

The $0.19 per contract ROT Index Option Transaction Charge is scheduled to be implemented on transactions settling on or after January 2, 2003. The Index Option Book Charge is scheduled to become effective on January 2, 2003.

The text of the proposed rule change is set forth below. New text is in italics. Deleted text is in brackets.

SUMMARY OF INDEX OPTION CHARGES

Option Comparison Charge I (Applicable to All Trades—except specialist trades):	
Registered Option Trader	$.03 per contract
Firm (Proprietary and Customer Executions)	$.04 per contract
Option Transaction Charge I:	
Customer Executions	
Market value less than $1.00*	$.20 per contract
Market value $1.00 or over*	$.40 per contract
Firm**	$.10 per contract
Registered Option Trader [and Specialist]	$[.14] *.19* per contract
Specialist	*$.14 per contract*
Option Book Charge I:	
KBW Bank Sector℠	*$2,000 per month*
Oil Service Sector℠	
Semiconductor Sector℠	
Gold and Silver Sector℠	
All other Index Options	*$1,000 per month*
Option Floor Brokerage Assessment I: 5% of net floor brokerage income.	
Floor Brokerage Transaction Fee I: $.05 per contract, for floor brokers executing transactions for their own member firms.	
Real-time Risk Management Fee I: $.0025 per contract for firms/members receiving information on a real-time basis See Appendix A for additional fees. I denotes fee eligible for monthly credit of up to $1,000.	

*Block transaction for customer executions of 500 to 999 contracts and 1000 contracts and more are eligible for a discount to such charges of 15% and 25% respectively from the stated rates upon submission to the PHLX of a customer option block discount request form with supportive documentation within thirty (30) days of monthly billing date.

**Non-clearing firm members' proprietary transactions are eligible for the ''firm'' rate based upon submission of a PHLX rebate request form with supportive documentation within thirty (30) days of invoice date.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to raise revenue for the Exchange. In addition, there are certain costs associated with the calculation of underlying index values. Because BKX℠, OSX℠, SOX℠ and XAU℠ have the highest trading interest and volume of all of the Exchange's Index Options, these Index Options will be assessed a higher Index Option Book Charge than other Index Options.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(4) of the Act,[6] in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among Exchange members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were 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 establishes or changes a due, fee, or charge imposed by the Exchange and, therefore, has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act[7] and Rule 19b–4(f)(2) thereunder.[8] 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 purpose 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

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78(s)(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–2002–80 and should be submitted by January 23, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–33121 Filed 12–31–02; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF STATE

[Public Notice 4246]

60-Day Notice of Proposed Information Collection: Form DS–2029, Application for Consular Report of Birth Abroad of a Citizen of the United States of America (Includes SS–5); OMB Control Number 1405–0011

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal to be submitted to OMB:

Type of Request: Reinstatement of a previously approved collection.

Originating Office: CA/OCS, all U.S. Embassies and Consulates abroad.

Title of Information Collection: 1405–0011, Application for Consular Report of Birth Abroad of a Citizen of the United States.

Frequency: Occasionally.

Form Number: DS–2029.

Respondents: Parents or legal guardians of American citizen children born overseas.

Estimated Number of Respondents: approximately 46,000 per year.

Average Hours Per Response: approximately 20 minutes.

Total Estimated Burden: 15,333 hours.

Public comments are being solicited to permit the agency to:

• Evaluate whether the proposed information collection is necessary for the Proper performance of the functions of the agency.

• Evaluate the accuracy of the agency's estimate of the burden of the proposed colLection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Public comments, or requests for additional information, regarding the collection listed in this notice should be directed to Michael Meszaros, who may be reached on 202–312–9722.

Dated: December 24, 2002.

Daniel B. Smith,

Assistant Secretary, Acting, Bureau of Consular Affairs, Department of State.

[FR Doc. 02–33124 Filed 12–31–02; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 4244]

Culturally Significant Objects Imported for Exhibition Determinations: ''Leonardo da Vinci, Master Draftsman''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition ''Leonardo da Vinci, Master Draftsman,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at The Metropolitan Museum of Art, New York, NY, from on or about January 21, 2003, to on or about March 30, 2003, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julianne Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6529). The address is U.S. Department of State, SA–44, 301 4th Street, SW, Room 700, Washington, DC 20547–0001.

Dated: December 24, 2002.

Thomas A. Farrell,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–33125 Filed 12–31–02; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular; Propeller Instructions for Continued Airworthiness

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability of proposed advisory circular and request for comments.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of proposed Advisory Circular (AC) Number 35.4–1, Propeller Instructions for Continued Airworthiness.

DATES: Comments must be received on or before February 14, 2003.

ADDRESSES: Send all comments on the proposed AC to the Federal Aviation Administration, Attn: Jay Turnberg, Engine and Propeller Standards Staff, ANE–110, 12 New England Executive Park, Burlington, MA 01803–5299.

FOR FURTHER INFORMATION CONTACT: Jay Turnberg, Engine and Propeller Standards Staff, ANE–110, at the above address; telephone: (781) 238–7116; fax: (781) 238–7199; e-mail: *jay.turnberg@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the subject AC may be obtained by contacting the person named under **FOR FURTHER INFORMATION CONTACT** or by downloading the proposed AC from the following Internet Web site: *http://www.airweb.faa.gov/rgl*. The FAA invites interested parties to comment on the proposed AC. Comments should identify the subject of the AC and be submitted to the individual identified under **FOR FURTHER INFORMATION CONTACT**. The FAA will consider all

[9] 17 CFR 200.30–3(a)(12).

communications received by the closing date before issuing the final AC.

Background

The propeller type certification process requires the applicant to prepare Instructions for Continued Airworthiness (ICA) under § 35.4. The ICA provides information for proper maintenance that ensures that propellers of that type design are airworthy. This AC addresses preparing ICA for propellers.

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

Issued in Burlington, Massachusetts, on December 19, 2002.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–33127 Filed 12–31–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Revision to Advisory Circular (AC) 25.562–1A, Dynamic Evaluation of Seat Restraint Systems and Occupant Protection on Transport Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed revision to advisory circular.

SUMMARY: The Federal Aviation Administration invites public comment on a proposed revision to Advisory Circular 25.561–1A, Dynamic Evaluation of Seat Restraint Systems and Occupant Protection on Transport Airplanes. The revision provides updated guidelines for demonstrating compliance with the airworthiness standards applicable to dynamic testing of seats.

DATES: Comments must be received on or before April 2, 2003.

ADDRESSES: You should send your comments on the proposed revision to the Federal Aviation Administration, Attention: Jeff Gardin, Airframe/Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Ave. SW., Renton, WA 98055–4056. You may also submit comments electronically to: *jeff.gardlin@faa.gov.*

FOR FURTHER INFORMATION CONTACT: Jeff Gardlin at the above address, telephone (425) 227–2136, facsimile (425) 227–1149, or e-mail *jeff.gardlin@faa.gov.*

SUPPLEMENTARY INFORMATION:

How Do I Obtain a Copy of the Proposed Advisory Circular Revision?

You may obtain an electronic copy of the draft advisory circular identified in this notice at the following Internet address: *http://www.airweb.faa.gov/DraftAC* If you do not have access to the Internet, you may request a copy by contacting Jeff Gardlin at the address or phone number listed earlier in this announcement.

How Do I Submit Comments on the Draft Advisory Circular?

You are invited to comment on the proposed advisory material by submitting written comments, data, or views. You must identify the title of the AC and submit your comments in duplicate to the address specified above. We will consider all comments received on or before the closing date for comments before issuing the final advisory material.

Discussion

This revision to Advisory Circular 25.562–1A provides an improved procedure for selection of test articles, as well as criteria for determining whether analysis or testing is appropriate for substantiation.

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

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–33132 Filed 12–31–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Revisions to Advisory Circular 25–7A, Flight Test Guide for Certification of Transport Category Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed advisory circular revisions and request for comments.

SUMMARY: The Federal Aviation Administration (FAA) requests comments on proposed revisions to Advisory Circular (AC) 25–7A, ''Flight Test Guide for Certification of Transport Category Airplanes.'' The proposed revisions provide revised guidance on a means of demonstrating compliance with the new requirements of part 25 as presented in Amendment 25–108 (67 FR 70812, November 26, 2002), entitled ''1-g Stall Speed as the Basis for Compliance with Part 25 of the Federal Aviation Regulations.'' This notice provides interested persons an opportunity to comment on the proposed revisions to the AC. The guidance will be included in the next revision to AC 25–7A.

DATES: Comments must be received on or before March 3, 2003.

ADDRESSES: Send all comments on the proposed AC revisions to the Federal Aviation Administration, Attention: Don Stimson, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, WA 98055–4056. Comments may be examined at the above address between 7:30 a.m., and 4 p.m., except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jan Thor, Standardization Branch, ANM–113, at the above address, telephone (425) 227–2127, or facsimile (425) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed AC revisions by submitting such written data, views, or arguments, as they may desire. You must identify the title of the AC and submit comments in duplicate to the address specified above. The Transport Airplane Directorate will consider all comments received on or before the closing date for comments before issuing the revision to the AC. You may view the complete text of AC 25–7A on the Internet at: *http://www.faa.gov/certification/aircraft/air_index.htm,* at the link titled ''Advisory Circulars,'' or at the Regulatory and Guidance Library Web site at *http://www.airweb.faa.gov/rgl,* at the link titled ''Advisory Circulars.''

Discussion

By Amendment 25–108 (67 FR 70812, November 26, 2002), the FAA revised the airworthiness standard for transport category airplanes to redefine the reference stall speed for transport category airplanes to a speed not less than the 1-g stall speed instead of the minimum speed obtained in a stalling maneuver. The FAA took this action to provide for a consistent, repeatable reference stall speed; ensure consistent and dependable maneuvering margins; provide for adjusted multiplying factors to maintain approximately the current requirements in areas where use of the minimum speed in the stalling maneuver has proven adequate; and harmonize the applicable regulations with those currently adopted in Change 15 to the European Joint Aviation

Requirements, JAR–25. The changes provide a higher level of safety for those cases in which the current methods result in artificially low operating speeds. To address these new requirements to part 25, the FAA is proposing to revise AC 25–7A to describe acceptable means of showing compliance with the new rules.

Proposed Revisions to AC 25–7A

Revise paragraph 3a(3)(i) by replacing ''1.4V_{S1}'' with ''1.3 V_{SR1}'' (three occurrences).

Revise paragraph 3a(3)(ii)(B) by replacing ''.12V_{S1}'' with ''0.11 V_{SR1}.''

Revise paragraph 10b(3)(i)(B) by replacing ''1.2 times V_S'' with ''1.13 times $V_{SR,}$'' ''V_S'' with ''$V_{SR,}$'' and ''stall speed'' with ''reference stall speed.''

Revise paragraph 10b(3)(ii) by replacing ''1.15 times V_S'' with ''1.08 times V_{SR}.''

Revise paragraph 10b(4) as follows:

(4) *Section 25.107(c)—Takeoff Safety Speed* (V_2). V_2 is the calibrated airspeed that is attained at or before the airplane reaches a height of 35 ft. above the takeoff surface after an engine failure at V_{EF} using an established rotation speed (V_R). During the takeoff speeds demonstration, V_2 should be continued to an altitude sufficient to assure stable conditions beyond the 35 ft. height. V_2 cannot be less than V_{2MIN}. In addition, V_2 cannot be less than the liftoff speed, V_{LOF}, as defined in § 25.107(f). In accordance with § 25.107(c), V_2 in terms of calibrated airspeed ''* * * may not be less than V_R plus the speed increment attained before reaching a height of 35 feet above the takeoff surface'' and ''that provides the maneuvering capability specified in § 25.143(g).'' * * *

Revise Figure 14–1 by replacing ''≥1.25 V_S'' with ''V_{FTO}.''

Revise paragraph 16b(2) by replacing ''1.3V_{S0}'' with ''V_{REF}.''

Revise paragraph 16b(3) by replacing ''1.3V_{S0}'' with ''V_{REF}'' (two occurrences).

Revise paragraph 17b(6) as follows:

(6) *Section 25.121(d) requires* that the stall speed for the configuration used to show compliance with this requirement not exceed 110 percent of the stall speed for the related landing configuration. This stall speed ratio requirement is to ensure that an adequate margin above the stall speed in the selected approach configuration is maintained during flap retraction. To achieve this stall speed ratio requirement, it is permissible to arbitrarily increase the landing flap stall speed, V_{SR0}, to show compliance. Of course, the landing approach speed used to comply with § 25.125(a)(2) must be based on the declared stall speed and the stall warning requirements of § 25.207 must be met at the declared stall speed. However, the § 25.203 stall characteristics requirements must still be met at the speed at which the stall is identified (as defined in § 25.201(d)). (An alternative to raising the landing flap stall speed, V_{SRO}, is to simply increase V_{REF}.)

Revise paragraph 19a(2) as follows:

(2) The minimum value of V_{REF} is specified in § 25.125(a)(2) and is intended to provide an adequate margin above the stall speed to allow for likely speed variations during an approach in low turbulence. If the landing demonstrations are unable to show the acceptability of the minimum approach speed, and the tests are predicated on the use of a higher approach speed, the landing distance data presented in the AFM must be based upon the higher approach speed.

Revise paragraph 20a as follows:

a. *Explanation.* The purpose of § 25.143 is to verify that any operational maneuvers conducted within the operational envelope can be accomplished smoothly with average piloting skill and without encountering stall warning or other characteristics that might interfere with normal maneuvering, or exceeding any airplane structural limits. Control forces should not be so high that the pilot cannot safely maneuver the airplane. Also, the forces should not be so light it would take exceptional skill to maneuver the airplane without over-stressing it or losing control. The airplane response to any control input should be predictable to the pilot.

Add a new paragraph 20a(5) to read as follows:

(5) Modern wing designs can exhibit a significant reduction in maximum lift capability with increasing Mach number. The magnitude of this Mach number effect depends on the design characteristics of the particular wing. For wing designs with a large Mach number effect, the maximum bank angle that can be achieved while retaining an acceptable stall margin can be significantly reduced. Because the effect of Mach number can be significant, and because it can also vary greatly for different wing designs, the multiplying factors applied to V_{SR} may be insufficient to ensure that adequate maneuvering capability exists at the minimum operating speeds. To address this issue, § 25.143(g) was added by Amendment 25–108 to require a minimum bank angle capability in a coordinated turn without encountering stall warning or any other characteristic that might interfere with normal maneuvering. The maneuvering requirements consist of the minimum bank angle capability the FAA deems adequate for the specified regimes of flight combined with a further 15 degrees of bank angle to provide a safety margin for various operational factors. These operational factors include both potential environmental conditions (*e.g.,* turbulence, wind gusts) and an allowance for piloting imprecision (*e.g.,* inadvertent overshoots).

Revise the first sentence of paragraph 20b and reformat paragraph 20b as follows:

b. *General Test Requirements.* (1) Compliance with §§ 25.143(a) through (f) is primarily a qualitative determination by the pilot during the course of the flight test program. * * *

Add a new paragraph 20b(2) to read as follows:

(2) Since § 25.143(g) involves a target speed, bank angle, and maximum value of thrust, not all flight test conditions to demonstrate compliance will necessarily result in a constant-altitude, thrust-limited turn. In cases with positive excess thrust, a climbing condition at the target bank and speed is acceptable. Alternately, if desired, the thrust may be reduced to less than the maximum allowed, so that compliance is shown with a completely stabilized, constant-altitude turn. For cases with negative excess thrust (*e.g.*, the landing configuration case), a constant-altitude slow-down maneuver at the target bank angle has been shown to be a suitable technique. With the airplane descending at V_{REF} in wings-level flight on a three degree glide path, trim and throttle position is noted. The airplane is then accelerated to V_{REF} + 10–20 knots in level flight. The original trim and throttle conditions are reset as the airplane is rolled into a constant-altitude slow-down turn at the target bank angle. Throttles can be manipulated between idle and the marked position to vary slow-down rate as desired. Compliance is shown when the airplane decelerates through V_{REF} in the turn without encountering stall warning. Revise paragraph 20c(2) by replacing ''1.3 V_S'' with ''1.23 V_{SR}.'' Add a new paragraph 20f(2)(v) to read as follows:

(v) Thrust or Power Setting for Maneuver Capability Demonstrations. The effect of thrust or power on maneuver capability is normally a function of only the thrust-to-weight ratio. Therefore, for those configurations in which the weight, altitude, temperature (WAT)-limited thrust or power setting is prescribed, it is usually acceptable to use the thrust or power setting that is consistent with a WAT-limited climb gradient at the test

conditions of weight, altitude, and temperature. However, if the maneuver margin to stall warning (or other characteristic that might interfere with normal maneuvering) is reduced with increasing thrust or power, the critical conditions of both thrust or power and thrust-to-weight ratio must be taken into account when demonstrating the required maneuvering capabilities. Revise paragraph 21a(1) as follows:

Section 25.145(a) requires that there be adequate longitudinal control to promptly pitch the airplane nose down from at or near the stall to return to the original trim speed. The intent is to ensure sufficient pitch control for a prompt recovery if inadvertently slowed to the point of stall. Although this requirement must be met with power off and at maximum continuous thrust or power, there is no intention to require stall demonstrations with thrust or power above that specified in § 25.201(a)(2). Instead of performing a full stall at maximum continuous power or thrust, compliance may be assessed by demonstrating sufficient static longitudinal stability and nose down control margin when the deceleration is ended at least one second past stall warning during a one knot per second deceleration. The static longitudinal stability during the maneuver and the nose down control power remaining at the end of the maneuver must be sufficient to assure compliance with the requirement. Revise paragraph 21b(1)(ii) as follows:

(ii) *Test procedure:* The airplane should be trimmed at the speed for each configuration as prescribed in § 25.103(b)(6). * * *

Revise paragraph 21b(2)(ii) by replacing ''$1.4V_S$'' with ''1.3 V_{SR}'' (two occurrences).

Revise paragraph 21b(3)(ii) by replacing ''$1.4V_S$'' with ''1.3 V_{SR}'' (two occurrences).

Revise paragraph 21b(4)(ii) by replacing ''$1.4V_S$'' with ''1.3 V_{SR}'' (two occurrences).

Revise paragraph 21b(5)(ii) by replacing ''$1.4V_S$'' with ''1.3 V_{SR},'' ''$1.1V_S$'' with ''V_{SW},'' and ''$1.7V_S$'' with ''1.6 $V_{SR.}$''

Revise paragraphs 21b(6)(i)(E) and 21b(6)(ii) by replacing ''$1.1V_S$'' with ''1.08 V_{SR}'' and ''$1.2V_S$'' with ''1.13 $V_{SR.}$''

Revise paragraph 22b(1)(i)(F) by replacing ''1.4_{VS}'' with ''1.3 $V_{SR.}$''

Revise paragraph 22b(2)(i)(F) by replacing ''$1.4V_{S1}$'' with ''1.3 $V_{SR1.}$''

Revise paragraph 22b(3)(ii) by replacing ''$1.4V_S$'' with ''1.3 V_{SR}'' and ''$1.4V_{S1}$'' with ''1.3 $V_{SR1.}$''

Revise paragraph 23b(2)(ii)(A) by replacing ''$1.2V_S$'' with ''1.13 $V_{SR.}$''

Revise paragraph 23b(2)(iii)(B) by replacing ''$1.1V_S$'' with ''1.08 $V_{SR.}$''

Revise paragraphs 27a(1), (2), and (3)(i) by replacing ''$1.2V_{S1}$'' with ''1.13 $V_{SR1.}$''

Revise paragraph 28a(1) by replacing ''$1.2V_{S1}$'' with ''1.13 $V_{SR1.}$''

Revise paragraph 29b(1)(i) as follows:

(i) To define the reference stall speeds and how they vary with weight, altitude, and airplane configuration.

Revise paragraph 29b(2) as follows:

(2) *During this testing,* the angle-of-attack should be increased at least to the point where the behavior of the airplane gives the pilot a clear and distinctive indication through the inherent flight characteristics or a stall identification device (*e.g.*, stick pusher) that the airplane is stalled.

Revise paragraph 29b(3) as follows:

(3) *The airplane is considered* to be fully stalled when any one or a combination of the characteristics listed below occurs to give the pilot a clear and distinctive indication to cease any further increase in angle of attack, at which time recovery should be initiated using normal techniques.

Revise paragraph 29c(1) as follows:

(1) *Background.* (i) Since many of the regulations pertaining to performance and handling qualities specify trim speeds and other variables that are functions of stall speeds, it is desirable to accomplish the stall speed testing early in the program, so the data are available for subsequent testing. Because of this interrelationship between the stall speeds and other critical performance parameters, it is essential that accurate measurement methods be used. Most standard airplane pitot-static systems have not been found to be acceptable for stall speed determination. These tests require the use of properly calibrated instruments and usually require a separate test airspeed system, such as a trailing bomb, a trailing cone, or an acceptable nose or wing boom.

(ii) Prior to Amendment 25–108, the stall speed defined in § 25.103 was the minimum speed attained in the stalling maneuver. For many high speed swept wing transport category airplanes the resulting stall speed often occurs at a load factor normal to the flight path considerably less than one, which leads to inconsistent and unrepeatable reference stall speeds. Pilot technique can also significantly influence the rate and magnitude of any spontaneous nose down pitch occurring at the stall, thereby contributing to inconsistencies in the determination of the minimum speed obtained in the stalling maneuver. Since Part 25 defines operating speeds as multiples of the stall speed, the resulting operating speed margins to stall may not be representative of the actual lift margin available (*i.e.*, the margin to the speed at which wing lift alone can support the weight of the airplane in 1-g flight); the net result of this inadequate lift margin being inconsistent operating speed margins and maneuvering margins. To ensure that operating speed and maneuvering margins are directly related to wing lift margin, Amendment 25–108 redefined the reference stall speed as the 1-g stall speed, which is the speed at which the wing is generating maximum usable lift in a 1-g flight condition.

(iii) Since the 1-g stall speed is generally higher than the minimum speed obtained in the stalling maneuver, retaining the existing multiplying factors for determining the minimum operating speeds would have resulted in higher minimum operating speeds. However, increasing the minimum operating speeds could have imposed costs on operators because of a reduction in payload capability to comply with the regulations at the higher operating speeds. Based on the service experience of the transport airplane fleet, the costs imposed would not have been offset by a commensurate increase in safety. A survey of various swept wing transport category airplanes was conducted to come up with revised multiplying factors that would provide essentially the same operating speeds regardless of the basis used for determining the reference stall speeds. From the survey, the average load factor at the minimum speed obtained in the stalling maneuver was determined to be 0.88, which means that the minimum speed obtained in the stalling maneuver was, on average, 94 percent of the 1-g stall speed. For that reason, in Amendment 25–108 the multiplying factors applied to the reference stall speed were reduced by approximately six percent.

(iv) Although the reduced multiplying factors were intended to result in roughly equivalent operating speeds, there is one class of airplanes for which a significantly lower operating speed would be obtained. Airplanes equipped with a device that abruptly pushes the nose down (*e.g.*, a stick pusher) near the angle of attack for maximum lift would be operated at speeds and angles-of-attack closer to the pusher activation point than has been experienced in operational service. For these airplanes, the minimum speed obtained in the stalling maneuver is closer to 96 to 97 percent of the 1-g stall speed. Therefore, to maintain equivalency in operating speeds for these airplanes, a supplementary margin has been

established such that V_{SR} must not be less than the greater of 2 knots or 2 percent above the speed at which the device activates. In addition, *see* paragraph 228 of this AC for guidance material regarding the design and function of such systems.

Revise paragraph 29c(3)(i) as follows:

(i) The airplane should be trimmed for hands-off flight at a speed 13 percent to 30 percent above the anticipated V_{SR} with the engines at idle and the airplane in the configuration for which the stall speed is being determined. Then, using only the primary longitudinal control for speed reduction, a constant deceleration (entry rate) is maintained until the airplane is stalled, as defined in § 25.201(d) and paragraph 29b(3) of this AC. Following the stall, engine thrust may be used as desired to expedite the recovery.

Revise paragraph 29c(3)(ii) as follows:

(i) A sufficient number of stalls (normally four to eight) should be accomplished at each critical combination of weight, c.g., and external configuration. The intent is to obtain enough data to define the stall speed at an entry rate of 1.0 knot/second.

Revise paragraph 29c(4) as follows:

(4) *Thrust Effects on Stall Speed.* (i) Stall speeds are typically determined with the thrust levers at idle; however, it is necessary to verify by test or analysis that engine idle thrust does not result in stall speeds that are appreciably lower than would be obtained at zero thrust. Prior to Amendment 25–108, a negative thrust at the stall, which slightly increases stall speeds, was considered acceptable, but it was not required to be taken into account. With the adoption of Amendment 25–108, it became a requirement to take into account idle thrust except where that thrust level results in a significant decrease in stall speed.

(ii) To determine whether thrust effects on stall speed are significant, at least three stalls should be conducted at one flap setting, with thrust set to approximately the value required to maintain level flight at 1.5 V_{SR} in the selected configuration.

(iii) These data may then be extrapolated to a zero thrust condition to determine the effect of idle thrust on stall speeds. (*See* Figure 29–1.) If the difference between idle thrust and zero thrust stall speed is 0.5 knots or less, the effect may be considered insignificant.

(iv) The effects of engine power on stall speeds for a turbopropeller airplane can be evaluated in a similar manner. Stall speed flight tests should be accomplished with engines idling and the propellers in the takeoff position. Engine torque, engine r.p.m., and estimated propeller efficiency can be used to predict the thrust associated with this configuration.

Revise paragraph 29c(5) as follows:

(5) *Data Reduction and Presentation.* The following is an example of how the data obtained during the stall speed testing may be reduced to standard conditions. Other methods may be found acceptable.

(i) Indicated airspeed from the flight test airspeed system is recorded throughout the stall, and these values are corrected to equivalent airspeed. Load factor normal to the flight path must also be recorded. Typically the load factor data would be obtained from a sufficient number of accelerometers capable of resolving the flight path load factor. At the bare minimum, one accelerometer aligned along the expected 1-g stall pitch angle may provide acceptable data.

(ii) The airplane corrected lift coefficient (C_{LCORR}) is calculated from the equation given below and plotted as a time history throughout the stall.

$$C_{L_{CORR}} = \frac{n_{zw}W}{qS} = \frac{295.37n_{zw}W}{V^2S}$$

Where:

n_{zw} = airplane load factor normal to the flight path

W = airplane test weight—lbs.

q = dynamic pressure—lbs./ft.^{2}

S = reference wing area—ft.^{2}

V = knots equivalent airspeed.

(iii) The maximum lift coefficient ($C_{L_{MAX}}$) is defined as the maximum value of $C_{L_{CORR}}$ achieved during the stall test. Where the plot of $C_{L_{CORR}}$ exhibits multiple peak values, $C_{L_{MAX}}$ corresponds to the first maximum. There should also typically be a noticeable break in a plot of the load factor normal to the flight path near the point at which $C_{L_{MAX}}$ is reached. The analysis to determine $C_{L_{MAX}}$ should disregard any transient or dynamic increases in recorded load factor, such as might be generated by abrupt control inputs, that do not reflect the lift capability of the airplane. The load factor normal to the flight path should be maintained at nominally 1.0 until $C_{L_{MAX}}$ is reached. (*See* Figure 29–1.)

(iv) The $C_{L_{MAX}}$ obtained for each stall is then corrected, if necessary, from the test c.g. position to the targeted c.g. position using the equation:

$$C_{L_{MAX_{CG}}} = C_{L_{MAX}}[1+(MAC/1_t)(CG_{std}-CG_{test})]-\Delta C_{L_T}$$

Where

MAC= Wing mean aerodynamic chord length—inches.

1_t = Effective tail length, measured between the wing 25 percent MAC and the stabilizer 25 percent MAC—inches.

CG_{std} = C.G. position resulting in the highest value of reference stall speed (normally the forward c.g. limit at the pertinent weight)—percent MAC/100

CG_{test} = Actual test c.g. position—percent MAC 100

ΔC_{LT} = Change in C_L due to engine thrust (if significant).

(v) Stall entry rate, which is defined as the slope of a straight line connecting the stall speed and an airspeed 10 percent above the stall speed, should be determined for each stall test. Because $C_{L_{MAX}}$ is relatively insensitive to stall entry rate, a rigorous investigation of entry rate effects should not be necessary. Test data should bracket a 1.0 knot/second entry rate such that the value of $C_{L_{MAX}CG}$ corresponding to an entry rate of 1.0 knot/second can be determined. This value of $C_{L_{MAX}CG}$ should be used to determine the reference stall speed defined in § 25.103(a).

(vi) For each approved configuration, a plot of $C_{L_{MAX}}$ versus weight is constructed. (*See* Figure 29–2.) An initial negative slope of this plot may be caused by several factors:

(A) A decrease in CLMAX due to increasing Mach number (which increases as the stall speed goes up with weight);

(B) The fact that C_{LMAX} is proportional to the rate of change of angle of attack, whereas the data are plotted at a fixed airspeed bleed rate; and

(C) Minor adverse aeroelastic effects on the wings and high lift devices as weight (and therefore speed) increases. An inflection in the plot is typically caused by a variation in the forward c.g. limit with weight.

(vii) In the measurement of stall speeds, the lowest test altitude is usually dictated by flight test safety concerns. This test data must then be expanded to lower altitudes, and hence, lower Mach numbers to cover the operational envelope of the airplane. Since C_{LMAX} increases as the Mach number is reduced, simple expansion of the flight test data could result in extrapolating to a higher C_{LMAX} than tested. Expansion of C_{LMAX} versus Mach number data is only permitted up to the highest C_{LMAX} within the range of W/**δ**'s tested.

(viii) The reference stall speed is a calibrated airspeed, not less than the 1–g stall speed, and is expressed as:

$$V_{SR} \geq \frac{V_{CL_{MAX}}}{\sqrt{n_{zw}}}$$

Where:

V_{CLMAX} =

$$\sqrt{295.37(W)/(C_{L_{MAX}}S)+\Delta V_C}.$$

If the stalling maneuver is limited by a device that commands an abrupt nose down pitch (*e.g.*, a stick pusher), V_{CLMAX} may not be less than the speed existing at the instant the device operates.

ΔV_C = compressibility correction (*i.e.*, the difference between equivalent airspeed and calibrated airspeed).

W = airplane weight—lbs.

C_{LMAX} = value of C_{LMAX} corresponding to the chosen weight (see Figure 29–3).

S = reference wing area—ft ^{2}.

(ix) For airplanes equipped with a device that abruptly pushes the nose down at a selected angle-of-attack (*e.g.*, a stick pusher), VSR must not be less than the greater of 2 knots or 2 percent above the speed at which the device activates.

(x) In showing compliance with § 25.103(d), in the case where a device that abruptly pushes the nose down at a selected angle of attack (*e.g.*, a stick pusher) operates after C_{LMAX}, the speed at which the device operates need not be corrected to 1 g. Otherwise, it would be possible for the device activation speed to be assessed as higher than VSR (or at least closer to VSR than would be obtained without correcting for load factor). Requiring the correction of the device activation speed to the 1–g condition would unnecessarily increase the stringency of § 25.103(d). Test procedures should be in accordance with paragraph 29c(3)(i) to ensure that no abnormal or unusual pilot control input is used to obtain an artificially low device activation speed.

Revise paragraph 29d(2)(v) as follows:

(v) For power-on stalls, thrust should be set to the value required to maintain level flight at a speed of 1.5 VSR at maximum landing weight with flaps in the approach position, and the landing gear retracted. The approach flap position referred to is the maximum flap deflection used to show compliance with § 25.121(d), which specifies a configuration in which the reference stall speed does not exceed 110 percent of the reference stall speed for the related landing configuration.

Revise paragraph 29d(2)(ix) as follows:

(ix) For abnormal aerodynamic configurations covered by AFM procedures, high angle-of-attack characteristics should be evaluated down to either stall warning, or to an angle-of-attack equivalent to the AFM recommended landing approach speed divided by 1.23. * * *

Revise paragraph 29d(3) as follows:

(3) *Procedures.* (i) The airplane should be trimmed for hands-off flight at a speed 13 percent to 30 percent above the reference stall speed, with the appropriate power setting and configuration. Then, using only the primary longitudinal control, establish and maintain a deceleration (entry rate) consistent with that specified in §§ 25.201(c)(1) or 25.201(c)(2), as appropriate, until the airplane is stalled. Both power and pilot selectable trim should remain constant throughout the stall and recovery (angle of attack has decreased to the point of no stall warning).

(ii) The same trim reference (for example, 1.23 VSR) should be used for both the stall speeds and characteristics testing. For all stall testing, the trim speed is based on the performance stall speeds provided in the AFM.

Revise paragraph 29f(2) as follows:

(ii) Timeliness. For one knot per second entry rate stalls, the stall warning must begin at a speed, VSW, not less than five knots or five percent CAS (whichever is greater) above the speed at which the stall is identified in accordance with § 25.201(d). For straight flight stalls, at idle thrust and with the center-of-gravity at the position specified in § 25.103(b)(5), the stall warning must begin at a speed not less than three knots or three percent (whichever is greater) above the reference stall speed. These speed margins should be in terms of the same units of measurement as VSR (*i.e.*, calibrated airspeed).

(iii) Consistency. The stall warning must be reliable and repeatable. The warning must occur with flaps and gear in all normally used positions in both straight and turning flight and must continue throughout the stall demonstration until the angle of attack is reduced to approximately that at which the stall warning was initiated. The warning may be furnished naturally through the inherent aerodynamic characteristics of the airplane, or artificially by a system designed for this purpose. If artificial stall warning is provided for any airplane configuration, it must be provided for all configurations.

Add paragraph 29f(2)(vi) as follows:

(vi) If the stall warning required by § 25.207 is provided by an artificial stall warning system (*e.g.*, a stick shaker), the effect of production tolerances on the stall warning system should be considered when evaluating the stall warning margin required by §§ 25.207(c) and (d) and the maneuver capabilities required by § 25.143(g).

(A) The stall warning margin required by §§ 25.207(c) and (d) should be available with the stall warning system set to the most critical setting expected in production. Unless another setting would provide a lesser margin, the stall warning system should be operating at its high angle of attack limit. For airplanes equipped with a device that abruptly pushes the nose down at a selected angle-of-attack (*e.g.*, a stick pusher), the stall warning margin may be evaluated with both the stall warning and stall identification (*e.g.*, stick pusher) systems at their nominal angle of attack settings unless a lesser margin can result from the various system tolerances.

(B) The maneuver capabilities required by § 25.143(g) should be available assuming the stall warning system is operating on its nominal setting. In addition, when the stall warning system is operating at its low angle of attack limit, the maneuver capabilities should not be reduced by more than 2 degrees of bank angle from those specified in § 25.143(g).

(C) The stall warning margin and maneuver capabilities may be demonstrated by flight testing at the settings specified above for the stall warning and, if applicable, stall identification systems. Alternatively, compliance may be shown by applying adjustments to flight test data obtained at a different system setting.

Revise paragraph 29f(3) as follows:

(3) *Procedures.* Stall warning tests are normally conducted in conjunction with the stall testing required by §§ 25.103 (stall speeds), 25.201 (stall demonstration), and 25.203 (stall characteristics), including consideration of the prescribed bank angles, power settings, and center-of-gravity position. In addition, if the stall warning margin may be affected by a system (*e.g.*, a stall warning or stick pusher system that modifies the stall warning or stall identification speed as a function of thrust, bank angle, angle-of-attack rate, *etc.*), compliance with § 25.207(c) should be demonstrated at the most critical conditions in terms of stall warning margin. However, bank angles greater than 40 degrees and power or thrust exceeding maximum continuous power or thrust need not be demonstrated. If the effect of the stall identification or stall warning system compensation is to increase the stall warning margin relative to the nominal values demonstrated during the testing required by §§ 25.103, 25.201, and

25.203, no further stall warning margin demonstrations need to be done.

Revise paragraph 29f(4) as follows:

(4) *Data Acquisition and Reduction.* The stall warning speed and type and quality of warning should be noted. The speed at which acceptable stall warning begins should then be compared to the stall identification speed and, for the conditions under which VSR is defined, VSR, to determine if the required margin exists. The stall warning speed margin required by § 25.207(d) should be determined at a constant load factor.

Revise paragraph 29g as follows:

g. *Accelerated Stall Warning.* (1) *Explanation.* Section 25.207(e) requires that, in slow-down turns with at least a 1.5g load factor normal to the flight path and an airspeed deceleration rate greater than 2 knots per second, sufficient stall warning is provided to prevent stalling when the pilot takes recovery action not less than one second after recognition of stall warning. The purpose of the requirement is to ensure that adequate stall warning exists to prevent an inadvertent stall under the most demanding conditions that are likely to occur in normal flight. The conditions of 1.5g and an airspeed deceleration rate greater than 2 knots per second correspond to the steep turn maneuver prescribed in Part 121, Appendices E and F for pilot initial and proficiency training, respectively, plus some margin for error (3 degrees more bank and a decreasing airspeed). The elevated load factor will emphasize any adverse stall characteristics, such as wing drop or asymmetric wing flow breakdown, while also investigating Mach and potential aeroelastic effects on available lift. The greater than 2 knot per second deceleration rate is intended to result in a reasonable penetration beyond the onset of stall warning.

(2) *Procedures.* (i) Trim at 1.3 $V_{SR.}$ Once trimmed, accelerate to a speed that will allow enough time to set up and complete the maneuver at the specified load factor and airspeed deceleration rate. Power or thrust should be set appropriate to the power for level flight at 1.3 V_{SR} and not adjusted during the maneuver. In a level flight maneuver, 1.5g equates to a bank angle of 48 degrees. To prevent an excessive deceleration rate (*e.g.*, greater than 3 knots per second), a descent may be used. Conversely, if the deceleration rate is too low, the maneuver should be conducted in a climbing turn.

(ii) After the onset of stall warning, continue the maneuver without releasing stick force for one second before attempting recovery. Normal low speed recovery techniques should be used. If any of the indications of a stall prescribed in § 25.201(d) (see paragraph 29b(3) of this AC) occur during the accelerated stall warning demonstration, compliance with § 25.207(d) will not have been demonstrated.

Revise paragraph 29h as follows:

h. *Maneuver Margins.* See paragraph 20 of this AC for guidance material associated with demonstrating compliance to the maneuvering capability requirements of § 25.143(g).

Redesignate existing paragraph 29i as 29j and add a new paragraph 29i as follows:

i. *Tolerance Considerations for Airplanes Equipped with Stall Identification Systems.* For airplanes equipped with a stall identification device, the applicant should consider the combined effects of the variables listed in paragraphs (1) through (4) below to determine the critical configuration for stall testing. A maximum deviation in stall speed of ±1 knot, from that defined in the nominal configuration, is considered acceptable for the combined effects of the items listed in paragraphs (1) through (3). The deviation in stall speed due to stall identification system tolerances (paragraph 3), alone, should not exceed ±0.5 knots. (The stall identification system consists of everything from the angle of attack sensing device to the connection of the force application actuator to the longitudinal control system.) It should be verified that threshold tolerances and system design features (*e.g.*, filtering, phase advancing) will not result in an unsafe diminishing of the margin between stall warning and pusher activation, or pusher activation and some dangerous airplane characteristic. Investigations should include the demonstration of maneuver margins, dynamic stall entries, the effects of atmospheric turbulence, and operation in windshear environments where the airplane will be flown at, or very near, stall warning. These flying conditions should not result in unwanted activation of the stall identification system or aerodynamic stall prior to, or close to, activation of the stall warning system. This verification may be provided by a combination of analysis, simulation, and flight test.

(1) High lift device and control surface rigging—at the limits of their respective tolerance bands that is most detrimental to the production of lift;

(2) Airframe build tolerances—the impact of wing angle of incidence variation relative to stall identification system vane angle;

(3) Stall identification system tolerances—activation vane angles should be at the low end of the tolerance band for stall speed testing, and at the high end for stall characteristics testing; and

(4) Wing leading edge condition—the effect of wing leading edge contamination (*e.g.*, insects) on stall speeds should be determined and accounted for if significant. The critical height and density of the contaminant should be substantiated by Generic. This testing may be accomplished using an artificial contaminant.

Remove existing Figure 29–1, renumber Figure 29–5 as Figure 29–1, add a new Figure 29–2, and reorder the remaining figures appropriately.

Revise paragraphs 30c(2)(i), 30e(1)(iii), and 30e(2)(ii) by replacing ''V_{S0}'' with ''$V_{SR0.}$''

Revise Page 2 of Appendix 4 by replacing ''$1.2V_S$'' with ''1.13 V_{SR}'' (two occurrences).

Remove Appendix 5.

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

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 02–33130 Filed 12–31–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aging Transport Systems Rulemaking Advisory Committee Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aging Transport Systems Rulemaking Advisory Committee (ATSRAC).

DATES: The FAA will hold the meeting on January 22 and 23, 2003, in Savannah, Georgia from 8:30 a.m. to 4:30 p.m. on the 22nd and from 8:30 a.m. to noon on the 23rd.

ADDRESSES: Hyatt Regency Savannah, 2 West Bay Street, Savannah, Georgia, 31401.

FOR FURTHER INFORMATION CONTACT: Shirley Stroman, Office of Rulemaking, ARM–208, FAA, 800 Independence Avenue, SW, Washington, DC 20591; telephone (202)267–7470; fax (202)267–5075; or e-mail *shirley.stroman@faa.gov.*

SUPPLEMENTARY INFORMATION: The ATSRAC will meet at the Hyatt Regency Savannah at the address shown under the **ADDRESSES** heading in this notice. The meeting agenda will include the following:

- Presentation of Working Group 10's (Small Transport Airplane

Harmonization Working Group) final report
- Discussion of comments on the FAA's Intrusive Inspection Recommendations Final Report
- Discussion of ATSRAC's recommendation to the FAA on an Enhanced Zonal Analysis Procedure implementation schedule
- Update on FAA's Research and Development Program
- Presentation by Robins Air Force Base: Lubricant Effectiveness Study for Corrosion Protection and Improved Reliability of Avionics

The meeting is open to the public, but attendance will be limited to the availability of meeting room space. The FAA will make the following services available if you request them by January 14, 2003:
- Teleconferencing
- Sign and oral interpretation
- A listening device

Individuals using the teleconferencing service and calling from outside the Washington, DC metropolitan area will be responsible for paying long distance charges. To arrange for any of the above services, contact the person listed under the **FOR FURTHER INFORMATION CONTACT** heading of this notice.

The public may present written statements to the Committee at any time by providing 20 copies to the Committee's Executive Director or by bringing the copies to the meeting. Public statements will be considered if time permits.

Issued in Washington, DC on December 23, 2002.

Anthony F. Fazio,

Director, Office of Rulemaking.

[FR Doc. 02–33110 Filed 12–31–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration (RSPA)

[Docket No. RSPA–02–14079; Notice 1]

Pipeline Safety: Pipeline Communications (Natural Gas and Hazardous Liquid Pipelines)

AGENCY: Office of Pipeline Safety, Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of public meeting.

SUMMARY: RSPA/OPS invites the public to a meeting on pipeline communications, including current RSPA initiatives, the development of American Petroleum Institute Recommended Practice 1162, integrity management communications, and pipeline performance metrics. This meeting is a continuation of a meeting held on February 12–14, 2001, to discuss pipeline integrity management and integrity management communications.

DATES: The public meeting will be on January 29, 2003, from 9 a.m. to 7 p.m.

ADDRESSES: Bellevue Community College, Carlson Theater, 3000 Landerholm Circle SE, Bellevue WA 98007–6484, (425) 564–2376. Driving directions and a map of the college can be found on Bellevue Community College's Web site: *http://www.bcc.ctc.edu*. To ensure sufficient seating, persons wishing to attend are encouraged to register for the meeting through the following Internet Web site: *http://primis.rspa.dot.gov/meetings*. The public will have an opportunity to make short statements on the topics under discussion. Members of the public who are unable to attend in person can view the meeting over the Internet and submit questions through the RSPA/OPS Web site: *http://ops.dot.gov*. In addition, a transcript will be available approximately 30 days after the meeting.

Persons wishing to submit comments relating to the public meeting may do so by mail or delivery to the Dockets Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. The Dockets facility is open from 10 a.m. to 5 p.m., Monday through Friday, except on Federal holidays. You should submit the original and one copy. Anyone who wants confirmation of receipt of their comments must include a stamped, self-addressed postcard. You may also submit comments to the docket electronically. To do so, log on to the Internet Web address *http://dms.dot.gov* and click on ''Help'' for instructions on electronic filing of comments. All written comments should identify the docket number RSPA–02–14079; Notice 1.

Information on Services for Individuals With Disabilities: For information on facilities or services for individuals with disabilities or to request special assistance during the telephone conference calls, contact Christina Sames (tel: 202–366–4561; E-mail: *christina.sames@rspa.dot.gov*).

FOR FURTHER INFORMATION CONTACT: Christina Sames (tel: 202–366–4561; E-mail: *christina.sames@rspa.dot.gov*). You can read comments and other material in the docket on the Internet at: *http://dms.dot.gov*.

SUPPLEMENTARY INFORMATION:

Background

RSPA/OPS's communication initiatives are intended to improve safety and environmental protection and to provide better assurance to the public about the safety of pipelines.

On February 14, 2001, RSPA/OPS held a public meeting to discuss pipeline integrity management and integrity management communications. Meeting attendees provided input on how State and local officials and the public could use and benefit from risk assessment information, how the consequences of potential pipeline failures should be characterized, how risk control actions should be described, and what operational information would be meaningful.

Additional information on that workshop can be found in the Dockets Facility at the Internet Web Site listed above and under Docket RSPA–00–7408.

Since the February 2001 meeting, RSPA/OPS has been exploring communication requirements for all pipeline operators to share information with community and State officials and the public about risks from pipelines, how pipeline risks can be managed and controlled, and how we know the pipelines are being operated safely. RSPA/OPS has also begun several initiatives to provide the public and local officials with pipeline educational material, training material for emergency officials responding to a pipeline accident, public outreach on damage prevention, and community assistance and technical service inspectors to assist communities with current and upcoming integrity management regulations.

The January 29, 2003, public meeting will be divided into three sessions. Each session will include presentations by RSPA/OPS, a panel discussion on that session's topic, and an open question and answer period. Panelists will include representatives from various communities, environmental organizations, first responders, city/county government, state government, and pipeline companies.

Session 1 will address the need for communications in regard to the integrity management programs. The panelists will provide their viewpoints on what information should be exchanged between pipeline operators and community officials and how this information should be provided. This session will include a discussion of a new RSPA/OPS program to provide community assistance and technical services to State and local officials, to assist with community damage

prevention efforts, and to address questions about the safety of pipelines, research and development, and other program activities.

Session 2 will address pipeline performance metrics and will include a discussion on performance tracking and monitoring initiatives, RSPA/OPS data initiatives, and concepts in performance metrics on both a per company and industry aggregate basis. Panelists will discuss indicators that would be useful to judge the safety and reliability of a specific operator's program and the pipeline industry as a whole.

Session 3 will focus on adequacy of an initiative to develop a national consensus standard for pipeline operators to use in developing public awareness programs. This standard has been developed by the oil and gas industry and observed by OPS and NAPSR. This consensus standard, American Petroleum Institute Recommended Practice 1162 (''RP 1162''), and additional information on the project can be viewed on the following Internet Web Site: *http://www.api.org/pipelinepublicawareness*. RSPA/OPS is particularly interested in hearing the public's views on the completeness of RP 1162's sections on the information provided to local officials and on effectiveness measures. The session will also address additional RSPA/OPS communication initiatives, the development of RSPA/OPS online source of information about pipelines (''Pipeline 101''), the National Pipeline Mapping System, a collaborative project with the National Association of State Fire Marshals to develop a first responder training program, and a project with the National Academy of Science/Transportation Research Board on the study of measures to prevent encroachment on pipelines.

All presentations and a meeting transcript will be available subsequent to the meeting in the docket at *http://dms.dot.gov* as well as at *http://primis.rspa.dot.gov*.

Issued in Washington, DC, on December 27, 2002.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 02–33109 Filed 12–31–02; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 19, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before February 3, 2003 to be assured of consideration.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0078.

Form Number: ATF Form 5000.18.

Type of Review: Revision.

Title: Change of Bond (Consent of Surety).

Description: A Change of Bond (Consent of Surety) is executed by both the bonding company and a proprietor and acts as a binding legal agreement between the two parties to extend the terms of a bond. A bond is necessary to over specific liabilities on the revenue produced from untaxpaid commodities. The Change of Bond (Consent of Surety) is filed with ATF and a copy is retained by ATF as long as it remains current and in force.

Respondents: Business of other for-profit.

Estimated Number of Respondents: 2,000.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: On occasion, Other (with application and permit changes).

Estimated Total Reporting Burden: 2,000 hours.

OMB Number: 1512–0119.

Form Number: ATF Form 5200.14.

Type of Review: Revision.

Title: Taxable Articles Without Payment of Tax.

Description: ATF needs this information to protect the revenue. If this ATF Form is not properly completed, ATF will assess the tax on the manufacturer of tobacco products or cigarette papers and tubes or the proprietor of the export warehouse or customs manufacturing warehouse.

Respondents: Business or other for-profit, individuals or households, Federal Government.

Estimated Number of Respondents: 272.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 15,000 hours.

Clearance Officer: Jacqueline White (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.

OMB Reviewer: Joseph F. Lackey, Jr. (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 02–33115 Filed 12–31–02; 8:45 am]

BILLING CODE 4810–31–P

Corrections

Federal Register

Vol. 68, No. 1

Thursday, January 2, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

National Infrastructure Advisory Council; Notice of Open Meeting

Correction

In notice document 02–32435 appearing on page 78415 in the issue of Tuesday, December 24, 2002 make the following correction:

On page 78415, in the first column, in the first paragraph, in the eigth and ninth lines, ''1–899–7785'' should read, ''1–888–899–7785''.

[FR Doc. C2–32435 Filed 12–31–02; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Thursday,
January 2, 2003

Part II

Securities and Exchange Commission

17 CFR Parts 210, 239, 249, 270, and 274
Shareholder Reports and Quarterly Portfolio Disclosure of Registered Management Investment Companies; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 239, 249, 270, and 274

[Release Nos. 33–8164; 34–47023; IC–25870; File No. S7–51–02]

RIN 3235–AG64

Shareholder Reports and Quarterly Portfolio Disclosure of Registered Management Investment Companies

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission is proposing rule and form amendments under the Securities Act of 1933, the Securities Exchange Act of 1934, and the Investment Company Act of 1940 to improve the periodic disclosure provided by registered management investment companies about their portfolio investments, costs, and past performance. The proposed amendments would permit a registered management investment company to include a summary portfolio schedule of investments in its reports to shareholders, provided that the complete schedule is filed with the Commission and is provided to shareholders upon request, free of charge. The proposals also would require a registered management investment company to include a tabular or graphic presentation of its portfolio holdings in its reports to shareholders. In addition, the proposed amendments would require a registered management investment company to disclose its complete portfolio schedule on a quarterly basis in filings with the Commission that would be available on the Commission's Electronic Data Gathering, Analysis, and Retrieval System. The proposed amendments also would require a registered open-end management investment company to include in its shareholder reports disclosure of fund expenses borne by shareholders during the reporting period. Finally, the proposals would require a registered open-end management investment company to include Management's Discussion of Fund Performance in its annual report to shareholders.

DATES: Comments must be received on or before February 14, 2003.

ADDRESSES: To help us process and review your comments more efficiently, comments should be sent by hard copy or electronic mail, but not by both methods.

Comments sent by hard copy should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically at the following E-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. S7–51–02; this file number should be included in the subject line if electronic mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Electronically submitted comment letters also will be posted on the Commission's Internet Web site (*http://www.sec.gov*).[1]

FOR FURTHER INFORMATION CONTACT: David S. Schwartz, Senior Counsel, or Paul G. Cellupica, Assistant Director, Office of Disclosure Regulation, Division of Investment Management, (202) 942–0721, at the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0506.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission (the ''Commission'') is proposing for comment new rule 30b1–4 (17 CFR 270.30b1–4) and new Form N–Q (17 CFR 274.129) under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (''Investment Company Act''); amendments to Forms N–1A (17 CFR 239.15A; 17 CFR 274.11A), N–2 (17 CFR 239.14; 17 CFR 274.11a–1), and N–3 (17 CFR 239.17; 17 CFR 274.11b) under the Investment Company Act and the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) (''Securities Act''); amendments to proposed Form N–CSR (17 CFR 249.33; 17 CFR 274.128) under the Investment Company Act and the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act''); and amendments to Article 6 (17 CFR 210.6) and Article 12 (17 CFR 210.12) of Regulation S–X (17 CFR 210).

Executive Summary

We are proposing rule and form amendments that would:

[sbull] Permit a management investment company registered under the Investment Company Act (''fund'') to include a summary portfolio schedule in its reports to shareholders, provided that the complete portfolio schedule is filed with the Commission on proposed Form N–CSR semi-annually and is provided to shareholders upon request, free of charge; [2]

[sbull] Exempt money market funds from including a portfolio schedule in reports to shareholders, provided that this information is filed with the Commission on proposed Form N–CSR and is provided to shareholders upon request, free of charge;

[sbull] Require reports to shareholders by funds to include a tabular or graphic presentation of a fund's portfolio holdings by identifiable categories;

[sbull] Require a fund to file its complete portfolio schedule as of the end of its first and third fiscal quarters with the Commission on new proposed Form N–Q;

[sbull] Require open-end management investment companies (''mutual funds'') to disclose fund expenses borne by shareholders during the reporting period in reports to shareholders; and

[sbull] Require a mutual fund to include Management's Discussion of Fund Performance in its annual report to shareholders.[3]

These proposed amendments are intended to provide better information to investors about fund investments, costs, and performance.

I. Background

The Investment Company Act and rules thereunder require each fund to

[1] We do not edit personal identifying information, such as names or electronic mail addresses, from electronic submissions. You should submit only information that you wish to make available publicly.

[2] A management investment company is an investment company other than a unit investment trust or face-amount certificate company. *See* Section 4 of the Investment Company Act (15 U.S.C. 80a–4). Management investment companies typically issue shares representing an undivided proportionate interest in a changing pool of securities, and include open-end and closed-end companies. *See* T. Lemke, G. Lins, A. Smith III, Regulation of Investment Companies, Vol. I, ch. 4, section 4.04, at 4–5 (2002). An open-end company is a management company that is offering for sale or has outstanding any redeemable securities of which it is the issuer. A closed-end company is any management company other than an open-end company. *See* Section 5 of the Investment Company Act (15 U.S.C. 80a–5). Open-end companies (''mutual funds'') generally offer and sell new shares to the public on a continuous basis, while closed-end companies generally engage in traditional underwritten offerings of a fixed number of shares and in most cases do not offer their shares to the public on a continuous basis.

Proposed Form N–CSR would be used by registered management investment companies to file certified shareholder reports with the Commission under the Sarbanes-Oxley Act of 2002. *See* Investment Company Act Release No. 25723 (Aug. 30, 2002) (67 FR 57298 (Sept. 9, 2002)); Sarbanes-Oxley Act of 2002, Pub. L. No. 107–204, 116 Stat. 745 (2002). The Commission proposed amendments to Form N–CSR in Investment Company Act Release No. 25739 (Sept. 20, 2002) (67 FR 60828 (Sept. 26, 2002)); Investment Company Act Release No. 25775 (Oct. 22, 2002) (67 FR 66208 (Oct. 30, 2002)); Investment Company Act Release No. 25838 (Dec. 2, 2002) (67 FR 76780 (Dec. 13, 2002)); and Investment Company Act Release No. 25845 (Dec. 10, 2002).

[3] Item 5 of Form N–1A.

transmit a report to its shareholders semi-annually, within 60 days of the end of the period for which the shareholder report is made, and to file the report with the Commission no later than 10 days after it is transmitted to shareholders.[4] Reports to shareholders currently are required to contain financial statements and other financial information,[5] as well as information about the fund's officers and directors.[6] Annual reports to shareholders of mutual funds typically also contain Management's Discussion of Fund Performance (''MDFP''), although they are not required to do so.[7] MDFP includes narrative disclosure of the factors that materially affected the fund's performance during the fiscal year, a line graph comparing the fund's performance over 10 years to that of an appropriate broad-based market index, and a table of the fund's average annual total returns for 1-, 5-, and 10-year periods.

Shareholder reports are one of the principal means by which funds provide periodic information to their investors. Fund shareholder reports historically have served primarily as a vehicle to provide financial statements and other financial information to shareholders.[8] We believe that, with some modifications, fund shareholder reports could become a more effective vehicle for communicating information to investors. Today's proposals principally address disclosure of fund portfolio holdings and expenses, two significant areas for improvement that have been identified by investor groups, members of the fund industry, and others.

A. Disclosure of Fund Portfolio Holdings

Currently, funds are required to include their complete portfolio holdings in the reports that are delivered to all shareholders twice a year.[9] Investor groups, members of the fund industry, and others have suggested ways in which this current disclosure regime could be improved, both by making the portfolio schedule that is required to be delivered to investors more streamlined, useful, and understandable and by increasing the frequency with which funds disclose their entire portfolio holdings.

First, some have argued that permitting funds to include a summary portfolio schedule in lieu of a complete portfolio schedule in their shareholder reports would simplify those reports, enable investors to focus on a fund's principal holdings, and thereby better evaluate the fund's risk profile and investment strategy.[10] At the same time, the fund's full portfolio schedule could remain available, upon request, to those investors who find this information useful. Because of its size or investment strategy, a fund may hold securities in hundreds, or even thousands, of portfolio companies, which may require as many as 35 or 40 pages to list. For many funds, such as index funds, providing a lengthy portfolio schedule may not contribute significantly to investor understanding regarding the fund's primary investment focus. It may, however, result in significant printing and mailing costs, which are ultimately borne by investors. Similarly, because of the high turnover of portfolio holdings by money market funds, and the fact that money market funds' portfolios are circumscribed by the credit quality, maturity, and portfolio diversification requirements of rule 2a–7 under the Investment Company Act, some have also argued that such funds should be exempt from the requirement to list portfolio holdings in their reports to shareholders.[11]

Advocates of this position have asserted that investors would be better served if fund shareholder reports contained a summary portfolio schedule listing a fund's most significant holdings, coupled with a chart, table, graph, or other graphical presentation breaking down a fund's investments by category. For example, a domestic equity fund might provide a graphical presentation that shows its portfolio investments broken down by industry sector, while a corporate or municipal bond fund might present its holdings broken down by credit quality or maturity.

Second, others have argued that investors would benefit if funds were required to disclose their complete portfolio schedules more frequently than semi-annually. The Commission has received six rulemaking petitions in the past several years that advocate more frequent disclosure of funds' portfolio holdings.[12] The petitioners argue that increasing the frequency of portfolio disclosure by funds will allow investors to better monitor the extent to which their funds' portfolios overlap, and hence will enable investors to make

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[4] *See* Section 30(e) of the Investment Company Act (15 U.S.C. 80a–29(e)); Rule 30e–1 under the Investment Company Act (17 CFR 270.30e–1) (transmission of report to shareholders); Section 30(b)(2) of the Investment Company Act (15 U.S.C. 80a–30(b)(2)); Rule 30b2–1 under the Investment Company Act (17 CFR 270.30b2–1) (filing of shareholder report with the Commission); proposed Form N–CSR (proposed Form to be used by registered management investment companies to file certified shareholder reports with the Commission under the Sarbanes-Oxley Act of 2002).

[5] *See* Item 22(b)(1), (b)(2), (c)(1), and (c)(2) of Form N–1A (registration statement of open-end management investment companies); Instructions 4.a, 4.b, 5.a, and 5.b to Item 23 of Form N–2 (registration statement of closed-end management investment companies); Instructions 4(i), 4(ii), 5(i), and 5(ii) to Item 27(a) of Form N–3 (registration statement of separate accounts organized as management investment companies that offer variable annuity contracts).

[6] Items 13(a)(1) and 22(b)(5) of Form N–1A; Item 18.1 and Instruction 4.e to Item 23 of Form N–2; Item 20(a) and Instruction 4(v) to Item 27(a) of Form N–3.

[7] Item 5 of Form N–1A (MDFP required in prospectus unless included in annual report to shareholders).

[8] Section 30(e) of the Investment Company Act (15 U.S.C. 80a–29(e)) (requiring a fund to transmit to its stockholders, at least semi-annually, reports containing financial statements and other financial information as the Commission may prescribe by rules and regulations); National Securities Markets Improvement Act of 1996, Pub. L. 104–290, Section 207, 110 Stat. 3416, 3430 (Oct. 11, 1996) (adding Section 30(f) to the Investment Company Act, which allows the Commission to require that semi-annual reports ''include such other information as the Commission deems necessary or appropriate in the public interest or for the protection of investors'').

[9] Rule 6–10(c)(1) of Regulation S–X (17 CFR 210.6–10(c)(1)) requires that a portfolio schedule be filed in support of the balance sheet entry for investments in securities of unaffiliated issuers. The form of the portfolio schedule is specified in Rule 12–12 of Regulation S–X (17 CFR 210.12–12). This list of portfolio securities also is required to be included with the financial statements in the Statement of Additional Information (''SAI'') of a fund, which is part of the registration statement filed with the Commission under both the Securities Act and the Investment Company Act. *See* Item 22 of Form N–1A; Item 23 of Form N–2; Item 27(a) of Form N–3.

[10] *See* Letter from Craig S. Tyle, General Counsel, Investment Company Institute (''ICI''), to Barry P. Barbash, Director, Division of Investment Management, Securities and Exchange Commission (''SEC'') (Aug. 11, 1998); Letter from Heidi Stam, Principal, Securities Regulation, The Vanguard Group, to Cynthia Fornelli, Deputy Director, Division of Investment Management, SEC (Oct. 13, 1999); Letter from Robert C. Pozen, General Counsel and Managing Director, Fidelity Investments, to The Honorable Steven Wallman, Commissioner, SEC (May 5, 1995). The letters are available for inspection and copying in File No. S7–51–02 in the Commission's public reference room.

[11] 17 CFR 270.2a–7. *See* Letter from Craig S. Tyle, General Counsel, ICI, to Barry P. Barbash, Director, Division of Investment Management, SEC (Aug. 11, 1998) at 2.

[12] *See* Rulemaking Petition by the International Brotherhood of Teamsters (Jan. 18, 2001) (disclose portfolio holdings monthly); Rulemaking Petition by the American Federation of Labor and the Congress of Industrial Organizations (Dec. 20, 2000) (disclose portfolio holdings monthly); Rulemaking Petition by the National Association of Investors Corporation (Oct. 9, 2000) (disclose portfolio holdings monthly); Rulemaking Petition by the Consumer Federation of America, *et al.* (Aug. 8, 2000) (disclose portfolio holdings monthly and on random days throughout year); Rulemaking Petition by the Financial Planning Association (June 28, 2000) (increase frequency of portfolio holdings disclosure); Rulemaking Petition by Fund Democracy, LLC (June 28, 2000) (disclose portfolio holdings monthly). The petitions are available for inspection and copying in File No. S7–51–02 in the Commission's public reference room.

more informed asset allocation decisions. In addition, the petitioners argue that more frequent disclosure would expose ''style drift'' (when the actual portfolio holdings of a fund deviate from its stated investment objective) and provide investors with greater information about how a fund is complying with its stated investment objective. The petitioners also argue that more frequent disclosure would help to shed light on and prevent several potential forms of portfolio manipulation. These include ''window dressing'' (buying or selling portfolio securities shortly before the date as of which a fund's holdings are publicly disclosed, in order to convey an impression that the manager has been investing in companies that have had exceptional performance during the reporting period) and ''portfolio pumping'' (buying shares of stocks the fund already owns on the last day of the reporting period, in order to drive up the price of the stocks and inflate the fund's performance results). Those who seek more frequent portfolio disclosure advocate that this information be made readily available to shareholders, not that the information be separately delivered to each fund shareholder.

B. Disclosure of Fund Expenses

Potential mutual fund investors receive significant disclosure about fund fees and expenses. Since 1988, the Commission has required the mutual fund prospectus to include a fee table that shows all fees and charges associated with a mutual fund investment as a percentage of net assets.[13] In addition, the Commission has undertaken efforts to educate investors about the significance of the costs that they pay in connection with mutual fund investments. In 1999, for example, the Commission introduced the Mutual Fund Cost Calculator, an Internet-based tool available on the Commission's website that enables investors to compare the costs of owning different funds.[14] In addition, the fund industry has undertaken efforts to educate investors and increase their awareness and understanding of mutual fund fees.[15]

Despite existing disclosure requirements and educational efforts, the degree to which investors understand mutual fund fees and expenses remains a significant source of concern. Mutual fund fees are of two types, transactional (*e.g.*, sales loads, redemption fees) and ongoing (*e.g.*, asset-based charges such as management fees and 12b–1 fees).[16] While transactional fees are relatively transparent, ongoing fees are less evident because they are deducted from fund assets and are reflected in reduced account balances rather than being separately stated. Significant concerns have been raised regarding the degree to which investors understand the nature and effect of these ongoing fees.[17]

A joint report of the Commission and the Office of the Comptroller of the Currency, for example, found that fewer than one in five fund investors could give any estimate of expenses for their largest mutual fund and fewer than one in six fund investors understood that higher expenses can lead to lower returns.[18] These ongoing fees can have a dramatic effect on an investor's return. A 1% annual fee, for example, will reduce an ending account balance by 18% on an investment held for 20 years.

In an important contribution to the public dialogue on fund fees, the United States General Accounting Office (''GAO'') issued a report in 2000, prepared pursuant to a request by Representative Michael G. Oxley, then Chairman of the Subcommittee on Finance and Hazardous Materials, House Committee on Commerce, and Representative John D. Dingell, Ranking Member of the Committee on Commerce, that analyzed mutual fund fees and the market forces that influence those fees.[19] The report's principal conclusion was that additional disclosure could help to increase investor awareness and understanding of mutual fund fees and, thereby, promote additional competition among funds on the basis of fees.[20] The GAO Report asserted that although mutual funds do not provide individual shareholders with information on the specific dollar amount of fees paid on their account statements, most other financial products and services (*e.g.*, bank deposit accounts, stock or bond transactions through a securities broker) are required to make such disclosures, and that these disclosures may be one reason for the apparently vigorous price competition among firms offering these other products and services.[21] The GAO Report therefore recommended that the Commission require funds to provide each investor with an exact dollar figure for fees paid in each quarterly account statement. However, the GAO Report acknowledged the potential costs associated with accounting for, and reporting, costs on an individual basis and encouraged the Commission to consider the cost and burden that various alternative means of making such disclosures would impose on the industry and investors. The GAO specifically discussed less costly alternatives, including providing the dollar amount of fees paid for preset

[13] Item 3 of Form N–1A; Investment Company Act Release No. 16244 (Feb. 1, 1988) (53 FR 3192 (Feb. 4, 1988)) (release adopting mutual fund fee table); Investment Company Act Release No. 15932 (Aug. 18, 1987) (52 FR 32018 (Aug. 25, 1987)) (release proposing mutual fund fee table).

[14] *Mutual Fund Cost Calculator* (last modified Sept. 6, 2000), *http://www.sec.gov/mfcc-int.htm. See also Invest Wisely: An Introduction to Mutual Funds* (last modified Apr. 4, 2001), *http://www.sec.gov/investor/pubs/inwsmf.htm* (investor brochure describing types of mutual fund fees and expenses).

[15] *See, e.g.,* ICI, *Frequently Asked Questions About Mutual Fund Fees, http://www.ici.org/aboutfunds/bro—mf—fees—faq.htm* (visited Nov. 27, 2002); Fidelity Research & Management, *How to Buy Funds Overview, http://www.fidelity.com/products/funds* (calculator for comparing the impact of fees and expenses from one fund to another) (visited Nov. 29, 2002); The Vanguard Group, *How to Select a Mutual Fund, http://www.vanguard.com/VGApp/hnw/FundsCompareCostsIntro?entryPoint=PandA* (calculator showing the impact of mutual fund loads, sales charges, fees, and other expenses on investment returns) (visited Nov. 29, 2002).

[16] A 12b–1 fee is a fee charged by some mutual funds against fund assets to pay for marketing and distribution activities. See Section 12(b) of the Investment Company Act (80 U.S.C. 80a–12(b)); Rule 12b–1 under the Investment Company Act (17 CFR 270.12b–1).

[17] *See, e.g.,* Theo Francis, *Getting the Most From Fund Costs,* Wall street Journal, Dec. 2, 2002, at R1 (discussing the importance of considering fees and expenses when investing in mutual funds, and explaining how to use the SEC's cost calculator); James Glassman, *A Failing Grade for Mutual Funds,* Washington Post, Dec. 1, 2002, at H1 (discussing importance of differences in expenses to fund returns, and using examples from SEC's cost calculator); Neil Weinberg, *Fund Manager Knows Best; As Corporations are Fessing Up to Investors, Mutual Funds Still Gloss Over Costs,* Forbes Magazine, Oct. 14, 2002 (84% of investors believe higher expenses result in higher performance); *Investors Need to Bone Up on Bonds and Costs, According to Vanguard/Money Investor Literacy Test,* Press Release, Business Wire , Sept. 25, 2002 (75% of survey respondents could not accurately define fund expense ratio and 64% did not understand the impact of expenses on fund returns); Liz Pulliam Weston, *Fees Making Matters Worse as Funds' Performance Drops,* Chicago Tribune, Jan. 1, 2002, at C5 (some investors are not aware of the impact of fund expenses on returns, while others do not realize that lower-cost alternatives are available); Michelle Singletary, *Are Our Funds Milking Us? Who Can Tell?,* Washington Post, Apr. 4, 1999, at H1 (studies show that a great number of mutual fund investors do not understand what funds are costing them); Charles Gasparino, *Go Figure; Investors Should Take a Close Look at the Fees Their Funds Are Charging,* Chicago Tribune, Sept. 15, 1998, at C1 (investors often do not realize how fees affect their fund's performance).

[18] Securities and Exchange Commission and Office of the Comptroller of the Currency, *Report on the OCC/SEC Survey of Mutual Fund Investors* (June 26, 1996).

[19] GAO, Mutual Fund Fees: Additional Disclosure Could Encourage Price Competition (June 7, 2000) (''GAO Report'').

[20] *Id.* at 97–98.

[21] *Id.* at 70–72.

investment amounts, such as $1,000, which investors could use to estimate the amount that they paid on their own accounts.

In December 2000, the Commission staff issued a report on mutual fund fees and expenses (''Commission Staff Report''), which considered, among other issues, the recommendations in the GAO Report, and concluded that disclosure of the dollar amount of fees paid for a preset investment amount would likely have the most favorable trade-off between costs and benefits.[22] The Commission Staff Report recommended requiring mutual funds to include in shareholder reports the cost in dollars associated with an investment of $10,000 that earned the fund's actual return for the period and incurred the fund's actual expenses for the period. Coupled with an investor's average account balance over the period, this would permit an individual investor to estimate the dollar costs that he or she incurred during the period. The staff also recommended that mutual funds disclose the cost in dollars, based on the fund's actual expenses, associated with an investment of $10,000 that earned a standardized return (*e.g.*, 5%) for the period. This would permit investors to compare the relative magnitudes of the ongoing costs of different funds.

Today's proposals address these important issues. They are intended to improve the information disclosed to investors about a fund's investments, by enhancing and streamlining the information provided in reports to shareholders about a fund's portfolio holdings and by requiring funds to disclose their portfolio holdings quarterly rather than semi-annually. In addition, our proposals are targeted at heightening investors' understanding of ongoing fund fees and expenses.

II. Discussion

A. Disclosure of Portfolio Holdings

The Commission is proposing rule and form amendments that would: (1) Permit a fund to include a summary portfolio schedule in its reports to shareholders, provided that the complete portfolio schedule is filed with the Commission semi-annually on proposed Form N-CSR and is provided to shareholders upon request, free of charge; (2) exempt money market funds from including a portfolio schedule in reports to shareholders, provided that this information is filed with the Commission on proposed Form N-CSR and is provided to shareholders upon request, free of charge; (3) require reports to shareholders to include a tabular or graphic presentation of a fund's portfolio holdings by identifiable category; and (4) require a fund to file its complete portfolio schedule as of the end of its first and third fiscal quarters with the Commission on new proposed Form N-Q. Together, these proposals would replace a one-size-fits-all approach to portfolio holdings disclosure, where all funds deliver their full portfolio schedules to all their shareholders twice a year, with a ''layered'' approach that would make more information available while permitting funds to tailor their shareholder reports to their particular circumstances and investors to tailor the amount of information they receive to meet their particular needs.[23] This ''layered'' approach is intended to result in the availability of enhanced portfolio information at reduced cost.

1. Summary Portfolio Schedule

We are proposing to permit funds to include in their reports to shareholders a summary portfolio schedule, in lieu of a complete portfolio schedule. The complete portfolio schedule would, however, continue to be available, free of charge, to those investors who are interested in this more detailed information. Our proposal is intended to address concerns that the current requirement for a fund to include in its shareholder reports a schedule that lists all investments held by the fund results, in many cases, in long lists of securities that do not provide meaningful information to most investors, and in substantial printing and mailing costs that are borne by fund investors.[24] Permitting funds to provide a summary portfolio schedule in lieu of a complete portfolio schedule in required reports to shareholders could streamline these reports and help investors to focus on a fund's principal holdings, and thereby better evaluate the fund's risk profile and investment strategy.

Our proposed amendments to Regulation S–X would permit a fund to include in its reports to shareholders a summary portfolio schedule, *Schedule VI—Summary schedule of investments in securities of unaffiliated issuers*, in lieu of the full schedule contained in *Schedule I—Investments in securities of unaffiliated issuers*.[25] The proposed summary portfolio schedule would include—in order of descending value—each of the fund's 50 largest holdings in unaffiliated issuers and each investment that exceeds one percent of the fund's net asset value. For purposes of determining whether the value of a security exceeds one percent of net asset value, a fund would be required to aggregate and treat as a single issue all securities of any one issuer. However, each issue would be required to be listed separately in the schedule, whether or not issued by a single issuer. Restricted securities could not be combined with unrestricted securities of the same issuer.[26] All securities not separately listed in the summary schedule would be required to be listed in a category labeled ''Other Securities.''[27] Funds would continue to be required to include in their reports to shareholders the other schedules currently required by Regulation S–X.[28]

We are recommending that the summary portfolio schedule include the fund's 50 largest holdings and each investment that exceeds one percent of net assets, because we believe that this would result in inclusion of the most significant portfolio holdings information in shareholder reports.[29]

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[22] Division of Investment Management, SEC, Report on Mutual Fund Fees and Expenses (Dec. 2000).

[23] *Cf.* Disclosure in Management's Discussion and Analysis About Off-Balance Sheet Arrangements, Contractual Obligations and Contingent Liabilities and Commitments, Securities Act Release No. 8144 (Nov. 4, 2002) [67 FR 68054, 68063 (Nov. 8, 2002)] (separate disclosure required in Management's Discussion and Analysis (''MD&A'') with respect to off-balance sheet arrangements would layer the MD&A, which would enable investors with varying levels of interest and financial acumen to easily obtain desired information); Chairman Harvey L. Pitt, SEC, Remarks before the Investment Company Institute, 2002 General Membership Meeting (May 24, 2002) (producing and disclosing financial information in layers benefits investors by yielding clear and concise financial statements that allow readers to explore whatever layer of detail they wish).

[24] See text accompanying note 10, *supra.*

[25] Schedule I of Regulation S–X (17 CFR 210.12–12); proposed Schedule VI of Regulation S–X (17 CFR 210.12–12C); proposed rule 6–10(c)(2) of Regulation S–X (17 CFR 210.6–10(c)(2)); proposed Instruction 1 to Item 21(b)(1) and Instruction to Item 21(c)(1) of Form N–1A; proposed Instructions 4.a., 5.a., and 7 to Item 23 of Form N–2; proposed Instructions 4.(i), 5.(i), and 7 to Item 27(a) of Form N–3.

[26] Proposed Note 1 to Schedule VI.

[27] Proposed Note 2 to Schedule VI.

[28] In addition to *Schedule I—Instruments in securities of unaffiliated issuers,* Article 6–10(c) of Regulation S–X (17 CFR 210.6–10(c)) requires the following schedules to be filed: *Schedule II—Investments-other than securities* (17 CFR 210.12–13); *Schedule III—Investments in and advances to affiliates* (17 CFR 210.12–14); *Schedule IV—Investments-securities sold short* (17 CFR 210.12–12A); and *Schedule V—Open option contracts written* (17 CFR 210.12–12B).

[29] *Cf.* The American Institute of Certified Public Accountants (''AICPA'') Audit and Accounting Guide, Audits of Investment Companies section 7.10 (Dec. 2000) (requiring funds to disclose each investment whose fair value constitutes more than one percent of net assets, all investments in any one issuer whose fair values aggregate more than one percent of net assets, and the fifty largest investments).

However, we note that if funds were required to disclose a somewhat higher number of securities, such as 150, this could result in a significant majority of funds including their complete schedules in their shareholder reports, while still allowing the minority of funds with lengthy portfolio schedules to limit their portfolio disclosure to two or three printed pages. We estimate that as of October 2002, almost 75% of all funds had portfolio holdings exceeding 50 securities, but only 25% of all funds had portfolio holdings exceeding 150 securities, and fewer than 10% of all funds had portfolio holdings exceeding 350 securities.[30]

The format of our proposed summary portfolio schedule would be similar to that of the complete schedule of investments in unaffiliated issuers currently contained in reports to shareholders. Thus, with respect to each issue required to be listed, the schedule would show (1) the name of the issuer and title of the issue; (2) the balance held at the close of the period (*i.e.*, the number of shares or the principal amount of bonds and notes); and (3) the value of each item at the close of the period.[31] Unlike the complete schedule, however, the summary schedule would also show the percentage value of the issue compared to net assets.[32] The summary schedule would also show the total value of all investments in securities of unaffiliated issuers.[33]

Because the proposed summary portfolio schedule would require investments to be listed in order of descending value, the requirement in the complete portfolio schedule that investments be listed separately by type (*e.g.*, common shares, preferred shares, bonds and notes, time deposits, and put and call options purchased) would be inapplicable.[34] However, the proposals would require each type of instrument to be identified by an appropriate symbol or footnote.[35] As with the current requirements for disclosure of the complete portfolio schedule, the summary schedule would require funds to identify by appropriate symbols each issue of securities that is non-income producing, each issue of securities held in connection with open put or call option contracts or loans for short sales, and each issue of restricted securities.[36] Short-term debt instruments of the same issuer (with disclosure indicating the range of interest rates and maturity dates), and fully collateralized repurchase agreements (with footnote disclosure indicating the range of dates of the repurchase agreements, the total purchase price of the securities, the total amount to be received upon repurchase, the range of repurchase dates, and a description of the securities subject to the repurchase agreements) would be required to be aggregated and treated as a single issue.[37] As in the current complete schedule, a fund also would be required to state in a footnote to the summary schedule the following amounts based on cost for Federal income tax purposes: (i) Aggregate gross unrealized appreciation for all securities in which there is an excess of value over tax cost; (ii) aggregate gross unrealized depreciation for all securities in which there is an excess of tax cost over value; (iii) net unrealized appreciation and depreciation; and (iv) the aggregate cost of securities for Federal income tax purposes.[38]

To ensure that shareholders have continued access to a complete schedule of the fund's portfolio holdings, any fund that uses a summary portfolio schedule would be required to file its complete portfolio schedule with the Commission on proposed Form N–CSR, which would be available on the Commission's Electronic Data Gathering, Analysis, and Retrieval System (''EDGAR'').[39] In addition, any fund that uses a summary portfolio schedule would be required to send its complete schedule of investments in securities of unaffiliated issuers to shareholders upon request within three business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery, and to disclose in its reports to shareholders that this complete portfolio schedule is available (i) without charge, upon request, by calling a specified toll-free (or collect) telephone number; (ii) on the fund's Web site, if applicable; and (iii) on the Commission's Web site.[40]

We believe that permitting the use of a summary portfolio holdings schedule potentially could enable funds to provide more meaningful information in their annual and semi-annual reports to shareholders, and encourage investors to focus on a fund's most significant holdings in evaluating its risk profile and investment strategy. In addition, the costs of printing and mailing of shareholder reports should be reduced. At the same time, the proposals would require that the fund's complete portfolio schedule continue to be readily available, without charge, to shareholders who are interested in this information, and that the fund provide disclosure in its reports to shareholders of how this information may be obtained. This ''layered'' disclosure approach is intended to enable investors with varying degrees of interest in a fund's portfolio holdings to easily obtain the desired level of information about the fund. Thus, the proposals attempt to strike a balance that would result in maximum availability of information in a useful format and at minimum cost.

We request comment on our proposal to permit funds to deliver a summary portfolio schedule in their reports to

[30] This estimate is based on the Commission staff's analysis of data from the *Morningstar Principia Plus* database (Nov. 2002) (data as of Oct. 2002).

[31] Columns A, B, and C of proposed Schedule VI of Regulation S–X.

[32] Column D of proposed Schedule VI.

[33] Proposed Note 4 to proposed Schedule VI.

[34] Note 2 to Schedule I (17 CFR 210.12–12).

[35] Proposed Note 2 to proposed Schedule VI.

[36] Proposed Notes 3, 5 and 6 to proposed Schedule VI; Notes 5, 6, and 7 to Schedule I (17 CFR 210.12–12).

[37] Proposed Note 2 to proposed Schedule VI.

[38] Proposed Note 7 to proposed Schedule VI; note 8 to Schedule I (17 CFR 210.12–12).

[39] Proposed Item 7 of proposed Form N—CSR. Funds that include the complete portfolio schedule in their shareholder reports would also file this schedule on Form N–CSR, as part of the shareholder report. This schedule must be audited, except in the case of a report on Form N—CSR as of the end of a fiscal half-year. Proposed Instruction to Item 7 of proposed Form N–CSR.

[40] Proposed Instruction 1 to Item 21(b)(1) and proposed Instruction to Item 21(c)(1) of Form N–1A; proposed Instruction 7 to Item 23 of Form N–2; proposed Instruction 7 to Item 27(a) of Form N–3.

A fund may incorporate its financial statements by reference into its registration statement. A fund that includes a summary portfolio schedule in its reports to shareholders, and that chooses to incorporate its financial statements in its Statement of Additional Information (''SAI'') by reference, would be expected to incorporate by reference its full portfolio schedule from Form N–CSR, along with the other financial statements and supporting schedules in its annual report to shareholders. See General Instruction D.1.(c) to Form N–1A (permitting incorporation by reference into the SAI generally); proposed General Instruction F to Form N–2 (permitting incorporation by reference of information from Form N–CSR in response to Item 23 (''Financial Statements'')); proposed General Instruction G to Form N–3 (permitting incorporation by reference of information from Form N–CSR in response to Item 27 (''Financial Statements'')). Such a fund would be required to deliver the full portfolio schedule from Form N–CSR, as well as the shareholder report, upon a shareholder request for the SAI. See Instruction to Item 10(a)(2)(iii) of Form N–1A (requiring any information incorporated by reference into the SAI to be delivered with the SAI unless the information has been previously delivered in a shareholder report and the fund states that the shareholder report is available, without charge, upon request); General Instruction F to Form N–2 (requiring any information incorporated by reference into the SAI to be delivered with the SAI unless the person to whom the SAI is sent or given holds securities of the fund and otherwise has received copies of the material, and fund states that the material is available, without charge, upon request); General Instruction G to Form N–3 (same).

shareholders and specifically on the following issues.

[sbull] Are the proposals to require funds to disclose their 50 largest holdings and holdings accounting for one percent (and greater) of net assets appropriate? Should a smaller or larger number of holdings (*e.g.*, 25, 100, 150, etc.) or a higher or lower percentage threshold (*e.g.*, 0.5%, 2%, etc.) be used?

[sbull] As proposed, securities disclosed in the summary schedule would be identified in order of descending value (largest holding to smallest). Should we adopt a different approach (*e.g.*, listing portfolio securities by identifiable category)?

[sbull] Should we require that a fund have a minimum number of securities to utilize a summary portfolio schedule (*e.g.*, 150 or 250 securities)? If so, should we select a number that is intended to ensure that the majority of funds continue to include their complete schedules of portfolio holdings?

[sbull] Should we allow the use of a summary portfolio schedule with respect to other investments in addition to investments in securities of unaffiliated issuers (*e.g.*, investments in securities sold short, open option contracts written, investments other than securities, and investments in and advances to affiliates)? [41] If so, what modifications to the proposed summary portfolio schedule would be necessary?

[sbull] As proposed, the summary portfolio schedule would require short-term debt instruments of the same issuer, and fully collateralized repurchase agreements, to be aggregated and treated as a single issue. Should aggregation be optional or mandatory? If fully collateralized repurchase agreements are permitted or required to be aggregated, what information about aggregate repurchase agreements of a fund should be required in the summary schedule?

[sbull] Are there any modifications in the format of the proposed summary portfolio schedule that would be appropriate, such as eliminating or revising the requirements to indicate by appropriate symbols non-income producing securities and restricted securities?

[sbull] Should we exempt index funds from the requirement to include their portfolio holdings in their reports to shareholders, as long as the holdings are filed with the Commission and made available to investors upon request and free of charge, on the grounds that delivery of this information to all shareholders is unnecessary as long as an index fund tracks its designated index? If so, how should we determine whether a fund tracks a designated index sufficiently closely to qualify for this exemption?

[sbull] Should we require a shareholder report covering more than one fund to use the same type of portfolio schedule (summary or complete) for all funds included in the report?

[sbull] Is Form N–CSR the appropriate location for funds that include a summary portfolio schedule in their shareholder reports to disclose their complete portfolio schedules? We have proposed, but not yet adopted, Form N–CSR to implement the certification requirement of section 302 of the Sarbanes-Oxley Act of 2002.[42] If we ultimately do not adopt Form N–CSR to implement the Sarbanes-Oxley Act, should we nevertheless adopt Form N–CSR as a vehicle for a fund to disclose its complete portfolio holdings schedule? If not, how should a fund file its complete portfolio holdings schedule with the Commission?

[sbull] Should a fund that uses a summary portfolio schedule be permitted to provide its complete portfolio schedule to investors exclusively through posting this information on its Web site?

2. Exemption of Money Market Funds From Portfolio Schedule Requirements in Shareholder Reports

We are proposing to permit money market funds to omit Schedule I, the schedule of investments in securities of unaffiliated issuers, from their reports to shareholders, provided that they make this schedule available to shareholders upon request and free of charge, and disclose the availability of the schedule in their reports to shareholders.[43] Currently, money market funds, like other funds, are required to include their portfolio schedules in the shareholder reports that are delivered to all investors. The investments of money market funds are, however, circumscribed by the credit quality, maturity, and portfolio diversification requirements of rule 2a–7 under the Investment Company Act.[44] Portfolio holdings schedules of money market funds typically contain a list of short-term government and corporate debt securities that may not assist the average investor in evaluating the money market fund, or in distinguishing one money market fund from another. Moreover, investors generally treat money market funds as cash investments, and therefore may be less interested in the composition of money market fund portfolios than other types of funds.

Our proposals would require money market funds to file their complete portfolio holdings schedules semi-annually with the Commission on proposed Form N–CSR, however, so that complete information about their portfolios would remain available to interested investors.[45] We also are proposing to require any money market fund that does not include its complete portfolio schedule in its reports to shareholders to disclose in its shareholder reports that its complete schedule of investments in unaffiliated issuers is available (i) without charge, upon request, by calling a specified toll-free (or collect) telephone number; (ii) on the fund's Web site, if applicable; and (iii) on the Commission's Web site at *http://www.sec.gov*.[46] The proposals also would require a money market fund to send its complete schedule of investments in securities of unaffiliated issuers within three business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery.[47]

We request comment generally on whether money market funds should be permitted to omit their portfolio schedules from reports to shareholders and specifically on the following issues.

[sbull] Would the proposed exemption be necessary or appropriate if the Commission permits, as also proposed, all funds to use summary portfolio schedules?

[sbull] Is the information with respect to a money market fund in either a complete or the proposed summary portfolio schedule sufficiently important that it should be delivered to all investors in the fund?

[sbull] Should the exemption for money market funds from the requirement to include a portfolio schedule in its reports to shareholders apply to all of the required schedules, or only the schedule of investments in unaffiliated issuers? [48]

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[41] *Schedule II—Investments-other than securities* (17 CFR 210.12–13); *Schedule III—Investments in and advances to affiliates* (17 CFR 210.12–14); *Schedule IV—Investments-securities sold short* (17 CFR 210.12–12A); and *Schedule V—Open option contracts written* (17 CFR 210.12–12B).

[42] Sarbanes-Oxley Act of 2002, Pub. L. 107–204, 116 Stat. 745 (2002).

[43] 17 CFR 210.12–12. *See* Proposed Instruction 2 to Item 21(b)(1) and proposed Instruction to Item 21(c)(1) of Form N–1A; proposed Instruction 7(ii) to Item 27(a) of Form N–3.

[44] 17 CFR 270.2a–7.

[45] Proposed Item 7 of proposed Form N–CSR.

[46] Proposed Instruction 2 to Item 21(b)(1) and proposed Instruction to Item 21(c)(1) of Form N–1A; proposed Instruction 7 to Item 27(a) of Form N–3.

[47] *Id.*

[48] *See Schedule II—Investments-other than securities* (17 CFR 210.12–13); *Schedule III—Investments in and advances to affiliates* (17 CFR 210.12–14); *Schedule IV—Investments-securities sold short* (17 CFR 210.12–12A); and *Schedule V—Open option contracts written* (17 CFR 210.12–12B).

3. Tabular or Graphic Presentation of Portfolio Holdings

We also are proposing to require funds to include in their annual and semi-annual reports to shareholders a presentation using tables, charts, or graphs that depicts a fund's portfolio holdings by reasonably identifiable categories (*e.g.*, industry sector, geographic region, credit quality, or maturity).[49] This presentation would show the percentage of net asset value attributable to each category. We believe that such a presentation could illustrate, in a concise and user-friendly format, the allocation of a fund's investments across asset classes. We believe that this presentation, coupled with a summary portfolio schedule, has the potential to effectively convey to investors key information about a fund's investments. Particularly in the case of a fund with a large number of holdings, the combination of a summary portfolio schedule and a tabular or graphic asset allocation presentation could be significantly more useful to many investors than the fund's complete portfolio schedule standing alone.

Under our proposals, a fund would have the flexibility to determine both the categories to be used (*e.g.*, industry sector, geographic region, credit quality, maturity, etc.) and the format (*e.g.*, tables, charts, graphs, etc.) of the presentation. The categories should be selected, and the format of the presentation designed, to provide the most useful information to investors about the types of investments made by the fund, given its investment objectives. For example, a domestic equity fund could choose to categorize its investments by attributes such as industry sector, market capitalization, or price-earnings ratio. A bond fund could choose to categorize its investments by attributes such as credit quality or maturity or government versus non-government securities.[50] Permitting a fund to determine the most useful means of presenting this portfolio information would allow each fund to tailor the presentation in a manner that is appropriate to its holdings. Further, over time, this flexible approach could enable both funds and the Commission to determine whether certain types of presentations are more effective for different types of funds.

We request comment generally on the appropriateness of the proposed tabular or graphic presentation of fund holdings.

[sbull] Would the proposed presentation be useful to shareholders? Should such a presentation be required or optional?

[sbull] Are there any particular types of funds (*e.g.*, money market funds or index funds) that should be exempt from the requirement to provide the tabular or graphic presentation of fund holdings? On what basis should such categories of funds be exempted?

[sbull] Are there any alternative presentations that should be required for certain types of funds? For example, should an index fund by required to show the extent to which it tracks the designated index (''tracking error'')?

[sbull] Would a tabular or graphic presentation be useful for a fund with a small number of holdings or should funds with, *e.g.*, less than 25 or 50 or 100 securities (or some other number) be exempt from this requirement?

[sbull] Should a fund that includes its full portfolio schedule, rather than a summary portfolio schedule, in its shareholder reports be exempt from the tabular or graphic presentation requirement since the full portfolio schedule requires classification of securities according to type of business or type of instrument? [51] Is the tabular or graphic presentation necessary in a shareholder report that contains a summary portfolio schedule, where the holdings would be listed in order of descending value, with percentage of net assets identified?

[sbull] What alternative presentations should we permit funds to use to illustrate the percentage and categories of securities they hold?

[sbull] Should we mandate the format of presentation?

[sbull] Should we mandate identifiable categories of holdings for any or all types of funds (*e.g.*, bond funds—credit quality or maturity; international funds—region, etc.)?

4. Quarterly Filing of Complete Portfolio Schedule

We propose to require funds to file their complete portfolio holdings schedules with the Commission on a quarterly basis, rather than semi-annually as currently required. As described above, funds would be required to file their complete portfolio schedules for the second and fourth fiscal quarters on proposed Form N–CSR.[52] In addition, funds would be required to file their portfolio schedules for the first and third fiscal quarters on new Form N–Q under the Investment Company Act, within 60 days of the end of the quarter.[53] Form N–Q would require funds to file the same schedules of investments that are currently required in annual and semi-annual reports to shareholders. These schedules could be unaudited.[54] Form N–Q would be a reporting form required under the Investment Company Act only, unlike proposed Form N–CSR, which is a combined Exchange Act and Investment Company Act form.[55] Form N–Q would be required to be signed by the fund, and on behalf of the fund by its principal financial officer or officers.[56]

Our proposals are intended to provide greater transparency of fund portfolio holdings, without imposing significant costs on funds and, ultimately, their shareholders. The proposals would enable interested investors, through more frequent access to portfolio information, to monitor whether, and how, a fund is complying with its stated investment objective. Given the significant interest in more frequent portfolio information that has been expressed in rulemaking petitions to the Commission by investors groups and others,[57] we believe that it is appropriate to propose more frequent portfolio reporting by funds for public comment at this time. We note, however, that the proposals would only require the *filing* of a fund's portfolio schedule on Form N–Q with the Commission on EDGAR and not actual delivery of that information to shareholders. A fund would be required to include in its annual and semi-annual

[49] Proposed Item 21(d)(2) of Form N–1A; proposed Instruction 6.a to Item 23 of Form N–2; proposed Instruction 6(i) to Item 27(a) of Form N–3.

[50] Credit quality would be required to be the ratings grade assigned by a nationally recognized statistical rating organization (''NRSRO''), as that term is used in paragraphs (c)(2)(vi)(E), (F), and (H) of Rule 15c3–1 under the Exchange Act (17 CFR 240.15c3–1(c)(2)(vi)(E), (F), and (H)]. The fund could use ratings of only one NRSRO. Proposed Item 21(d)(2) of Form N–1A; proposed Instruction 6.a to Item 23 of Form N–2; proposed Instruction 6(i) to Item 27(a) of Form N–3.

[51] Note 2 to *Schedule I—Investments in securities of unaffiliated issuers* (17 CFR 210.12–12).

[52] Proposed Item 7 of proposed Form N–CSR. *See* note *supra* and accompanying text.

[53] Proposed Form N–Q; proposed rule 30b1–4 under the Investment Company Act. Small business investment companies (''SBICs'') registered with the Commission on Form N–5 would not be required to file Form N–Q. General Instruction A to proposed Form N–Q. Although they are management investment companies, SBICs are not currently required to deliver reports to shareholders containing financial statements, and hence are not required to deliver schedules of investments to their shareholders.

[54] *See* Proposed Item 1 of proposed Form Q; *Schedule I—Investments in securities of unaffiliated issuers* (17 CFR 210.12–12); *Schedule II—Investments-other than securities* (17 CFR 210.12–13); *Schedule III—Investments in and advances to affiliates* (17 CFR 210.12–14); *Schedule IV—Investments-securities sold short* (17 CFR 210.12–12A); and *Schedule V—Open option contracts written* (17 CFR 210.12–12B).

[55] *See* Investment Company Act Release No. 25723, *supra* note 2 (proposed form N–CSR).

[56] General Instruction F.2.(a) to Form N–Q.

[57] *See supra* note 12.

reports to shareholders a statement that: (i) The fund files its complete schedule of portfolio holdings with the Commission for the first and third quarters of each fiscal year on Form N–Q; (ii) the fund's Forms N–Q are available on the Commission's Web site at *http://www.sec.gov;* (iii) the fund's Forms N–Q may be reviewed and copied at the Commission's Public Reference Room, and how information on the operation of the Public Reference Room may be obtained; and (iv) if the fund makes the information on Form N–Q available to shareholders on its Web site or upon request, a description of how the information may be obtained from the fund.[58] This proposal is intended to strike an appropriate balance between investors' interest in more frequent portfolio information and the costs associated with disclosing and making that information available to investors, which are ultimately borne by investors.

We are cognizant of concerns raised by some members of the fund industry that mandating more frequent portfolio disclosure would harm fund shareholders by expanding the opportunities for professional traders to exploit this information by engaging in predatory trading practices, such as trading ahead of funds, often called ''front-running.'' [59] They assert that more frequent portfolio disclosure would facilitate the ability of outside investors to ''free ride'' on a mutual fund's investment strategies, by obtaining for free the benefits of fund research and investment strategies that are paid for by fund shareholders.[60]

At this time, we are not persuaded that these concerns are significant enough to prevent our proposal from being put forward for public comment. We have endeavored to address those concerns by proposing a 60-day delay for the filing of the required additional quarterly disclosure. We believe that a 60-day filing delay would limit the ability of professional traders to engage in these harmful trading practices. In this regard, we note that a significant majority of funds already make their full portfolio schedules publicly available at least quarterly, apparently without concern about predatory trading practices.[61]

We also note that currently, fund managers and other institutional investment managers exercising investment discretion over $100 million or more in certain equity securities must disclose information about portfolios that they manage on Form 13F within 45 days of the end of each quarter.[62] Reports on Form 13F disclose a fund manager's aggregate holdings in each security required to be reported; the holdings of each individual mutual fund or other account over which an investment manager has discretion are not broken out separately.[63] To the extent that required quarterly disclosure about a fund's portfolio investments raises concerns about predatory trading practices, these concerns are not new, since fund portfolio holdings have been disclosed on Form 13F, aggregated by investment manager, since 1979.[64]

We request comment generally on whether more frequent portfolio holdings disclosure should be required and specifically on the following issues.

[sbull] With regard to the proposed Form N–Q filing requirement, we request public comment on feasible alternatives that minimize the reporting burdens on registered management investment companies. In addition, we request comment on the utility to investors of the reports to the Commission in relation to the costs to registered management investment companies of providing those reports.

[sbull] Are there less burdensome alternatives than requiring quarterly disclosure of a fund's full portfolio schedule of investments, as proposed?

[sbull] What, if any, additional costs would funds incur as a result of filing their complete portfolio holdings schedules with the Commission via EDGAR on a quarterly basis with a 60-day delay?

[sbull] How frequently should funds be required to disclose information about their portfolios? Monthly, quarterly, semi-annually, or some other frequency? In addressing this question, commenters should address both the benefits to investors from more frequent disclosure and the detriments to funds, and their shareholders, from predatory trading practices that could accompany more frequent disclosure.

[sbull] Would a 60-day delay sufficiently discourage or impair the ability of third parties to ''front-run'' and ''free ride'' or should the period be longer, *e.g.*, 75 days or 90 days? Would a 30- or 45-day or some other delay sufficiently discourage or impair the ability of third parties to engage in predatory trading practices? Is there any evidence that the current quarterly disclosure required by Form 13F either facilitates or does not facilitate predatory trading practices, such as ''front-running?''

[sbull] Shareholder reports are currently required to be filed with the Commission within 70 days of the end of each semi-annual reporting period; reports on Form 13F are required to be filed within 45 days of the end of each quarter; and proposed Form N–Q would

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[58] Proposed Item 21(d)(3) of Form N–1A; proposed Instruction 6.b. to Item 23 of Form N–2; proposed Instruction 6.(ii) to Item 27(a) of Form N–3.

[59] *See* Letter from Craig S. Tyle, General Counsel, ICI, to Paul F. Roye, Director, Division of Investment Management, SEC (July 17, 2001), *available at http://www.ici.org/port—holdings—com.html;* Russ Wermers, *The Potential Effects of More Frequent Portfolio Disclosure on Mutual Fund Performance,* ICI Perspective (June 2001), *available at http://www.ici.org/pdf/per07–03.pdf.* (increasing the frequency of portfolio holdings disclosure may increase the likelihood of predatory trading practices, such as ''front-running''). These materials are available for inspection and copying in File No. S7–51–02 in the Commission's public reference room.

[60] *Id.*

[61] *See* Scott Cooley, *Tell Investors What They Own,* Morningstar Online, Feb. 6, 2002 (more than 70% of funds currently provide monthly or quarterly portfolio disclosure to Morningstar). *See also* Tom Lauricella and Aaron Lucchetti, *To Industry, Silence is Golden—Mutual Funds Embrace Disclosure Rules—As Long as it Doesn't Involve Them,* Wall Street Journal Europe, Aug. 1, 2002, at M1 (roughly 200 fund firms and 17 of the top 20 largest funds provide quarterly or monthly holdings updates to investors); *Survey of Fund Groups' Portfolio Disclosure Policies Summary of Results,* Investment Company Institute (2001), *available at http://www.ici.org/port—holdings—appdxa.html.*

[62] *See* Section 13(f) of the Exchange Act (15 U.S.C. 78m(f)); Rule 13f–1 under the Exchange Act (17 CFR 240.13f–1). Securities required to be reported on Form 13F include, among other securities, all exchange-traded or NASDAQ-quoted securities. Rule 13f–1 under the Exchange Act (17 CFR 240.13f–1); Section 13(d)(1) of the Exchange Act (15 U.S.C. 78m(d)(1)). Congress enacted Section 13(f) in order to create a central depository of historical and current data about the investment activities of institutional investment managers that would be available to individuals, federal and state regulators, and other institutional investment managers. Report of Senate Comm. on Banking, Housing and Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 85 (1975). The dissemination of this data was intended to increase confidence among all investors in the integrity of the securities markets. *Id.* at 82.

[63] *See* Special Instruction 12 to Form 13F (17 CFR 249.325).

[64] Institutional investment managers may request confidential treatment of information in filings on Form 13F pursuant to Section 13(f)(3) of the Exchange Act (15 U.S.C. 78m(f)(3)), on the basis, among others, that the information would reveal an investment manager's ongoing program of acquisition or disposition. *See* Report of Senate Comm. on Banking, Housing and Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 87 (1975) (describing intended exemption). An application for confidential treatment on this basis must, among other requirements: (a) describe the investment strategy being followed with respect to the relevant securities holdings; (b) explain why public disclosure of the securities would, in fact, be likely to reveal the investment strategy; (c) demonstrate that such revelation of an investment strategy would be premature, and indicate whether the manager was engaged in a program of acquisition or disposition of the security both at the end of the quarter and at the time of the filing; and (d) demonstrate that failure to grant the request for confidential treatment would be likely to cause substantial harm to the manager's competitive position. Instructions for Confidential Treatment Requests, Form 13F (17 CFR 249.325).

be required to be filed within 60 days of each semi-annual reporting period. Should the filing periods for these three forms be identical? If so, what period is appropriate, 30 days, 45 days, 60 days, 70 days, or some other period? Are concerns about predatory trading practices more or less significant in the context of disclosure about aggregate holdings in equity securities managed by an institutional investment manager (Form 13F), as opposed to disclosure of the securities in each fund (proposed Form N–Q)?

[sbull] If we extended the time period for filing Form 13F to, for example, 60 days, would there continue to be a need for institutional investment managers to be able to request confidential treatment of filings on Form 13F on the basis of a manager's ongoing investment strategy? Are there other changes that should be made to Form 13F, such as, for example, modifying the $100 million filing threshold?

[sbull] Would quarterly disclosure of portfolio holdings deter portfolio manipulation, such as ''window dressing'' and ''portfolio pumping?'' Are there additional ways to inhibit or curb these practices? For example, should we require the proposed summary portfolio schedule and/or the complete portfolio schedule to identify securities acquired within a designated number of days before the end of the reporting period (*e.g.*, 20 days, 10 days, 5 days, 2 days)?

[sbull] Should Form N–Q require disclosure of less than a fund's complete portfolio schedule (*e.g.*, information comparable to that permitted in the proposed summary portfolio schedule, top 25 holdings, top 10 holdings, etc.)?

[sbull] As proposed, Form N–Q would require quarterly disclosure of all of the schedules of investments required for funds by Regulation S–X. Should any of this information be deleted from Form N–Q? Is there additional information that should be required on Form N–Q?

[sbull] As proposed, Form N–Q would be filed under the Investment Company Act only. Should Form N–Q also be a reporting form under sections 13(a) and 15(d) of the Exchange Act, subject to certification under section 302 of the Sarbanes-Oxley Act of 2002?

[sbull] As proposed, Form N–Q would be required to be signed by the fund, and on behalf of the fund by its principal financial officer or officers. Are the principal financial officer(s) the appropriate persons to be required to sign proposed Form N–Q? Should the chief executive officer(s) sign proposed Form N–Q?

B. Disclosure of Fund Expenses

We are proposing to require mutual funds to disclose in their reports to shareholders fund expenses borne by shareholders during the reporting period. Fund shareholder reports would be required to include: (1) The cost in dollars associated with an investment of $10,000, based on the fund's actual expenses and return for the period; and (2) the cost in dollars, associated with an investment of $10,000, based on the fund's actual expenses for the period and an assumed return of 5 percent per year.[65] The first figure is intended to permit investors to estimate the actual costs, in dollars, that they bore over the reporting period. The second figure is intended to provide investors with a basis for comparing the level of current period expenses at different funds. Together, the two expense figures in the proposed example are designed to increase investor understanding of the fees that they pay on an ongoing basis for investing in a fund.

The proposed disclosure in shareholder reports would supplement the fee disclosure required in the mutual fund prospectus. Funds are currently required to include in their prospectuses a fee table that includes, as a percentage of fund assets, all fees and charges associated with a mutual fund investment.[66] The fee table reflects both (1) charges paid directly by a shareholder out of his or her investment, such as front- and back-end sales loads, and (2) recurring charges deducted from fund assets, such as management and 12b–1 fees.[67] The fee table is accompanied by a numerical example that illustrates the aggregate expenses that an investor could expect to pay over time on a $10,000 investment if he or she received a 5 percent annual return and remained in the fund for 1-, 3-, 5-, and 10-year periods.

The numbers that we are proposing be disclosed in mutual fund shareholder reports are intended to provide information to investors about actual current period expenses. This disclosure would respond to concerns that have been raised regarding the degree to which investors understand the nature and effect of these ongoing fees.[68] While some have advocated that this information should be provided on an individualized basis in shareholder account statements, our proposals are intended to strike an appropriate balance between investors' need for this information and the costs and burdens that would be associated with providing this information on an individualized basis.

The methodology for calculation of the proposed fee disclosure would be similar to that required for the expense example in the fee table of the mutual fund prospectus, with modifications to reflect the fact that the example in shareholder reports is intended to reflect actual historical expenses borne by an investor, rather than hypothetical future expenses. In determining its actual operating expenses during the reporting period, a fund would be required to include all expenses that are deducted from its assets or charged to all shareholder accounts, including management fees, distribution (12b–1) fees, and other expenses.[69] The example would not reflect any exchange fees, redemption fees, or sales charges (loads).[70]

Our proposal would require a fund to use its actual operating expenses (after expense reimbursement or fee waiver arrangements that reduced expenses) for the reporting period in calculating the example.[71] Expenses that would be deducted from the fund's assets for the purposes of the required example would be the amounts shown as expenses in the fund's statement of operations.[72] If there were any increases or decreases in fund operating expenses that occurred during the reporting period (or that occurred or would be expected to occur during the current fiscal year) that would have materially affected the information in the example had those changes been in place throughout the reporting period, the fund would be

[65] Proposed Item 21(d)(1) of Form N–1A.

[66] Item 3 of Form N–1A.

[67] *Id.*

[68] *See* discussion in Section I, ''Disclosure of Fund Expenses,'' *supra*.

[69] Proposed Instructions 2(a)(i) and 2(d) to Item 21(d)(1) of Form N–1A. ''Other expenses'' would include extraordinary expenses as determined under generally accepted accounting principles (*see* Accounting Principles Board Opinion No. 30). If extraordinary expenses were incurred that materially affected a fund's ''other expenses,'' the fund would be permitted to disclose in a footnote to the required example what ''actual operating expenses'' would have been had the extraordinary expenses not been included. *See* proposed Instruction 2(a)(ii) to Item 21(d)(1) of Form N–1A. If the fund is a feeder fund it would be required to reflect the aggregate expenses of the feeder fund and master fund, and to state in a footnote to the example that the example reflects the expenses of both the feeder and master fund. Proposed Instruction 1(c)(i) to Item 21(d)(1) of Form N–1A. If the report covers more than one class of multiple class fund or more than one feeder fund that invests in the same master fund, a separate example would be required for each class or feeder fund. Proposed Instruction 1(c)(ii) to Item 21(d)(1) of Form N–1A.

[70] Proposed Instruction 2(a)(i) to Item 21(d)(1) of Form N–1A.

[71] Proposed Instruction 2(c)(i) to Item 21(d)(1) of Form N–1A.

[72] Proposed Instruction 2(a)(i) to Item 21(d)(1) of Form N–1A.

required to restate in a footnote to the example the expense information using the current fees as if they had been in effect throughout the entire reporting period.[73] Account fees that are collected by more than one fund would be required to be allocated among the funds in proportion to the relative average net assets.[74] The example would assume the reinvestment of all dividends and distributions.[75]

The proposed numerical expense disclosure would be accompanied by a prescribed narrative explanation.[76] The narrative would explain that mutual funds charge both transaction costs and ongoing costs and that the example is intended to help a shareholder understand his or her ongoing costs and to compare these costs with the ongoing costs of investing in other mutual funds. The narrative also would explain the assumptions used in the example, note that the example does not reflect any transactional costs, and caution that the example is useful in comparing ongoing costs but not total costs of different funds. A fund would be permitted to modify the narrative explanation if the narrative contained comparable information to that prescribed, and a fund could eliminate any part of the narrative that is inapplicable.[77] For example, a fund that did not charge loads could omit the statement that the example does not reflect loads.

As an alternative to our proposed approach, we considered the recommendation of the GAO Report that the Commission require mutual funds to provide each investor with an exact dollar figure for expenses paid in each quarterly account statement that the investor receives.[78] The GAO Report's alternative would have the benefit of providing cost disclosure tailored to each investor. However, we have concerns about the cost and logistical complexity that this requirement might entail.[79] Mutual fund expenses are charged against fund assets and are not currently accounted for on an individual account basis. Moreover, in many cases fund shares are held by broker-dealers, financial advisers, and other third-party financial intermediaries, which must prepare accurate and timely customer account statements by integrating data supplied by many unrelated fund groups. In addition to the systems changes necessary for the fund itself, these financial intermediaries would need to implement new systems in order to calculate and report personalized expense information for each fund held in an account each quarter. Because we believe that the costs of requiring this expense disclosure in quarterly account statements may outweigh the benefits, we determined that it would be more appropriate to propose including additional expense information in shareholder reports.[80]

We request comment generally on our proposal to require mutual funds to include in reports to shareholders the dollar cost associated with a $10,000 investment and specifically on the following issues.

[sbull] Is the disclosure of actual costs paid over the current period useful to investors? If so, is there a better approach to providing this disclosure than that proposed?

[sbull] Are there better vehicles than annual and semi-annual reports to shareholders in which to include additional disclosure about fund expenses? In particular, would requiring disclosure of the actual costs paid by an individual investor in his or her account statements be preferable? If so, what benefits would individualized cost disclosure in account statements provide to investors that disclosure in shareholder reports of the fees paid on an initial $10,000 investment would not?

[sbull] What would be the costs of requiring expense disclosure in quarterly account statements, compared to the costs of the proposed expense disclosure requirement in shareholder reports? How would these costs be different for funds sold through and held by third-party intermediaries, such as broker-dealers? Would there be any ways to reduce these costs?

[sbull] Does the proposed example provide useful information as to current period costs? Does the first number required in the example, showing the cost in dollars associated with a $10,000 investment that earned the fund's actual return for the period and incurred the fund's actual expenses, appropriately convey to investors the actual fees that they have paid? Will investors understand how to estimate their own actual costs by using this number and the average assets they invested in the fund over the reporting period?

[sbull] Does the second required number, showing the cost in dollars associated with a $10,000 investment that earned a standardized 5% return for the period, provide an appropriate means for investors to compare the ongoing costs of different funds? Would the fact that this number does not reflect certain costs (*e.g.*, exchange fees, sales charges (loads), redemption fees) cause shareholders to draw inappropriate conclusions about the relative costs of various funds? For example, would the proposed requirement to show the ongoing cost in dollars using a standardized return present funds with a front-end load in an unduly favorable light as compared to funds that impose distribution costs through asset-based 12b–1 fees? Is it useful to investors to compare current period costs, as opposed to total costs of fund ownership? If so, how should this number be presented and explained so that investors will understand that it does not reflect total costs?

[sbull] Will our proposed disclosure lead to better cost comparisons among funds and between funds and other investment vehicles? How would our proposed disclosure affect the cost competition among mutual funds and between mutual funds and other savings and investment vehicles, such as bank certificates of deposit? Will mutual fund investors understand that the ongoing costs shown have already been deducted from returns shown by a fund?[81]

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[73] *See* proposed Instruction 2(c)(ii) to Item 21(d)(1) of Form N–1A. A change in actual operating expenses would not include a decrease in operating expenses as a percentage of assets due to economies of scale or breakpoints in a fee arrangement resulting from an increase in the fund's assets.

[74] Proposed Instruction 2(d) to Item 21(d)(1) of Form N–1A.

[75] Proposed Instruction 2(b) to Item 21(d)(1) of Form N–1A.

[76] Proposed Item 21(d)(1) and proposed Instruction 1(b) to Item 21(d)(1) of Form N–1A.

[77] *Id.*

[78] *See* GAO Report, *supra* note 19.

[79] *See* Letter from Colette D. Kimbrough, Chair, Investment Committee, Securities Industry Association, to Paul F. Roye, Director, Division of Investment Management, SEC (Dec. 7, 2000); Letter from Paul G. Haaga, Jr., Executive Vice President, Capital Research, to The Honorable Arthur Levitt, Jr., Chairman, SEC (Oct. 27, 2000); Letter from John J. Brennan, Chairman and Chief Executive Officer, Vanguard, to The Honorable Arthur Levitt, Jr., Chairman, SEC (Oct. 13, 2000); Letter from David S. Pottruck, President and Co–CEO, The Charles Schwab Corporation, to The Honorable Arthur Levitt, Jr., Chairman, SEC (Sept. 7, 2000). The letters are available for inspection and copying in File No. S7–51–02 in the Commission's public reference room.

[80] The GAO Report estimated that the costs of personalized disclosure in account statements ''might be a few dollars or less per investor'' in one-time and annual costs. GAO Report, *supra* note 19, at 97. As of year-end 2001, there were approximately 248 million shareholder accounts invested in funds. Investment Company Institute, Mutual Fund Fact Book 63 (42nd ed. 2002). At a cost of $1 per shareholder account, this would be a cost of approximately $248 million.

[81] *See* Instruction 3 to Item 21(b)(1); Instruction 5 to Item 21(b)(2); and Instruction 5 to Item 21(b)(3) of Form N–1A (calculation of average annual total return requires deduction of all recurring fees); Rule 482(e)(3)(i) and (e)(4)(i) under the Securities Act (17 CFR 230.482(e)) (requiring calculation of average annual total return in a performance advertisement

[sbull] Will the proposed computation methodology help us to achieve the objective of permitting investors to estimate the actual costs, in dollars, that they bore over the reporting period and also provide them with a basis for comparing the level of current period expenses at different funds? What, if any, modifications to the proposed computation methodology are appropriate?

C. Management's Discussion of Fund Performance (''MDFP'')

We are proposing to require that MDFP, which is currently required for all mutual funds other than money market funds, be included in annual reports to shareholders.[82] Currently, a mutual fund is required to include MDFP in its prospectus unless the information is included in the fund's latest annual report to shareholders.[83] At the time we adopted MDFP, our authority to directly require information in annual reports was circumscribed.[84] Mutual funds, however, typically include MDFP in their annual reports, and we believe that requiring MDFP to be included in the annual report would aid investors in assessing the fund's performance over the prior year, and would fit naturally with other ''backward looking'' information contained in the annual report, such as the fund's financial statements. We now have broad authority to prescribe the content of shareholder reports, and we propose to require MDFP in annual reports to shareholders.[85]

We wish to remind funds of their obligation to use MDFP to provide a complete and accurate discussion of the factors that affected fund performance over the past year. In its integrated reviews of mutual fund prospectuses and shareholder reports, the staff has identified instances where MDFP has provided insufficient substantive discussion of the factors that affected the fund's performance during the most recent fiscal year.[86] The Commission has asked the staff, in its review of a fund's disclosure documents, to continue to focus on areas where funds' MDFP disclosure has been deficient. We expect that our proposed revisions to shareholder reports, coupled with improved MDFP disclosure by funds, should enhance the usefulness of shareholder reports and result in improved disclosure by funds about their operations.

We request comment generally on our proposal to require mutual funds to include MDFP in their annual reports to shareholders.

[sbull] Should we require MDFP in annual reports to shareholders?

[sbull] Are there changes that we should make to the content of MDFP?

D. Compliance Date

If we adopt the proposed amendments, we would expect to require all fund reports to shareholders filed for periods ending on or after the effective date of the amendments to comply with the proposed amendments. In addition, we would expect to require funds to file quarterly reports on Form N–Q with respect to any fiscal quarter ending on or after the effective date. The Commission requests comment on these proposed compliance dates.

III. General Request for Comments

The Commission requests comment on the amendments proposed in this release, whether any further changes to our rules or forms are necessary or appropriate to implement the objectives of our proposed amendments, and on other matters that might have an effect on the proposals contained in this release.

IV. Paperwork Reduction Act

Certain provisions of the proposed amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 [44 U.S.C. 3501, *et seq.*), and the Commission is submitting the proposed collections of information to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The titles for the collections of information are: (1) ''Form N–1A under the Investment Company Act of 1940 and Securities Act of 1933, Registration Statement of Open-End Management Investment Companies''; (2) ''Form N–2—Registration Statement of Closed-End Management Investment Companies''; (3) ''Form N–3—Registration Statement of Separate Accounts Organized as Management Investment Companies''; (4) ''Form N–CSR—Certified Shareholder Report of Registered Management Investment Companies''; (5) ''Rule 30e–1 under the Investment Company Act of 1940, Reports to Stockholders of Management Companies''; and (6) ''Form N–Q—Quarterly Schedule of Portfolio Holdings of Registered Management Investment Company.'' 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.

Form N–1A (OMB Control No. 3235–0307), Form N–2 (OMB Control No. 3235–0026), and Form N–3 (OMB Control No. 3235–0316) were adopted pursuant to Section 8(a) of the Investment Company Act (15 U.S.C. 80a–8) and Section 5 of the Securities Act (15 U.S.C. 77e). We issued a release proposing Form N–CSR on August 30, 2002 (67 FR 57298 (Sept. 9, 2002)), pursuant to Section 30 of the Investment Company Act (15 U.S.C. 80a–8) and Sections 13 and 15(d) of the Exchange Act (15 U.S.C. 78m and 78o(d)). We proposed amendments to Form N–CSR on September 20, 2002 (Investment Company Act Release No. 25739) (67 FR 60828 (Sept. 26, 2002)); October 22, 2002 (Investment Company Act Release No. 25775) (67 FR 66208 (Oct. 30, 2002)); December 2, 2002 (Investment

by a mutual fund to be based on methods of computation prescribed in Form N–1A).

[82] Proposed Item 21(b)(7) of Form N–1A.

[83] Item 5 of Form N–1A. A fund that includes MDFP in its annual report must disclose in its prospectus that its annual report contains a discussion of the market conditions and investment strategies that significantly affected the fund's performance during its last fiscal year and that this discussion will be made available upon request and without charge. Item 1(b)(1) of Form N–1A. Because we are proposing to require MDFP in a fund's annual report, we are proposing to amend Instruction 5 to Item 1(b)(1) to require all funds except money market funds, which are not required to provide MDFP, to include this disclosure.

[84] *See* 15 U.S.C. 80a–29(d) (1988) (permitting the Commission to require that investment companies transmit to shareholders, at least semi-annually, reports containing the following information and financial statements: (1) A balance sheet accompanied by a statement of the aggregate value of investments; (2) a list showing the amount and value of securities owned; (3) a statement of income; (4) a statement of surplus; (5) a statement of aggregate remuneration paid by the company during the period to officers, directors, and certain affiliated persons; and (6) a statement of the aggregate dollar amounts of purchase and sales of investment securities, other than government securities, made during the period covered by the report); Investment Company Act Release No. 19382 (Apr. 6, 1993) (58 FR 19050, 19052 (Apr. 12, 1993)) (permitting a fund to include MDFP in its prospectus or annual report to shareholders, but requiring a fund that placed MDFP in an annual report to disclose in its prospectus that its annual report contained additional performance information that would be made available upon request and without charge).

[85] The National Securities Markets Improvement Act of 1996 (''NSMIA'') added Section 30(f) to the Investment Company Act, authorizing the Commission to require that reports to shareholders include information that ''the Commission deems necessary or appropriate in the public interest or for the protection of investors.'' National Securities Markets Improvement Act of 1996, Pub. L. 104–290, 207, 110 Stat. 3416 (Oct. 11, 1996); 15 U.S.C. 80a–29(f).

[86] *See In the Matter of Davis Selected Advisers-NY, Inc.,* Investment Advisers Act Release No. 2055 (Sept. 4, 2002) (fund violated Section 34(b) of the Investment Company Act (15 U.S.C. 80a–34(b)) by failing to disclose the material impact that investments in initial public offerings had on its performance during its previous fiscal year in its MDFP); Tom Lauricella and Aaron Lucchetti, *What's Your Fund Doing? Some Managers Don't Say,* The Wall Street Journal, Oct. 7, 2002, at R23 (describing inadequate discussions in funds' MDFP).

Company Act Release No. 25838); and December 10, 2002 (Investment Company Act Release No. 25845). Rule 30e–1 (OMB Control No. 3235–0025) was promulgated under section 30(e) of the Investment Company Act (15 U.S.C. 80a–29(e)). New Form N–Q is being proposed under Section 30 of the Investment Company Act (15 U.S.C. 80a–29(e)).

We are proposing a new rule and form, and rule and form amendments, that are intended to improve the periodic disclosure provided by registered management investment companies (''funds'') to their investors about fund investments, costs, and performance. The proposed amendments would:

[sbull] Permit a fund to include a summary portfolio schedule in its reports to shareholders, and exempt a money market fund from the requirement to include a portfolio schedule of investments in securities of unaffiliated issuers in its reports to shareholders, provided that the complete portfolio schedule is filed with the Commission on proposed Form N–CSR semi-annually and is provided to shareholders upon request, free of charge;

[sbull] Require reports to shareholders by funds to include a tabular or graphic presentation of a fund's portfolio holdings by identifiable categories;

[sbull] Require a fund to file its complete portfolio schedule as of the end of its first and third fiscal quarters with the Commission on new proposed Form N–Q;

[sbull] Require open-end management investment companies (''mutual funds'') to disclose fund expenses borne by shareholders during the reporting period in reports to shareholders; and

[sbull] Require a mutual fund to include Management's Discussion of Fund Performance in its annual report to shareholders.

These proposed amendments are intended to significantly improve the periodic disclosure that fund investors receive, particularly with respect to portfolio holdings and expenses, while reducing the costs of producing and delivering funds' annual and semi-annual reports to shareholders.

Form N–1A

Form N–1A contains collection of information requirements. The likely respondents to this information collection are open-end funds registering with the Commission on Form N–1A. Compliance with the disclosure requirements of Form N–1A is mandatory. Responses to the disclosure requirements are not confidential.

We estimate that the proposed amendments to Form N–1A would have no impact on the hour burden for filing registration statements on Form N–1A. The amendments to Form N–1A relate solely to the contents of shareholder reports for funds registered on Form N–1A, and the additional burden hours imposed by these amendments are reflected in the collection of information requirements for shareholder reports required by rule 30e–1 under the Investment Company Act.

Form N–2

Form N–2 contains collection of information requirements. The likely respondents to this information collection are closed-end funds registering with the Commission on Form N–2. Compliance with the disclosure requirements of Form N–2 is mandatory. Responses to the disclosure requirements are not confidential.

We estimate that the proposed amendments to Form N–2 would have no impact on the hour burden for filing registration statements on Form N–2. The amendments to Form N–2 relate solely to the contents of shareholder reports for funds registered on Form N–2, and the additional burden hours imposed by these amendments are reflected in the collection of information requirements for shareholder reports required by rule 30e–1 under the Investment Company Act.

Form N–3

Form N–3, including the proposed amendments, contains collection of information requirements. The likely respondents to this information collection are separate accounts, organized as management investment companies and offering variable annuities, registering with the Commission on Form N–3. Compliance with the disclosure requirements of Form N–3 is mandatory. Responses to the disclosure requirements are not confidential.

We estimate that the proposed amendments to Form N–3 would have no impact on the hour burden for filing registration statements on Form N–3. The amendments to Form N–3 relate solely to the contents of shareholder reports for funds registered on Form N–3, and the additional burden hours imposed by these amendments are reflected in the collection of information requirements for shareholder reports required by rule 30e–1 under the Investment Company Act.

Form N–CSR

Proposed Form N–CSR, including the proposed amendments, contains collection of information requirements. The respondents to this information collection would be management investment companies subject to rule 30e–1 under the Investment Company Act of 1940 registering with the Commission on Form N–1A, N–2, or N–3. Compliance with the disclosure requirements of Form N–CSR is proposed to be mandatory. Responses to the disclosure requirements are not confidential.

We previously estimated that the weighted average hour burden for preparing a proposed Form N–CSR would be 16.38 hours per filing. We also estimated that 3,700 funds would file Form N–CSR on a semi-annual basis for a total of 7,400 filings. Thus, we estimated that the total annual hour burden for the preparation and filing of Form N–CSR would be 121,195 hours.[87] We estimate that the 3,700 funds filing reports on Form N–CSR include 9,850 portfolios, including 9,100 portfolios of mutual funds registered on Form N–1A, 630 closed-end funds registered on Form N–2, and 120 sub-accounts of managed separate accounts registered on Form N–3.[88]

The proposed amendments would require a fund that has used a summary portfolio schedule in its reports to shareholders in lieu of including a complete schedule of investments in securities of unaffiliated issuers, or a money market fund that has omitted its schedule of investments in securities of unaffiliated issuers from its reports to

[87] *See* Certification of Management Investment Company Shareholder Reports and Designation of Certified Shareholder Reports as Exchange Act Periodic Reporting Forms, Investment Company Act Release No. 25723 (Aug. 30, 2002) (67 FR 57298 (Sept. 9, 2002)); Disclosure of Proxy Voting Policies and Proxy Voting Records by Registered Management Investment Companies, Investment Company Act Release No. 25739 (Sept. 20, 2002) (67 FR 60828 (Sept. 26, 2002)); Disclosure Required by Sections 404, 406 and 407 of the Sarbanes-Oxley Act of 2002, Investment Company Act Release No. 25775 (October 22, 2002) (67 FR 66208 (Oct. 30, 2002)); Strengthening the Commission's Requirements Regarding Auditor Independence, Investment Company Act Release No. 25838 (Dec. 2, 2002) (67 FR 76780 (Dec. 13, 2002)); Rule 10b–18 and Purchases of Certain Equity Securities by the Issuer and Others, Investment Company Act Release No. 25845 (Dec. 10, 2002).

[88] The estimates of the number of mutual fund portfolios registered on Form N–1A and the number of closed-end funds registered on Form N–2 are based on the Commission staff's analysis of reports filed on Form N–SAR in 2002. The estimate of the number of sub-accounts of managed separate accounts registered on Form N–3 is based on the staff's analysis of reports filed on Form N–SAR in 2002, and the staff's estimate, based on its experience with Form N–3, of four sub-accounts per managed separate account.

shareholders, to file its complete schedule of investments in securities of unaffiliated issuers pursuant to Item 7 of Form N–CSR. We estimate that 7,195 fund portfolios, including 1,000 money market fund portfolios that would be exempt from including a portfolio schedule in their shareholder reports, and 6,195 portfolios (or 70% of the fund portfolios remaining) would take advantage of one of these provisions, and hence would be required to file a complete portfolio schedule on Item 7 of Form N–CSR.[89] We estimate that the requirements of Item 7 of Form N–CSR would increase the hour burden for filing Form N–CSR by 5 hours per portfolio per filing, or 71,950 hours (7,195 portfolios x 5 hours per portfolio x 2 filings per year). Thus, if the proposed amendments to Form N–CSR are adopted, the total annual hour burden for all funds for preparation and filing of Form N–CSR would be 193,145 hours (121,195 hours + 71,950 hours). The weighted average burden per filing on Form N–CSR would be 26.1 hours.

Shareholder Reports

Rule 30e–1, including the proposed amendments to Forms N–1A, N–2, and N–3, contains collection of information requirements.[90] The respondents to this collection of information requirement are funds registered on Forms N–1A, N–2, and N–3. Compliance with the disclosure requirements of rule 30e–1 is mandatory. Responses to the disclosure requirements will not be kept confidential.

There are approximately 3,700 funds subject to rule 30e–1. We estimate that the current hour burden for preparing and filing semi-annual and annual shareholder reports in compliance with rule 30e–1 is 212.5 hours per fund, for a total annual burden to the industry of 786,250 hours. We estimate that the 3,700 funds filing annual and semi-annual shareholder reports pursuant to rule 30e–1 include 9,850 portfolios, including 9,100 portfolios of mutual funds registered on Form N–1A, 630 closed-end funds registered on Form N–2, and 120 sub-accounts of managed separate accounts registered on Form N–3.[91]

We estimate that there are 1,000 money market fund portfolios that would take advantage of the provision permitting a money market fund to omit its schedule of investments in securities of unaffiliated issuers from its shareholder reports. This would decrease the hour burden of complying with rule 30e–1 for these funds by 5 hours per portfolio per filing, or 10,000 hours (1,000 portfolios x 5 hours x 2 filings per year).

We estimate that of the remaining 8,850 portfolios of funds filing shareholder reports, 70%, or 7,095 portfolios, would choose to take advantage of the provisions permitting use of a summary portfolio schedule. However, we estimate that use of the summary portfolio schedule provisions would have no net effect on the burden hours of complying with rule 30e–1. The estimated time necessary to prepare a summary portfolio schedule will be equivalent to the time currently required to prepare a complete portfolio schedule, because a fund will still need to evaluate the size of each of its investments in securities of unaffiliated issuers in order to prepare the summary portfolio schedule.

Further, we estimate that the proposed requirement to include a tabular or graphic presentation in shareholder reports, which would apply to all funds, will increase the estimated burden hours for complying with rule 30e–1 by 3 hours per portfolio per filing, or 59,100 hours (9,850 portfolios x 3 hours x 2 filings per year). We estimate that the requirement to disclose in shareholder reports the dollar cost of investing in the fund over the reporting period, which would apply only to mutual funds, will increase the estimated burden hours for complying with rule 30e–1 by 5 hours per portfolio per filing, or 91,000 hours (9,100 mutual fund portfolios x 5 hours x 2 filings per year).[92] Finally, we estimate that the requirement for mutual funds to include MDFP in annual reports to shareholders would have a negligible effect on the estimated burden hours for complying with rule 30e–1, because over 90% of mutual funds, in the staff's experience, already include MDFP in annual reports to shareholders.

Thus, the proposed amendments would have a net increase on the burden hours of complying with rule 30e–1 of 140,100 hours (–10,000 hours + 59,100 hours + 91,000 hours), for a new total burden of 926,350 hours.

Rule 30b1–4

The purpose of proposed Rule 30b1–4 is to improve transparency of information about funds' portfolio holdings. Proposed Rule 30b1–4 would require funds to file a quarterly report via the Commission's EDGAR system on proposed Form N–Q, not more than sixty calendar days after the close of each first and third fiscal quarter, containing their complete portfolio holdings. The likely respondents to Rule 30b1–4 would be registered management investment companies, other than small business investment companies registered with the Commission on Form N–5.

We estimate that there are approximately 3,700 funds that would be affected by the proposed rule. Each of those 3,700 funds would be required by proposed Rule 30b1–4 to file a complete portfolio holdings schedule via EDGAR on proposed Form N–Q. For purposes of this Paperwork Reduction Act analysis, the burden associated with the requirements of proposed Rule 30b1–4 has been included in the collection of information requirements of proposed Form N–Q, rather than the proposed Rule.

Compliance with rule 30b1–4 is mandatory for every registered fund. Responses to the disclosure requirements will not be kept confidential.

Form N–Q

Proposed Form N–Q contains collection of information requirements. The respondents to this information collection would be management investment companies subject to rule 30e–1 under the Investment Company Act of 1940 registering with the Commission on Forms N–1A, N–2, or N–3. Compliance with the disclosure requirements of Form N–Q would be mandatory. Responses to the disclosure requirements would not be kept confidential.

Every registered management investment company, other than a small business investment company registered on Form N–5, would be required to file a quarterly report on Form N–Q disclosing the information required therein, not more than sixty calendar days after the close of the first and third quarters of each fiscal year. We estimate that there are approximately 3,700 funds that would be affected by the proposal, which include 9,850 fund portfolios. We therefore estimate that for each of those

[89] This is based on the Commission staff's estimate that more than 70% of funds had more than 50 securities in their portfolios, according to the staff's analysis of data from the *Morningstar Principia Pro* database.

[90] The proposed amendments are to the shareholder reports requirements in Forms N–1A, N–2, and N–3. Rule 30e–1(a) under the Investment Company Act of 1940 (17 CFR 270.30e–1(a)) requires funds to include in the shareholder reports the information that is required by the fund's registration statement form.

[91] This estimate is based on the Commission staff's analysis of reports filed on Form N–SAR in 2002.

[92] The estimate of the number of mutual funds is based on data derived from the Commission's EDGAR filing system of the number of mutual funds filing shareholder reports pursuant to rule 30e–1.

funds the disclosure of their portfolio holdings schedules in filings on Form N–Q as of the end of each first and third fiscal quarter would require, on average, 10 hours per portfolio per filing,[93] for a total annual hour burden of 197,000 hours (10 hours per filing x 2 filings per year x 9,850 fund portfolios).

Request for Comments

We request your comments on the accuracy of our estimates. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to: (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 Commission's estimate of burden of the proposed collection of information; (3) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (4) evaluate whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons submitting comments on the collection of information requirements should direct the comments to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Room 3208, New Executive Office Building, Washington, DC 20503, and should send a copy to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0609, with reference to File No. S7–51–02. Requests for materials submitted to OMB by the Commission with regard to this collection of information should be in writing, refer to File No. S7–51–02, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filing and Information Services, 450 Fifth Street NW., Washington, DC 20549. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days after publication of this Release.

V. Cost/Benefit Analysis

The Commission is sensitive to the costs and benefits imposed by its rules. Our proposed amendments are intended to improve the periodic disclosure provided by registered management investment companies (''funds'') about their portfolio investments, costs, and past performance. The proposed amendments would:

[sbull] Permit a fund to include a summary portfolio schedule in its reports to shareholders, and exempt a money market fund from the requirement to include a portfolio schedule of investments in securities of unaffiliated issuers in its reports to shareholders, provided that the complete portfolio schedule is filed with the Commission on proposed Form N–CSR semi-annually and is provided to shareholders upon request, free of charge;

[sbull] Require reports to shareholders by funds to include a tabular or graphic presentation of a fund's portfolio holdings by identifiable categories;

[sbull] Require a fund to file its complete portfolio schedule as of the end of its first and third fiscal quarters with the Commission on new proposed Form N–Q;

[sbull] Require open-end management investment companies (''mutual funds'') to disclose fund expenses borne by shareholders during the reporting period in reports to shareholders; and

[sbull] Require a mutual fund to include Management's Discussion of Fund Performance in its annual report to shareholders.

These proposed amendments are intended to significantly improve the periodic disclosure that fund investors receive, particularly with respect to portfolio holdings and expenses, while reducing the costs of producing and delivering funds' annual and semi-annual reports to shareholders.

A. Benefits

Use of Summary Portfolio Schedule and Exemption of Money Market Funds from Portfolio Schedule Requirements in Shareholder Reports. The Commission estimates that more than 70% of all funds may realize at least some cost savings, through reduced printing and mailing expenses, by use of a summary portfolio holdings schedule in their shareholder reports.[94] Money market funds would realize similar benefits with respect to the proposed exemption from the requirement to include the schedule of investments in unaffiliated issuers in their reports to shareholders. In addition, for purposes of the Paperwork Reduction Act, we have estimated that this exemption for money market funds would reduce the burden hours for compliance with shareholder reports requirements by 10,000 hours, translating into a cost savings of $689,400 annually.[95]

For funds with large numbers of holdings, such as index funds, the cost savings in printing and mailing could be substantial. As of year-end 2001, there were approximately 248 million shareholder accounts invested in funds.[96] For each account, funds are required to provide an annual and semi-annual shareholder report, although our rules allow the delivery of a single shareholder report to investors who share an address (''householding'') under certain conditions. We estimate that, as a result, funds may print and deliver approximately 347.2 million and 446.4 million shareholder reports annually.[97] Annually, use of a summary portfolio schedule could therefore impact approximately 243.0 million to 312.5 million shareholder reports.[98] Although we are unable to precisely quantify the overall cost savings, at a minimum, if funds could reduce their printing and distribution expenses by one page per shareholder report, at a cost of 2[cent] per page, shareholders could

[93] This estimate is based on a review of the estimated hour burdens currently associated with other rules and forms under the Investment Company Act that impose similar disclosure requirements.

[94] This is based on the Commission staff's estimate that more than 70% of funds had more than 50 securities in their portfolios, according to the staff's analysis of data from the *Morningstar Principia Pro* database.

[95] *See* Section IV., *supra* (estimating that 1,000 money market fund portfolios would take advantage of the provision permitting a money market fund to omit its schedule of investments in securities of unaffiliated issuers from its shareholder reports, resulting in an estimated decrease of 5 hours per portfolio per filing). The estimated cost savings is derived from the estimated reduction in burden hours, and an estimated hourly wage rate for professional and non-professional staff of $68.94. This estimated wage rate is a blended rate, based on published hourly wage rates for compliance attorneys in New York City ($74.22) and programmers ($27.91), and the estimate that professional and non-professional staff would divide time equally on compliance with the proposed disclosure requirements, yielding a weighted wage rate of $68.94 (($74.22 x .50) + ($27.91 x .50)) = $51.065). *See* Securities Industry Association, *Report on Management & Professional Earnings in the Securities Industry 2001* (Oct. 2001). This weighted wage rate was then adjusted upward by 35% for overhead, reflecting the costs of supervision, space, and administrative support, to obtain the total per hour internal cost of $68.94 ($51.065 x 1.35) = $68.94.

[96] Investment Company Institute, Mutual Fund Fact Book 63 (42nd ed. 2002).

[97] *See* Delivery of Disclosure Documents to Households, Investment Company Act Release No. IC–24123 (64 FR 62540, 62543 (Nov. 16, 1999)) (estimating that householding rules would produce a decline in the number of shareholder reports required to be delivered of between 10 and 30 percent).

[98] This number reflects the estimated 70% of funds that would use a summary portfolio schedule and hence may benefit from reduced printing costs.

save approximately $4.9 million to $6.3 million per year.[99] The Commission believes, however, that some funds may be able to reduce the length of their shareholder reports by more than a single printed page and we therefore expect the cost savings to funds may exceed these estimates.[100] These potential savings may be passed on to fund shareholders.[101]

Apart from savings in printing and distribution costs, use of a summary portfolio schedule may benefit investors by helping them focus on a fund's principal holdings, and thereby better evaluate a fund's risk profile and investment strategy. These benefits to investors are difficult to quantify, however. We request comment on the extent and magnitude of the benefits to funds and investors that would result from permitting use of a summary portfolio schedule in shareholder reports, and permitting money market funds to omit a schedule of investments in securities of unaffiliated issuers from shareholder reports.

Tabular or Graphic Presentation of Portfolio Holdings. The proposed requirements for funds to provide a tabular or graphic presentation of their portfolio holdings in their annual and semi-annual reports to shareholders should benefit fund investors by illustrating, in a concise and user-friendly format, the allocation of a fund's investments across asset classes. This presentation, coupled with a summary portfolio schedule, may more effectively convey key information about a fund's investments than would the fund's complete portfolio schedule standing alone, particularly in the case of funds with large numbers of holdings. These benefits to investors resulting from the use of a tabular or graphic presentation are difficult to quantify, however. We request comment on the extent and magnitude of the benefits to funds and investors that would result from use of a summary portfolio schedule in shareholder reports.

Quarterly Filing of Complete Portfolio Schedule. The proposal to require the quarterly filing of a fund's complete portfolio schedule via EDGAR, within 60 days after the end of the first and third fiscal quarters, should benefit investors by providing them with greater information about whether, and how, a fund is complying with its stated investment objective. The proposal would allow investors, and their advisers or other investment professionals, to better monitor the extent to which the portfolios of the funds that investors hold overlap, and hence should promote more informed asset allocation decisions. In addition, quarterly disclosure of a fund's portfolio holdings may expose instances of ''style drift,'' when the actual portfolio holdings of a fund deviate from its stated investment objective. The increased transparency resulting from quarterly disclosure may also deter several forms of portfolio manipulation by portfolio managers, including ''window dressing'' (buying or selling portfolio securities shortly before the date as of which a fund's holdings are publicly disclosed, in order to convey an impression that the manager has been investing in companies that have had exceptional performance during the reporting period) and ''portfolio pumping'' (buying shares of stocks the fund already owns on the last day of the reporting period, in order to drive up the price of the stocks and inflate the fund's performance results).[102] Any of these forms of portfolio manipulation enhance the apparent composition of the portfolio at the expense of portfolio returns. By increasing the frequency of reporting, engaging in these activities becomes more expensive in terms of returns. Therefore, we would expect fewer funds to engage in these activities. To the extent that portfolio managers currently engage in these activities, shareholders would be better off as a result of the proposed amendments. More broadly, the increased frequency of disclosure will permit investors to better link the composition of a fund portfolio to fund performance.

We request comment on the benefits to investors of quarterly portfolio disclosure, and in particular on whether, and to what extent, quarterly portfolio disclosure might deter forms of portfolio manipulation.

Disclosure of Fund Expenses in Shareholder Reports. The proposed requirement for mutual funds to disclose in their reports to shareholders fund expenses borne by shareholders during the reporting period should benefit investors by increasing their awareness and understanding of the fees that they pay on an ongoing basis for investing in a mutual fund. The benefits of the improved transparency of funds' ongoing fees and expenses are difficult to quantify, however. We request comment on the extent and magnitude of these benefits, as well as the benefits of alternative means of disclosure of the ongoing costs of funds.

Inclusion of MDFP in Annual Reports to Shareholders by Mutual Funds. The proposals to require funds to include MDFP in their annual reports to shareholders should assist investors in assessing the fund's performance over the prior year. Requiring MDFP in the annual report, as opposed to the fund's prospectus, may benefit shareholders by enabling them to assess information provided in the MDFP together with other ''backward looking'' information contained in the annual report. We note, however, that to the extent that, based on the staff's experience, over 90% of mutual funds already include this information in their annual reports to shareholders, these benefits are already being realized.

B. Costs

The proposed amendments may lead to some additional costs for funds, which could be passed on to fund shareholders. In the case of the additional disclosure requirements being proposed, these costs would include both internal costs (for attorneys and other non-legal staff of a fund, such as computer programmers, to prepare and review the required disclosure) and external costs (for printing and typesetting of the disclosure).

Use of Summary Portfolio Schedule and Exemption of Money Market Funds from Portfolio Schedule Requirements in Shareholder Reports. Our proposals to allow funds to include summary portfolio schedules in reports to shareholders, and to exempt money market funds from the requirement to include a portfolio schedule of investments in securities of unaffiliated issuers in their reports to shareholders,

[99] This is based on an estimate that the typical shareholder report is approximately 25 pages long and costs $.52 to print and deliver. *See* Delivery of Disclosure Documents to Households, Securities Act Release No. 33–7766 (Nov. 4, 1999) (64 FR 62540, 62543 (Nov. 16, 1999)).

[100] *See e.g.*, Letter from Craig S. Tyle, General Counsel, ICI, to Barry P. Barbash, Director, Division of Investment Management, SEC, *supra* note 10, at 2 (portfolio holdings schedule contained in one large equity fund's March 31, 1998 annual report was nineteen pages long and listed approximately 480 securities); Letter from Heidi Stam, Principal, Securities Regulation, Vanguard, to Cynthia Fornelli, Division of Investment Management, SEC, *supra* note 10, at 1–2 (portfolio holdings schedule in the Vanguard Total Stock Market Index Fund June 30, 1999 semi-annual report was 29 pages long and listed 3,204 securities).

[101] The provision permitting use of a summary portfolio schedule in shareholder reports, and the exemption for money market funds from the requirement to include in shareholder reports a complete schedule of investments in securities of unaffiliated issuers, are not expected to result in any reduction in internal costs for funds, because funds that utilize these provisions would still be required to file their complete portfolio schedules on Item 7 of Form N–CSR.

[102] *See* Rulemaking Petition by the American Federation of Labor and the Congress of Industrial Organizations, *supra* note 12 at 2–3; Rulemaking Petition by the Consumer Federation of America, *et al., supra* note 12 at 2; Rulemaking Petition by Fund Democracy, LLC, *supra* note 12, ''Memorandum in Support of Rulemaking Petition'' at 7–8, 15–21.

may result in some costs to funds. For purposes of the Paperwork Reduction Act, we estimate that these proposals would not increase the hour burden for completing a shareholder report in compliance with rule 30e-1 under the Investment Company Act. However, we estimate that use of either the provision permitting use of a summary portfolio schedule or the provision permitting a money market fund to omit its schedule of investments in securities of unaffiliated issuers would increase the hour burden for filing Form N–CSR by 5 hours per portfolio per filing, or 71,950 hours (7,195 portfolios x 5 hours per portfolio x 2 filings per year), resulting in an additional cost of filing Form N–CSR of $4,960,233.[103]

Further, under our proposals, to the extent that investors want to see a complete portfolio schedule, investors would incur search costs to gather this information (*i.e.*, requesting the information from the fund). However, since funds will be required to deliver the complete portfolio schedule within three days and free of charge to all investors who request it, we expect these costs to be very small. We request comment on these estimates.

Tabular or Graphic Presentation of Portfolio Holdings. The proposals would require funds to provide one or more tables, charts, or graphs depicting the securities holdings of the fund by reasonably identifiable categories (*e.g.*, type of security, industry sector, geographic region, credit quality, or maturity) showing the percentage of net asset value attributable to each. We estimate that these costs would be limited, however, because a fund could select the most appropriate means by which it would convey information to investors about the types of investments made by the fund, given its investment objectives, and because a majority of funds, according to the staff's estimate, already provide some type of tabular or graphic depiction of their holdings in shareholder reports. For purposes of the Paperwork Reduction Act, we have estimated that the disclosure requirements would add 3 hours per portfolio to the burden of completing each annual and semi-annual report to shareholders, or 59,100 hours total (3 hours per portfolio x 2 reports per year x 9,850 portfolios of funds required to provide reports to shareholders). We estimate that this additional burden would equal total internal costs of $4,074,354 annually.[104] Further, because most funds already include a similar type of presentation voluntarily in shareholder reports, we estimate that this new disclosure requirement will not increase printing and mailing costs of shareholder reports for most funds, and hence the external costs to funds of the tabular and graphic disclosure requirement would be minimal. We request comment on these estimates.

Quarterly Filing of Complete Portfolio Schedule. Our proposals to require funds to file with the Commission for the first and third fiscal quarters of each fiscal year their complete portfolio holdings schedule on proposed Form N–Q, and to disclose the availability of the filing on the Commission's website, would impose certain costs on funds. We estimate that for purposes of the Paperwork Reduction Act, these disclosure requirements would impose 10 burden hours per portfolio per filing on Form N–Q. We estimate that the total burden would therefore be 197,000 hours, or $13,581,180 in total internal costs annually, based on an estimate of 3,700 funds filing reports on Form N–Q for 9,850 fund portfolios.[105] Because this quarterly disclosure would only be required to be filed on EDGAR, and not actually delivered to shareholders, we estimate that the external costs per fund, for typesetting, printing, and mailing, of this additional disclosure would be negligible.

Mandating quarterly portfolio disclosure may impose other costs on funds and their shareholders. Arguments have been made that more frequent disclosure of portfolio holdings may expand the opportunities for professional traders to exploit this information by engaging in predatory trading practices, such as trading ahead of funds, often called ''front-running.'' [106] However, in order for ''front-running'' to significantly decrease investment returns under the proposed quarterly reporting requirements, it appears that the following conditions may have to be present:

1. To accomplish the goals of the trade that might be front run, the fund manager has limited discretion over the timing of the trade.

2. The trade occurs during a quarter at the end of which the fund otherwise would not have had to report its portfolio holdings.

3. The order is so large that it cannot be reasonably completed within the disclosure window.

4. The market is sufficiently illiquid so that large orders may be reasonably expected to have a substantial impact on price.

5. When the fund's portfolio is revealed, the size of the remaining order is sufficiently large that it is worth front-running.

6. Other traders recognize the front-running opportunity.

7. Other traders are willing to assume the risks of trading on the front-running opportunity.

8. The fund manager cannot delay the trade without a significant effect on performance.

It appears that front running may be a profitable strategy if all of these conditions hold simultaneously. It also appears that these conditions may rarely be met. If this is correct, the resulting costs of front-running under our proposals should be minimal.[107]

Furthermore, there are two additional potential costs that may be associated with these proposals. First, it has been argued that, given public data about aggregate flows of new cash to funds, more frequent disclosure of portfolio holdings would allow traders to effectively identify the securities in which the fund(s) will transact to accommodate this flow. This may, in turn, provide a potentially profitable front-running strategy to these traders.[108] Second, a requirement for more frequent disclosure may disrupt trades that are made for potential tax-

[103] These figures are based on an estimated hourly wage rate of $68.94. See *supra* note (explaining calculation of wage rate).

[104] These figures are based on an estimated hourly wage rate of $68.94. See *supra* note 95 (explaining calculation of wage rate).

[105] This estimate is based on data from the Commission's EDGAR system of the number of registered management investment companies, and an estimated hourly wage rate of $68.94; *see supra* note 95.

[106] *See* Letter from Craig S. Tyle, General Counsel, ICI to Paul F. Roye, Director, Division of Investment Management, SEC, *supra* note 59; Russ Wermers, *Potential Effects of More Frequent Portfolio Disclosure on Mutual Fund Performance,* ICI Perspective, *supra* note 59.

[107] A delay of 60 days in reporting is intended to significantly mitigate the potential costs to funds caused by quarterly portfolio disclosure. The Commission staff estimates that approximately 99% of fund portfolio holdings represent an average of nine days of trading volume or less in the securities held. Thus, even if a fund decided it needed to significantly alter or exit a position at the end of a reporting period, it appears likely that the fund generally could unwind that position in the time between the end of the reporting period and the date of disclosure with only minimal price impact.

[108] *See, e.g.*, Russ Wermers, *Potential Effects of More Frequent Portfolio Disclosure on Mutual Fund Performance,* ICI Perspective, *supra* note , at 9–10. Some empirical evidence suggests that portfolio holdings are correlated across all funds. *See* Paul A. Gompers and Andrew Metrick, *Institutional Investors and Equity Prices,* National Bureau of Economic Research Working Paper 6723 (Sept. 1998), *available at http://www.nber.org/papers/w6723.* If this is correct, more frequent disclosure of individual holdings is unlikely to make current trading strategies more profitable, since quarterly aggregate holdings data is currently available through 13F filings.

timing advantages.[109] These potential costs are particular cases of front-running, and it appears that they may require the same conditions to hold as those described above, along with additional conditions specific to these strategies.

We request comment on the analysis above, and on the nature and magnitude of any potential costs of front-running resulting from more frequent disclosure of portfolio holdings.

Arguments have also been made that more frequent portfolio disclosure may facilitate the ability of outside investors to ''free ride'' on a mutual fund's investment strategies, by obtaining for free the benefits of fund research and investment strategies that are paid for by fund shareholders.[110] The extent to which our proposed quarterly disclosure requirement, with a 60 day lag, would result in these types of costs is difficult to quantify, and may depend on a number of assumptions. In general, it appears that the following conditions must be satisfied for free-riding to be a profitable strategy:

1. The market is able to consistently identify skilled fund managers.[111]

2. The trading information of skilled fund managers remains valuable from 2 to 5 months after the trade is initiated.

It appears that a fund may be damaged by free-riding if its trading positions are incomplete when the fund's portfolio is disclosed and the front-running conditions discussed above are met. In addition, it appears that the market for the securities being traded pursuant to the strategy must be sufficiently illiquid to generate price impacts such that completion of the trading strategy is more costly to the fund manager. It appears that these conditions may not often simultaneously hold, although when they do, funds may be adversely impacted.

We also note, however, that once the fund adviser has completed its trading strategy, it may hope that other traders will follow it because the price impacts of their trading will make the fund's trades profitable. The net effect of ''free riding'' therefore is not necessarily negative.

We request comment on this analysis and on the nature and magnitude of any potential costs of free-riding that may result from more frequent disclosure of portfolio holdings.

We request comment generally on whether, and to what extent, our proposals would impose costs resulting from predatory trading practices, and on any other costs that would be imposed by our proposed quarterly portfolio disclosure requirement.

Disclosure of Fund Expenses in Shareholder Reports. We estimate that in order for mutual funds to comply with the proposed requirement to include in annual and semi-annual reports disclosure of the dollar cost associated with investing a standardized amount in a fund, a typical mutual fund would need to add two additional pages to its annual and semi-annual reports, at a cost of $0.02 per page.[112] We estimate that a typical fund may have, on average, 30,000 shareholder accounts, and will send out between 42,000 and 54,000 reports to shareholders annually.[113] Therefore, this additional disclosure in shareholder reports would cost approximately $2,400 (($0.04 x 30,000 shareholder accounts) x 2 reports per year) in external costs per fund annually. Based on an estimate of 3,100 mutual funds filing annual and semi-annual reports with the Commission pursuant to rule 30e–1, we estimate these external costs would be $7,440,000 for the industry as a whole. In addition, we estimate for purposes of the Paperwork Reduction Act that these disclosure requirements would add 91,000 burden hours for mutual funds required to transmit shareholder reports, or 10 hours per mutual fund portfolio, equal to internal costs of $6,273,540 for the industry annually.[114] We request comment on these estimates.

As the Commission considered how to best disclose to investors the fees and expenses that they incur with investment in a fund, it considered the costs and benefits of various alternatives, including providing fund shareholders with individualized cost information (in dollars) as to the fees and expenses that they paid in quarterly account statements. We estimate that the cost of providing this individualized cost disclosure would greatly exceed the cost of our proposal. According to the GAO Report which recommended requiring individualized cost disclosure in account statements, one broker-dealer with approximately 6.5 million customer accounts estimated that for it to develop the systems necessary to produce such statements might cost as much as $4 million, with additional annual costs of $5 million.[115] Given that as of year-end 2001, there were approximately 248 million shareholder accounts invested in funds, estimated industry-wide costs could easily exceed $100 million annually.[116] We request comment on the costs of alternative methods of increasing investors' awareness of fund fees and expenses.

Inclusion of MDFP in Annual Reports to Shareholders by Mutual Funds. We estimate that the proposed requirement that mutual funds include MDFP in their annual reports to shareholders would not impose any costs on funds or shareholders. The staff estimates that over 90% of mutual funds already include MDFP in their annual reports to shareholders. Further, a fund that does not include MDFP in its annual reports must include MDFP in its prospectus. Thus, this proposed amendment would not impose any new disclosure requirement on funds, but rather would only mandate a change in the location of the required disclosure, for the minority of funds that do not already include MDFP in their annual reports. To the extent, however, that a fund does not already include MDFP in its annual report to shareholders, the fund may incur additional printing and mailing costs. We request comment on this estimate.

C. Request for Comments

We request comments on all aspects of this cost-benefit analysis, including identification of any additional costs or benefits of, or suggested alternatives to, the proposed amendments. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

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[109] Russ Wermers, *Potential Effects of More Frequent Portfolio Disclosure on Mutual Fund Performance,* ICI Perspective, *supra* note 59, at 10–11.

[110] *See* Letter from Craig S. Tyle, General Counsel, ICI to Paul F. Roye, Director, Division of Investment Management, SEC, *supra* note 59; Russ Wermers, *Potential Effects of More Frequent Portfolio Disclosure on Mutual Fund Performance,* ICI Perspective, *supra* note 59.

[111] Some empirical studies of mutual fund performance evaluation have suggested that the consistent identification of skilled mutual fund managers is not likely. *See* Mark Carhart, *On the Persistence of Mutual Fund Performance,* Journal of Finance, March 1997, at 57–82.

[112] *See supra* note 99.

[113] The estimate regarding the average number of shareholder accounts per typical fund is derived from data provided in the Mutual Fund Fact Book, *supra* note 96, at 63, 64. The estimates that 42,000 to 54,000 reports to shareholders must be delivered to shareholders annually are derived from the number of shareholder accounts, the requirement that each fund must deliver an annual and a semi-annual report to each account-holder, and an estimated 10 to 30 percent savings in the number of reports that must be delivered to shareholders due to householding rules. *See supra* note 97.

[114] These figures are based on the staff's estimate, derived from data from the Commission's EDGAR filing system, that approximately 3,100 mutual funds file shareholder reports with the Commission and hence would be subject to the proposed amendments, and an estimated hourly wage rate of $68.94. *See supra* note 104.

[115] GAO Report, *supra* note 19, at 79.

[116] *See* Investment Company Institute, Mutual Fund Fact Book, *supra* note 96, at 63.

VI. Consideration of Burden on Competition; Promotion of Efficiency, Competition, and Capital Formation

Section 23(a)(2) of the Exchange Act requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. Section 23(a)(2) also prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.[117] In addition, Section 2(c) of the Investment Company Act, Section 2(b) of the Securities Act, and Section 3(f) of the Exchange Act require the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.[118]

The proposed amendments are intended to provide greater transparency for fund shareholders regarding their investments in funds. These proposed amendments may improve efficiency. The enhanced disclosure requirements may provide shareholders with more frequent access to portfolio holdings of the funds in which they invest, which may promote more efficient allocation of investments by investors and more efficient allocation of assets among competing funds. The proposed amendments may also improve competition, as enhanced disclosure may lead to better-informed investors and may prompt funds to seek to provide better-informed investors with improved products and services. In addition, permitting funds to deliver summary portfolio schedules in shareholder reports may provide a significant reduction in printing and delivery costs ultimately borne by shareholders. Finally, the effects of the proposed amendments on capital formation are unclear. Although, as noted above, we believe that the proposed amendments would benefit investors, the magnitude of the effect of the proposed amendments on efficiency, competition, and capital formation is difficult to quantify, particularly given that many funds do not currently provide the type of disclosure contemplated by the proposed amendments.

We request comment on whether the proposed amendments, if adopted, would impose a burden on competition. We also request comment on whether the proposed amendments, if adopted, would promote efficiency, competition, and capital formation. Commenters are requested to provide empirical data and other factual support for their views if possible.

VII. Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis (''Analysis'') has been prepared in accordance with 5 U.S.C. 603, and relates to the Commission's proposed rule and form amendments under the Securities Act, the Exchange Act, and the Investment Company Act to improve the quality of periodic disclosure provided by registered management investment companies (''funds'') about their portfolio investments, costs, and past performance. These proposed amendments are intended to enable funds to provide more meaningful information to shareholders while reducing the costs of producing and delivering annual and semi-annual reports to shareholders.

A. Reasons for, and Objectives of, Proposed Amendments

Shareholder reports are one of the principal means by which funds provide periodic information to their investors. Fund shareholder reports historically have served primarily as a vehicle to provide financial statements and other financial information to shareholders.[119] The Commission believes that, with some modifications, fund shareholder reports could become a more effective vehicle for communicating information to investors. The proposed amendments principally address disclosure of fund portfolio holdings and expenses, two significant areas for improvement that have been identified by investor groups, members of the fund industry, and others.

B. Legal Basis

The Commission is proposing amendments to Regulation S–X pursuant to authority set forth in sections 5, 6, 7, 8, and 19(a) of the Securities Act (15 U.S.C. 77e, 77f, 77g, 77h, and 77s(a)), sections 12, 13, 15(d) and 23(a) of the Exchange Act (15 U.S.C. 78*l*, 78m, 78o(d), and 78w(a)) and sections 8, 24(a), 30, 31, and 38 of the Investment Company Act (15 U.S.C. 80a–8, 80a–24(a), 80a–29, 80a–30, and 80a–37). The Commission is proposing new rule 30b1–4 and new Form N–Q pursuant to authority set forth in sections 8, 30, 31, and 38 of the Investment Company Act (15 U.S.C. 80a–8, 80a–29, 80a–30, and 80a–37). The Commission is proposing amendments to Forms N–1A, N–2, and N–3 pursuant to authority set forth in sections 5, 6, 7, 10, 19(a), and 28 of the Securities Act (15 U.S.C. 77e, 77f, 77g, 77j, 77s(a), and 77z–3) and sections 6(c), 8, 24(a), 30, and 38 of the Investment Company Act (15 U.S.C. 80a–6(c), 80a–8, 80a–24(a), 80a–29, and 80a–37). The Commission is proposing amendments to proposed Form N–CSR pursuant to authority set forth in sections 10(b), 13, 15(d), 23(a), and 36 of the Exchange Act (15 U.S.C. 78j(b), 78m, 78o(d), 78w(a), and 78mm) and sections 6(c), 8, 24(a), 30, and 38 of the Investment Company Act (15 U.S.C. 80a–6(c), 80a–8, 80a–24(a), 80a–29, and 80a–37).

C. Small Entities Subject to the Rule

For purposes of the Regulatory Flexibility Act, an investment company is a small entity if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[120] Approximately 205 out of 3700 investment companies that would be affected by this rule meet this definition.[121]

D. Reporting, Recordkeeping, and Other Compliance Requirements

The proposed amendments would:

[sbull] Permit a fund to include a summary portfolio schedule in its reports to shareholders, and exempt a money market fund from the requirement to include a portfolio schedule of investments in unaffiliated issuers in its reports to shareholders, provided that the complete portfolio schedule is filed with the Commission on proposed Form N–CSR semi-annually and is provided to shareholders upon request, free of charge;

[117] 15 U.S.C. 78w(a)(2).

[118] 15 U.S.C. 77(b), 78c(f), and 80a–2(c).

[119] Section 30(e) of the Investment Company Act (15 U.S.C. 80a–29(e)] (requiring a fund to transmit to its stockholders, at least semi-annually, reports containing financial statements and other financial information as the Commission may prescribe by rules and regulations); National Securities Markets Improvement Act of 1996, Pub. L. 104–290, 207, 110 Stat. 3416 (Oct. 11, 1996) (adding Section 30(f) to the Investment Company Act, which allows the Commission to require that semi-annual reports ''include such other information as the Commission deems necessary or appropriate in the public interest or for the protection of investors.'')

[120] 17 CFR 270.0–10.

[121] This estimate is based on figures compiled by Division of Investment Management staff regarding investment companies registered on Form N–1A, Form N–2, and Form N–3. In determining whether an insurance company separate account is a small entity for purposes of the Regulatory Flexibility Act, the assets of insurance company separate accounts are aggregated with the assets of their sponsoring insurance companies. Investment Company Act rule 0–10(b) (17 CFR 270.0–10(b)).

[sbull] Require reports to shareholders by funds to include a tabular or graphic presentation of a fund's portfolio holdings by identifiable categories;

[sbull] Require a fund to file its complete portfolio schedule as of the end of its first and third fiscal quarters with the Commission on new proposed Form N–Q;

[sbull] Require open-end management investment companies (''mutual funds'') to disclose fund expenses borne by shareholders during the reporting period in reports to shareholders; and

[sbull] Require a mutual fund to include Management's Discussion of Fund Performance in its annual report to shareholders.

The proposed amendments would apply equally to funds that are small entities and to other funds. The Commission estimates that the proposed amendments may result in some one-time formatting and ongoing costs and burdens that would be imposed on all funds, but which may have a relatively greater impact on smaller firms. These include the costs related to disclosing the dollar cost associated with investing a standardized amount in a fund; and the requirement that funds file their complete portfolio schedules with the Commission on a quarterly basis. These costs also could include expenses for computer time, legal and accounting fees, information technology staff, and additional computer and telephone equipment. However, we believe the benefits that will result to shareholders through better information about their funds' investments, costs, and past performance justify these potential costs.

The Commission solicits comment on the effect the proposed amendments would have on small entities.

E. Duplicative, Overlapping or Conflicting Federal Rules

There are no rules that duplicate, overlap, or conflict with the proposed amendments.

F. Significant Alternatives

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish our stated objective, while minimizing any significant adverse impact on small issuers. In connection with the proposed amendments, the Commission considered the following alternatives: (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance and reporting requirements under the proposed amendments for small entities; (iii) the use of performance rather than design standards; and (iv) an exemption from coverage of the proposed amendments, or any part thereof, for small entities.

The Commission believes at the present time that special compliance or reporting requirements for small entities, or an exemption from coverage for small entities, would not be appropriate or consistent with investor protection. The proposed disclosure amendments would provide shareholders with greater transparency regarding a fund's investments, costs, and performance. Different disclosure requirements for small entities, such as reducing the frequency of portfolio holdings reports that small entities would have to file with the Commission, may create the risk that shareholders of those small entities would not have access to sufficient information to make an informed evaluation as to whether the fund is complying with its stated investment objective. We believe it is important that the disclosure that would be required by the proposed amendments be provided to shareholders by all funds, not just funds that are not considered small entities.

We have endeavored throughout these proposed amendments to minimize the regulatory burden on all funds, including small entities, while meeting our regulatory objectives. Small entities should benefit from the Commission's reasoned approach to the proposed amendments to the same degree as other investment companies. Further clarification, consolidation, or simplification of the proposals for funds that are small entities would be inconsistent with the Commission's concern for investor protection. Finally, we do not consider using performance rather than design standards to be consistent with our statutory mandate of investor protection in the present context.

G. Solicitation of Comments

The Commission encourages the submission of written comments with respect to any aspect of this analysis. Comment is specifically requested on the number of small entities that would be affected by the proposed amendments and the likely impact of the proposals on small entities. Commenters are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. These comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed amendments are adopted, and will be placed in the same public file as comments on the proposed amendments themselves. Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* To help us process and review your comments more efficiently, comments should be sent by hard copy or electronically, but not by both methods. All comment letters should refer to File No. S7–51–02; this file number should be included on the subject line if E-mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549–0102. Electronically submitted comment letters also will be posted on the Commission's Internet Web site (*http://www.sec.gov*).[122]

VIII. Consideration of Impact on the Economy

For purposes of the Small Business Enforcement Fairness Act of 1996,[123] a rule is ''major'' if it results or is likely to result in:

[sbull] An annual effect on the economy of $100 million or more;

[sbull] A major increase in costs or prices for consumers or individual industries; or

[sbull] Significant adverse effects on competition, investment, or innovation.

The Commission requests comment on the potential impact of the proposed amendments on the U.S. economy on an annual basis. Commenters are requested to provide empirical data to support their views.

IX. Statutory Authority

The Commission is proposing amendments to Regulation S–X pursuant to authority set forth in sections 5, 6, 7, 8, and 19(a) of the Securities Act (15 U.S.C. 77e, 77f, 77g, 77h, and 77s(a)]; sections 12, 13, 15(d), and 23(a) of the Exchange Act (15 U.S.C. 78*l*, 78m, 78o(d), and 78w(a)]; and sections 8, 24(a), 30, 31, and 38 of the Investment Company Act (15 U.S.C. 80a–8, 80a–24(a), 80a–29, 80a–30, and 80a–37]. The Commission is proposing new rule 30b1–4 and new Form N–Q pursuant to authority set forth in sections 8, 30, 31, and 38 of the

[122] We do not edit personal identifying information, such as names or electronic mail addresses, from electronic submissions. You should submit only information that you wish to make available publicly.

[123] Pub. L. 104–21, Title II, 110 Stat. 857 (1996).

Investment Company Act (15 U.S.C. 80a–8, 80a–29, 80a–30, and 80a–37]. The Commission is proposing amendments to Forms N–1A, N–2, and N–3 pursuant to authority set forth in sections 5, 6, 7, 10, 19(a), and 28 of the Securities Act (15 U.S.C. 77e, 77f, 77g, 77j, 77s(a), and 77z–3] and sections 6(c), 8, 24(a), 30, and 38 of the Investment Company Act (15 U.S.C. 80a–6(c), 80a–8, 80a–24(a), 80a–29, and 80a–37]. The Commission is proposing amendments to proposed Form N–CSR pursuant to authority set forth in sections 10(b), 13, 15(d), 23(a), and 36 of the Exchange Act (15 U.S.C. 78j(b), 78m, 78o(d), 78w(a), and 78mm] and sections 6(c), 8, 24(a), 30, and 38 of the Investment Company Act (15 U.S.C. 80a–6(c), 80a–8, 80a–24(a), 80a–29, and 80a–37].

List of Subjects

17 CFR Parts 210, 270, and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

17 CFR Parts 239 and 249

Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule and Form Amendments

For the reasons set out in the preamble, Title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, INVESTMENT ADVISERS ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. The authority citation for part 210 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 78c, 78j–1, 78*l*, 78m, 78n, 78o(d), 78q, 78u–5, 78w(a), 78*ll*, 78mm, 79e(b), 79j(a), 79n, 79t(a), 80a–8, 80a–20, 80a–29, 80a–30, 80a–37(a), 80b–3, 80b–11 unless otherwise noted.

2. Paragraph (c) of § 210.6–10 is revised to read as follows:

§ 210.6–10 What schedules are to be filed.

* * * * *

(c) *Management investment companies.* (1) Except as otherwise provided in the applicable form, the schedules specified in this paragraph shall be filed for management investment companies as of the dates of the most recent audited balance sheet and any subsequent unaudited statement being filed for each person or group.

Schedule I—Investments in securities of unaffiliated issuers. The schedule prescribed by § 210.12–12 shall be filed in support of caption 1 of each balance sheet.

Schedule II—Investments—other than securities. The schedule prescribed by § 210.12–13 shall be filed in support of caption 3 of each balance sheet. This schedule may be omitted if the investments, other than securities, at both the beginning and end of the period amount to less than one percent of the value of total investments (§ 210.6–04.4).

Schedule III—Investments in and advances to affiliates. The schedule prescribed by § 210.12–14 shall be filed in support of caption 2 of each balance sheet.

Schedule IV—Investments—securities sold short. The schedule prescribed by § 210.12–12A shall be filed in support of caption 10(a) of each balance sheet.

Schedule V—Open option contracts written. The schedule prescribed by § 210.12–12B shall be filed in support of caption 10(b) of each balance sheet.

(2) When permitted by the applicable form, the schedule specified in this paragraph may be filed for management investment companies as of the dates of the most recent audited balance sheet and any subsequent unaudited statement being filed for each person or group.

Schedule VI—Summary schedule of investments in securities of unaffiliated issuers. The schedule prescribed by § 210.12–12C may be filed in support of caption 1 of each balance sheet.

* * * * *

3. Add § 210.12–12C to read as follows:

§ 210.12–12C Summary schedule of investments in securities of unaffiliated issuers.

Column A	Column B	Column C	Column D
Name of issuer and title of issue [1, 2].	Balance held at close of period. Number of shares—principal amount of bonds and notes [3].	Value of each item at close of period [4, 5, 6, 7].	Percentage value compared to net assets

[1] List the 50 largest issues and any other securities the value of which exceeded one percent of net asset value of the registrant as of the close of the period in order of descending value. For purposes of determining whether the value of a security exceeds one percent of net asset value, aggregate and treat as a single issue all securities of any one issuer. List each issue separately, whether or not issued by a single issuer, except as provided in note 2. Restricted securities shall not be combined with unrestricted securities of the same issuer.

[2] Identify by an appropriate symbol or footnote the type of instrument. For purposes of the list, aggregate and treat as a single issue, respectively, (a) short-term debt instruments of the same issuer (indicating the range of interest rates and maturity dates), and (b) fully collateralized repurchase agreements (indicate in a footnote the range of dates of the repurchase agreements, the total purchase price of the securities, the total amount to be received upon repurchase, the range of repurchase dates, and description of securities subject to the repurchase agreements). Group all securities not separately listed in a category labeled ''Other Securities.''

[3] Indicate by an appropriate symbol each issue of securities which is non-income producing. Evidences of indebtedness and preferred shares may be deemed to be income producing if, on the respective last interest payment date or date for the declaration of dividends prior to the date of the related balance sheet, there was only a partial payment of interest or a declaration of only a partial amount of the dividends payable; in such case, however, each such issue shall be indicated by an appropriate symbol referring to a note to the effect that, on the last interest or dividend date, only partial interest was paid or partial dividends declared. If, on such respective last interest or dividend date, no interest was paid or no cash or in kind dividends declared, the issue shall not be deemed to be income producing. Common shares shall not be deemed to be income producing unless, during the last year preceding the date of the related balance sheet, there was at least one dividend paid upon such common shares.

[4] Total Column C. The total of column C should equal the total shown on the related balance sheet for investments in securities of unaffiliated issuers.

[5] Indicate by an appropriate symbol each issue of restricted securities. State the following in a footnote: (a) as to each such issue: (1) acquisition date, (2) carrying value per unit of investment at date of related balance sheet, *e.g.*, a percentage of current market value of unrestricted securities of the same issuer, *etc.*, and (3) the cost of such securities; (b) as to each issue acquired during the year preceding the date of the related balance sheet, the carrying value per unit of investment of unrestricted securities of the same issuer at: (1) the day the purchase price was agreed to; and (2) the day on which an enforceable right to acquire such securities was obtained; and (c) the aggregate value of all restricted securities and the percentage which the aggregate value bears to net assets.

[6] Indicate by an appropriate symbol each issue of securities held in connection with open put or call option contracts or loans for short sales.

[7] State in a footnote the following amounts based on cost for Federal income tax purposes: (a) Aggregate gross unrealized appreciation for all securities in which there is an excess of value over tax cost, (b) the aggregate gross unrealized depreciation for all securities in which there is an excess of tax cost over value, (c) the net unrealized appreciation or depreciation, and (d) the aggregate cost of securities for Federal income tax purposes.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

4. The authority citation for part 239 continues to read, in part, as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–24, 80a–26, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

5. The authority citation for part 249 continues to read, in part, as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted.

* * * * *

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

6. The general authority citation for part 270 is revised to read as follows:

Authority: 15 U.S.C. 80a–1 *et seq*., 80a–34(d), 80a–37, and 80a–39, unless otherwise noted.

* * * * *

7. Section 270.30b1–4 is added to read as follows:

§ 270.30b1–4 Quarterly report.

Every registered management investment company, other than a small business investment company registered on Form N–5 (§ § 239.24 and 274.5 of this chapter), shall file a quarterly report on Form N–Q (§ 274.129 of this chapter) not more than sixty calendar days after the close of the first and third quarters of each fiscal year. A registered management investment company that has filed a registration statement with the Commission registering its securities for the first time under the Securities Act of 1933 is relieved of this reporting obligation with respect to any reporting period or portion thereof prior to the date on which that registration statement becomes effective or is withdrawn.

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

8. The authority citation for part 274 is revised to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a–8, 80a–24, 80a–26, and 80a–29, and sections 3(a) and 302, Pub. L. No. 107–204, 116 Stat. 745, unless otherwise noted.

Section 274.128 is also issued under secs. 3(a) and 302, Pub. L. 107–204, 116 Stat. 745.

8a. Section 274.129 is added to read as follows:

§ 274.129 Form N–Q, quarterly schedule of portfolio holdings of registered management investment company.

This form shall be used by registered management investment companies, other than small business investment companies registered on Form N–5 (§ § 239.24 and 274.5 of this chapter), for quarterly reports to be filed for the first and third quarters of each fiscal year, pursuant to seciton 30 of the Investment Company Act of 1940 and § 270.30b1–4 of this chapter.

9. Form N–1A (referenced in § § 239.15A and 274.11A) is amended by:

a. Removing Item 5 and redesignating Items 6 through 30 as Items 5 through 29;

b. In paragraph B.2(b) of the General Instructions, revising the phrase ''(except Items 1, 2, 3, 5, and 9), B, and C (except Items 23(e) and (i)–(k))'' to read ''(except Items 1, 2, 3, and 8), B, and C (except Items 22(e) and (i)–(k))'';

c. In paragraph C.3(a) of the General Instructions, revising the reference ''Item 8'' to read ''Item 7'';

d. In paragraph C.3(d)(i), introductory text, of the General Instructions and in newly redesignated Item 6, the introductory text of paragraph (f), revising the reference ''Items 7(b)–(d) and 8(a)(2)'' to read ''Items 6(b)–(d) and 7(a)(2)'';

e. In paragraph (b)(1) of Item 1, removing the phrase '', if required by Item 5'';

f. Removing Instruction 5 to Item 1(b)(1) and redesignating Instruction 6 to Item 1(b)(1) as Instruction 5 to Item 1(b)(1);

g. In newly redesignated Instruction 5 to Item 1(b)(1) and paragraph (a)(2) of newly redesignated Item 7, revising the reference ''Item 7(f)'' to read ''Item 6(f)'';

h. In newly redesignated Instruction 5 to Item 1(b)(1), revising the reference ''Item 7(f)(3)'' to read ''Item 6(f)(3)'';

i. In Item 2(c)(2)(iii), revising the phrase ''Instruction 5 to Item 5(b)'' to read ''Instruction 5 to Item 21(b)(7)'';

j. In Instruction 1(a) to Item 2(c)(2), revising the reference ''Item 9(a)'' to read ''Item 8(a)'';

k. In Instruction 2(a) to Item 2(c)(2), revising the references ''Item 21(a)'', ''Item 21(b)(1)'', and ''Items 21(b)(2) and (3)'' to read ''Item 20(a)'', ''Item 20(b)(1)'', and ''Items 20(b)(2) and (3)'', respectively;

l. In Instruction 2(b) to Item 2(c)(2), revising the phrase ''Instruction 6 to Item 5(b)'' to read ''Instruction 6 to Item 21(b)(7)'';

m. In Instruction 2(d) to Item 2(c)(2), revising the references ''Item 21(b)(2)'' and ''Item 21'' to read ''Item 20(b)(2)'' and ''Item 20'', respectively;

n. In Instruction 4 to Item 2(c)(2), revising the phrase ''Instruction 11 of Item 5(b)'' to read ''Instruction 11 to Item 21(b)(7)'';

o. In Instruction 2(a)(i) to Item 3, revising the reference ''Item 8(a)'' to read ''Item 7(a)'';

p. In Instruction 5 to Item 4(b)(1), revising the reference ''Item 12(c)(1)'' to read ''Item 11(c)(1)''; q. In paragraph (e) of newly redesignated Item 11, revising the reference ''Item 9'' to read ''Item 8'';

r. Revising the reference ''Item 13'' to read ''Item 12'' in the following places:

i. Instruction 1 to newly redesignated Item 12;

ii. Paragraph (a)(2) of newly redesignated Item 12;

iii. Paragraph (b)(3) of newly redesignated Item 12;

iv. Paragraph (b)(6) of newly redesignated Item 12;

v. Instructions 6, 8, and 10 to newly redesignated Item 12(b)(7) each time it appears;

vi. Paragraph (b)(8) of newly redesignated Item 12 each time it appears;

vii. Instructions 2, 4, 6, 7, and 8 to newly redesignated Item 12(b)(8) each time it appears; and

viii. Paragraph (b)(9)(iii) of newly redesignated Item 12.

s. In Instruction to paragraph (a) of newly redesignated Item 17, revising the reference ''Item 18(a)'' to read ''Item 17(a)'';

t. In Instruction 4 to paragraph (c) of newly redesignated Item 17 and paragraph (k) of newly redesignated Item 22, revising the reference ''Item 22'' to read ''Item 21'';

u. In Instruction 1 to paragraph (c) of newly redesignated Item 19, revising the references ''Item 8(b)(2)'', ''Item 15(d)'', and ''Item 30'' to read ''Item 7(b)(2)'', ''Item 14(d)'', and ''Item 29'', respectively;

v. In paragraph (b) of newly redesignated Item 26, revising the reference ''Item 20'' to read ''Item 19'';

w. In Instruction 2 to paragraph (c) of newly redesignated Item 26, revising the reference ''Item 20(c)'' to read ''Item 19(c)'';

x. In Instruction 1 to newly redesignated Item 28, revising the reference ''Item 15'' to read ''Item 14''; and

y. Revising Instruction 5 to Item 1(b)(1) and newly redesignated Item 21.

The revisions read as follows.

Note: The text of Form N–1A does not and this amendment will not appear in the Code of Federal Regulations.

Form N–1A

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Item 1. Front and Back Cover Pages

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(b) * * *

(1) * * *

Instructions.

* * * * *

5. A Money Market Fund may omit the sentence indicating that a reader will find in the Fund's annual report a discussion of the market conditions and investment strategies that significantly affect the Fund's performance during its last fiscal year.

* * * * *

Item 21. Financial Statements

(a) *Registration Statement.* Include, in a separate section following the responses to the preceding Items, the financial statements and schedules required by Regulation S–X. The specimen price-make-up sheet required by Instruction 4 to Item 17(c) may be provided as a continuation of the balance sheet specified by Regulation S–X.

Instructions

1. The statements of any subsidiary that is not a majority-owned subsidiary required by Regulation S–X may be omitted from Part B and included in Part C.

2. In addition to the requirements of rule 3–18 of Regulation S–X (17 CFR 210.3–18), any Fund registered under the Investment Company Act that has not previously had an effective registration statement under the Securities Act must include in its initial registration statement under the Securities Act any additional financial statements and condensed financial information (which need not be audited) necessary to make the financial statements and condensed financial information included in the registration statement current as of a date within 90 days prior to the date of filing.

(b) *Annual Report.* Every annual report to shareholders required by rule 30e-1 must contain the following:

(1) *Financial Statements.* The audited financial statements required, and for the periods specified, by Regulation S–X.

Instructions.

1. *Schedule VI—Summary schedule of investments in securities of unaffiliated issuers* (17 CFR 210.12–12C) may be included in the financial statements in lieu of *Schedule I—Investments in securities of unaffiliated issuers* (17 CFR 210.12–12) if: (a) the Fund states in the report that the Fund's complete schedule of investments in securities of unaffiliated issuers is available (i) without charge, upon request, by calling a specified toll-free (or collect) telephone number; (ii) on the Fund's Web site, if applicable; and (iii) on the Commission's Web site at *http://www.sec.gov;* and (b) whenever the Fund (or financial intermediary through which shares of the Fund may be purchased or sold) receives a request for the Fund's schedule of investments in securities of unaffiliated issuers, the Fund (or financial intermediary) sends a copy of *Schedule I—Investments in securities of unaffiliated issuers* within 3 business days of receipt by first-class mail or other means designed to ensure equally prompt delivery.

2. In the case of a Money Market Fund, *Schedule I—Investments in securities of unaffiliated issuers* (17 CFR 210.12–12C) may be omitted from its financial statements, provided that: (a) the Fund states in the report that the Fund's complete schedule of investments in securities of unaffiliated issuers is available (i) without charge, upon request, by calling a specified toll-free (or collect) telephone number; (ii) on the Fund's Web site, if applicable; and (iii) on the Commission's Web site at *http://www.sec.gov;* and (b) whenever the Fund (or financial intermediary through which shares of the Fund may be purchased or sold) receives a request for the Fund's schedule of investments in securities of unaffiliated issuers, the Fund (or financial intermediary) sends a copy of *Schedule I—Investments in securities of unaffiliated issuers* within 3 business days of receipt by first-class mail or other means designed to ensure equally prompt delivery.

(2) *Condensed Financial Information.* The condensed financial information required by Item 8(a) with at least the most recent fiscal year audited.

(3) *Remuneration Paid to Directors, Officers, and Others.* Unless shown elsewhere in the report as part of the financial statements required by paragraph (b)(1), the aggregate remuneration paid by the Fund during the period covered by the report to:

(i) All directors and all members of any advisory board for regular compensation;

(ii) Each director and each member of an advisory board for special compensation;

(iii) All officers; and

(iv) Each person of whom any officer or director of the Fund is an affiliated person.

(4) *Changes in and Disagreements with Accountants.* The information concerning changes in and disagreements with accountants and on accounting and financial disclosure required by Item 304 of Regulation S–K (17 CFR 229.304).

(5) *Management Information.* The management information required by Item 12(a)(1).

(6) *Availability of Additional Information about Fund Directors.* A statement that the SAI includes additional information about Fund directors and is available, without charge, upon request, and a toll-free (or collect) telephone number for shareholders to call to request the SAI.

(7) *Management's Discussion of Fund Performance.* Disclose the following information unless the Fund is a Money Market Fund:

(i) Discuss the factors that materially affected the Fund's performance during the most recently completed fiscal year, including the relevant market conditions and the investment strategies and techniques used by the Fund's investment adviser.

(ii)(A)Provide a line graph comparing the initial and subsequent account values at the end of each of the most recently completed 10 fiscal years of the Fund (or for the life of the Fund, if shorter), but only for periods subsequent to the effective date of the Fund's registration statement. Assume a $10,000 initial investment at the beginning of the first fiscal year in an appropriate broad-based securities market index for the same period.

(B) In a table placed within or next to the graph, provide the Fund's average annual total returns for the 1-, 5-, and 10-year periods as of the end of the last day of the most recent fiscal year (or for the life of the Fund, if shorter), but only for periods subsequent to the effective date of the Fund's registration statement. Average annual total returns should be computed in accordance with Item 20(b)(1). Include a statement accompanying the graph and table to the effect that past performance does not predict future performance and that the graph and table do not reflect the deduction of taxes that a shareholder would pay on fund distributions or the redemption of fund shares.

Instructions.

1. *Line Graph Computation.*

(a) Assume that the initial investment was made at the offering price last calculated on the business day before the first day of the first fiscal year.

(b) Base subsequent account values on the net asset value of the Fund last calculated on the last business day of the first and each subsequent fiscal year.

(c) Calculate the final account value by assuming the account was closed and redemption was at the price last calculated on the last business day of the most recent fiscal year.

(d) Base the line graph on the Fund's required minimum initial investment if that amount exceeds $10,000.

2. *Sales Load.* Reflect any sales load (or any other fees charged at the time of purchasing shares or opening an account) by beginning the line graph at the amount that actually would be invested (*i.e.*, assume that the maximum sales load, and other charges deducted from payments, is deducted from the initial $10,000 investment). For a Fund whose shares are subject to a contingent deferred sales load, assume the deduction of the maximum deferred sales load (or other charges) that would apply for a complete redemption that received the price last calculated on the last business day of the most recent fiscal year. For any other deferred sales load, assume that the deduction is in the amount(s) and at the time(s) that the sales load actually would have been deducted.

3. *Dividends and Distributions.* Assume reinvestment of all of the Fund's dividends and distributions on the reinvestment dates during the period, and reflect any sales load imposed upon reinvestment of dividends or distributions or both.

4. *Account Fees.* Reflect recurring fees that are charged to all accounts.

(a) For any account fees that vary with the size of the account, assume a $10,000 account size.

(b) Reflect, as appropriate, any recurring fees charged to shareholder accounts that are paid other than by redemption of the Fund's shares.

(c) Reflect an annual account fee that applies to more than one Fund by allocating the fee in the following manner: Divide the total amount of account fees collected during the year by the Funds' total average net assets, multiply the resulting percentage by the average account value for each Fund and reduce the value of each hypothetical account at the end of each fiscal year during which the fee was charged.

5. *Appropriate Index.* For purposes of this Item, an ''appropriate broad-based securities

market index'' is one that is administered by an organization that is not an affiliated person of the Fund, its investment adviser, or principal underwriter, unless the index is widely recognized and used. Adjust the index to reflect the reinvestment of dividends on securities in the index, but do not reflect the expenses of the Fund.

6. *Additional Indexes.* A Fund is encouraged to compare its performance not only to the required broad-based index, but also to other more narrowly based indexes that reflect the market sectors in which the Fund invests. A Fund also may compare its performance to an additional broad-based index, or to a non-securities index (*e.g.*, the Consumer Price Index), so long as the comparison is not misleading.

7. *Change in Index.* If the Fund uses an index that is different from the one used for the immediately preceding fiscal year, explain the reason(s) for the change and compare the Fund's annual change in the value of an investment in the hypothetical account with the new and former indexes.

8. *Other Periods.* The line graph may cover earlier fiscal years and may compare the ending values of interim periods (*e.g.*, monthly or quarterly ending values), so long as those periods are after the effective date of the Fund's registration statement.

9. *Scale.* The axis of the graph measuring dollar amounts may use either a linear or a logarithmic scale.

10. *New Funds.* A New Fund (as defined in Instruction 5 to Item 3) is not required to include the information specified by this Item in its prospectus (or annual report), unless Form N–1A (or the annual report) contains audited financial statements covering a period of at least 6 months.

11. *Change in Investment Adviser.* If the Fund has not had the same investment adviser for the previous 10 fiscal years, the Fund may begin the line graph on the date that the current adviser began to provide advisory services to the Fund so long as:

(a) Neither the current adviser nor any affiliate is or has been in ''control'' of the previous adviser under section 2(a)(9) (15 U.S.C. 80a–2(a)(9)];

(b) The current adviser employs no officer(s) of the previous adviser or employees of the previous adviser who were responsible for providing investment advisory or portfolio management services to the Fund; and

(c) The graph is accompanied by a statement explaining that previous periods during which the Fund was advised by another investment adviser are not shown.

(iii) Discuss the effect of any policy or practice of maintaining a specified level of distributions to shareholders on the Fund's investment strategies and per share net asset value during the last fiscal year. Also discuss the extent to which the Fund's distribution policy resulted in distributions of capital.

(c) *Semi-Annual Report.* Every semi-annual report to shareholders required by rule 30e–1 must contain the following (which need not be audited):

(1) *Financial Statements.* The financial statements required by Regulation S–X for the period commencing either with:

(i) The beginning of the Fund's fiscal year (or date of organization, if newly organized); or

(ii) A date not later than the date after the close of the period included in the last report under rule 30e–1 and the most recent preceding fiscal year.

Instruction. Instructions 1 and 2 to Item 21(b)(1) also apply to this Item 21(c)(1).

(2) *Condensed Financial Information.* The condensed financial information required by Item 8(a), for the period of the report as specified by paragraph (c)(1), and the most recent preceding fiscal year.

(3) *Remuneration Paid to Directors, Officers, and Others.* Unless shown elsewhere in the report as part of the financial statements required by paragraph (c)(1), the aggregate remuneration paid by the Fund during the period covered by the report to the persons specified under paragraph (b)(3).

(4) *Changes in and Disagreements with Accountants.* The information concerning changes in and disagreements with accountants and on accounting and financial disclosure required by Item 304 of Regulation S–K (17 CFR 229.304).

(d) *Annual and Semi-Annual Reports.* Every annual and semi-annual report to shareholders required by rule 30e–1 must contain the following:

(1) *Expense Example.* The following information regarding expenses for the period:

Example:

As a shareholder of the Fund, you incur two types of costs: (1) transaction costs, including sales charges (loads) on purchase payments, reinvested dividends, or other distributions, redemption fees, and exchange fees; and (2) ongoing costs, including management fees, distribution (and/or service) (12b–1) fees, and other Fund expenses. This Example is intended to help you understand your ongoing costs (in dollars) of investing in the Fund and to compare this cost with the ongoing cost of investing in other mutual funds.

The Example assumes that you had a $10,000 investment in the Fund at the beginning of the reporting period and continued to hold your shares at the end of the reporting period. The Example uses the Fund's actual operating expenses for the period [insert dates], including account fees.

The Example contains two numbers. The first number uses the actual return earned by the Fund during the period from [insert dates] to show the actual ongoing costs incurred on a $10,000 investment.

The second number uses a hypothetical 5% annual return. You may use this number to compare the ongoing costs of investing in the Fund over the current period with the ongoing costs of investing in other Funds, which appear in their shareholder reports. Please note that the Example does not reflect any transactional costs, such as sales charges (loads), redemption fees, or exchange fees. Therefore, the Example is useful in comparing ongoing costs only, and will not help you determine the relative total costs of owning different funds. In addition, if these transactional costs were included, your costs would have been higher.

Although your actual ongoing costs may have been higher or lower, based on the assumptions described, the costs would have been:

$—— (using the Fund's actual return for the reporting period); and

$—— (using a hypothetical 5% return for the reporting period).

Instructions.

1. General.

(a) Round all dollar figures to the nearest dollar.

(b) Include the narrative explanations in the order indicated. A Fund may modify the narrative explanations if the explanation contains comparable information to that shown. A Fund may eliminate any parts of the narrative explanations that are inapplicable. For example, a Fund that does not charge loads need not include the statement that the Example does not reflect loads or that costs would be higher if loads were included.

(c)(i) If the Fund is a Feeder Fund, reflect the aggregate expenses of the Feeder Fund and the Master Fund. In a footnote to the Example, state that the Example reflects the expenses of both the Feeder and Master Funds.

(ii) If the report covers more than one Class of a Multiple Class Fund or more than one Feeder Fund that invests in the same Master Fund, provide a separate Example for each Class or Feeder Fund.

2. Computation

(a)(i) In determining the Fund's ''actual operating expenses'' for purposes of this example, include all expenses that are deducted from the Fund's assets or charged to all shareholder accounts, including ''Management Fees,'' ''Distribution (and/or Service) (12b–1) Fees,'' and ''Other Expenses'' as those terms are defined in Instruction 3 to Item 3 of this form as modified by Instructions 2(a)(ii) and (c)(i) to this Item. Reflect recurring and non-recurring fees charged to all investors other than any exchange fees, sales charges (loads), or fees charged upon redemption of the Fund's shares. The amount of expenses deducted from the Fund's assets are the amounts shown as expenses in the Fund's statement of operations (including increases resulting from complying with paragraph 2(g) of rule 6–07 of Regulation S–X (17 CFR 210.6–07)).

(ii) For purposes of this Item 21(d)(1), ''Other Expenses'' include extraordinary expenses as determined under generally accepted accounting principles (*see* Accounting Principles Board Opinion No. 30). If extraordinary expenses were incurred that materially affected the Fund's ''Other Expenses,'' the Fund may disclose in a footnote to the Example what ''actual operating expenses'' would have been had the extraordinary expenses not been included.

(b) Assume reinvestment of all dividends and distributions.

(c)(i) Base the percentages of ''actual operating expenses'' on amounts incurred during the reporting period. ''Actual operating expenses'' should reflect actual expenses after expense reimbursement or fee

waiver arrangements that reduced expenses during the reporting period.

(ii) If there have been any increases or decreases in Fund operating expenses that occurred during the reporting period (or that have occurred or are expected to occur during the current fiscal year) that would have materially affected the information in the Example had those changes been in place throughout the reporting period, restate in a footnote to the Example the expense information using the current fees as if they had been in effect throughout the entire reporting period. A change in Fund operating expenses does not include a decrease in operating expenses as a percentage of assets due to economies of scale or breakpoints in a fee arrangement resulting from an increase in the Fund's assets.

(d) Reflect any shareholder account fees collected by more than one Fund by allocating the total amount of the fees collected during the reporting period for all such Funds to each Fund in proportion to the relative average net assets of the Fund. A Fund that charges account fees based on a minimum account requirement exceeding $10,000 may adjust its account fees based on the amount of the fee in relation to the Fund's minimum account requirement.

(2) *Graphical Representation of Holdings.* One or more tables, charts, or graphs depicting the securities holdings of the Fund by reasonably identifiable categories (*e.g.*, type of security, industry sector, geographic region, credit quality, or maturity) showing the percentage of net asset value attributable to each. The categories should be selected, and the format of the presentation designed, to provide the most useful information to investors about the types of investments made by the Fund, given its investment objectives. Credit quality should be the ratings grade assigned by a nationally recognized statistical rating organization (''NRSRO''), as that term is used in paragraphs (c)(2)(vi)(E), (F), and (H) of Rule 15c3–1 under the Exchange Act (17 CFR 240.15c3–1(c)(2)(vi)(E), (F), and (H)). The fund should use ratings of only one NRSRO.

(3) *Statement Regarding Availability of Quarterly Portfolio Schedule.* A statement that: (i) the Fund files its complete schedule of portfolio holdings with the Commission for the first and third quarters of each fiscal year on Form N–Q; (ii) the Fund's Forms N–Q are available on the Commission's Website at *http://www.sec.gov;* (iii) the Fund's Forms N–Q may be reviewed and copied at the Commission's Public Reference Room in Washington, DC, and that information on the operation of the Public Reference Room may be obtained by calling 1–800–SEC–0330; and (iv) if the Fund makes the information on Form N–Q available to shareholders on its website or upon request, a description of how the information may be obtained from the Fund.

10. Form N–2 (referenced in §§ 239.14 and 274.11a–1) is amended by:

a. Revising the fourth paragraph and subparagraph 2 of General Instruction F;

b. Revising Instructions 4.a. and 5.a. to Item 23;

c. Redesignating Instruction 6 to Item 23 as Instruction 8; and

d. Adding new Instructions 6 and 7 to Item 23.

The additions and revisions read as follows:

Note: The text of Form N–2 does not and this amendment will not appear in the Code of Federal Regulations

Form N–2

* * * * *

General Instructions

* * * * *

F. Incorporation by Reference

A Registrant may incorporate by reference into the prospectus or the SAI in response to Item 4.1 or 23 of this form the information contained in Form N–CSR (17 CFR 249.331 and 274.128) or any report to shareholders meeting the requirements of section 30(e) of the 1940 Act (15 U.S.C. 80a–29(e)] and Rule 30e–1 (17 CFR 270.30e–1) thereunder (and a Registrant that has elected to be regulated as a business development company may so incorporate into Items 4.2, 8.6.c, or 23 of this form the information contained in its annual report under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (the ''Exchange Act'')), provided:

* * * * *

2. The Registrant states in the prospectus or the SAI, at the place where the information required by Items 4.1, 4.2, 8.6.c., or 23 of this form would normally appear, that the information is incorporated by reference from a report to shareholders or a report on Form N–CSR. (The Registrant also may describe briefly, in either the prospectus, the SAI, or Part C of the registration statement (in response to Item 24.1) those portions of the report to shareholders or report on Form N–CSR that are not incorporated by reference and are not a part of the registration statement.); and

* * * * *

Item 23. Financial Statements

* * * * *

Instructions.

* * * * *

4. * * *

a. The audited financial statements required by Regulation S–X for the periods specified by Regulation S–X, modified to permit the omission of the statements and schedules that may be omitted from Part B of the registration statement by Instruction 2 above and as permitted by Instruction 7 below;

* * * * *

5. * * *

a. The financial statements required by Regulation S–X for the period commencing either with (1) the beginning of the company's fiscal year (or date of organization, if newly organized); or (2) a date not later than the date after the close of the period included in the last report conforming with the requirements of Rule 30e–1 and the most recent preceding fiscal year, modified to permit the omission of the statements and schedules that may be omitted from part B of the registration statement by Instruction 2 above and as permitted by Instruction 7 below;

* * * * *

6. Every annual and semi-annual report to shareholders required by Section 30(e) of the 1940 Act and Rule 30e–1 thereunder shall contain the following information:

a. One or more tables, charts, or graphs depicting the securities holdings of the Registrant by reasonably identifiable categories (*e.g.*, type of security, industry sector, geographic region, credit quality, or maturity) showing the percentage of net asset value attributable to each. The categories should be selected, and the format of the presentation designed, to provide the most useful information to investors about the types of investments made by the Registrant, given its investment objectives. Credit quality should be the ratings grade assigned by a nationally recognized statistical rating organization (''NRSRO''), as that term is used in paragraphs (c)(2)(vi)(E), (F) and (H) of Rule 15c3–1 under the Exchange Act (17 CFR 240.15c3–1(c)(2)(vi)(E), (F) and (H)). The Registrant should use ratings of only one NRSRO; and

b. A statement that: (i) The Registrant files its complete schedule of portfolio holdings with the Commission for the first and third quarters of each fiscal year on Form N–Q; (ii) the Registrant's Forms N–Q are available on the Commission's Web site at *http://www.sec.gov;* (iii) the Registrant's Forms N–Q may be reviewed and copied at the Commission's Public Reference Room in Washington, DC, and that information on the operation of the Public Reference Room may be obtained by calling 1–800–SEC–0330; and (iv) if the Registrant makes the information on Form N–Q available to shareholders on its website or upon request, a description of how the information may be obtained from the Registrant.

7. *Schedule VI—Summary schedule of investments in securities of unaffiliated issuers* (17 CFR 210.12–12C) may be included in the financial statements required under Instructions 4.a. and 5.a. of this Item in lieu of *Schedule I—Investments in securities of unaffiliated issuers* (17 CFR 210.12–12) if: (a) The Registrant states in the report that the Registrant's complete schedule of investments in securities of unaffiliated issuers is available (i) without charge, upon request, by calling a specified toll-free (or collect) telephone number; (ii) on the Registrant's website, if applicable; and (iii) on the Commission's Web site at *http://www.sec.gov;* and (b) whenever the Registrant (or financial intermediary through which shares of the Registrant may be purchased or sold) receives a request for the Registrant's schedule of investments in securities of unaffiliated issuers, the Registrant (or financial intermediary) sends a copy of *Schedule I—Investments in securities of unaffiliated issuers* within 3 business days of receipt by first-class mail or other means designed to ensure equally prompt delivery.

* * * * *

11. Form N–3 (referenced in §§ 239.17 and 274.11b) is amended by:

a. Revising the fourth paragraph and subparagraph 2 of General Instruction G;

b. Revising Instructions 4.i. and 5.i. to Item 27(a);

c. Redesignating Instruction 6 to Item 27(a) as Instruction 8 to Item 27(a);

d. Adding new Instructions 6 and 7 to Item 27(a); and

e. Revising newly redesignated Instruction 8 to Item 27(a).

The additions and revisions read as follows.

Note: The text of Form N–3 does not and this amendment will not appear in the Code of Federal Regulations.

Form N–3

* * * * *

General Instructions

* * * * *

G. Incorporation by Reference

Subject to these rules, a Registrant may incorporate by reference into the prospectus or the Statement of Additional Information in response to Items 4(a) or 27 of Form N–3 the information in Form N–CSR (17 CFR 249.331 and 274.128) or any report to contractowners meeting the requirements of Section 30(e) of the 1940 Act (15 U.S.C. 80a–29(e)) and Rule 30e–1 (17 CFR 270.30e–1) provided:

* * * * *

2. The Registrant states in the prospectus or the Statement of Additional Information, at the place where the information would normally appear, that the information is incorporated by reference from a report to securityholders or a report on Form N–CSR. The Registrant may also describe, in either the prospectus, the Statement of Additional Information, or Part C of the Registration Statement (in response to Item 28(a)), any parts of the report to securityholders or the report on Form N–CSR that are not incorporated by reference and are not a part of the Registration Statement; and

* * * * *

Item 27. Financial Statements

(a) * * *

Instructions:

* * * * *

4. * * *

(i) The audited financial statements required by Regulation S–X for the periods specified by Regulation S–X, as modified by Instruction 2 above and as permitted by Instruction 7 below;

* * * * *

5. * * *

(i) The financial statements required by Regulation S–X for the period commencing either with (A) the beginning of the separate account's fiscal year (or date of organization, if newly organized); or (B) a date not later than the date after the close of the period included in the last report conforming with the requirements of Rule 30e–1 and the most recent preceding fiscal year, as modified by Instruction 2 above and as permitted by Instruction 7 below;

* * * * *

6. Every report required by Section 30(e) of the 1940 Act and Rule 30e–1 under it (17 CFR 270.30e–1) shall contain the following information:

(i) One or more tables, charts, or graphs depicting the securities holdings of the Registrant by reasonably identifiable categories (*e.g.*, type of security, industry sector, geographic region, credit quality, or maturity) showing the percentage of net asset value attributable to each. If the Registrant has sub-accounts, provide the information separately for each sub-account. The categories should be selected, and the format of the presentation designed, to provide the most useful information to investors about the types of investments made by the Registrant, given its investment objectives. Credit quality should be the ratings grade assigned by a nationally recognized statistical rating organization (''NRSRO''), as that term is used in paragraphs (c)(2)(vi)(E), (F), and (H) of § 240.15c3–1 of Rule 15c3–1 under the Exchange Act (17 CFR 240.15c3–1(c)(2)(vi)(E), (F), and (H)). The Registrant should use ratings of only one NRSRO; and

(ii) A statement that: (A) The Registrant files its complete schedule of portfolio holdings with the Commission for the first and third quarters of each fiscal year on Form N–Q; (B) the Registrant's Forms N–Q are available on the Commission's Web site at *http://www.sec.gov;* (C) the Registrant's Forms N–Q may be reviewed and copied at the Commission's Public Reference Room in Washington, DC, and that information on the operation of the Public Reference Room may be obtained by calling 1–800–SEC–0330; and (D) if the Registrant makes the information on Form N–Q available to contractowners on its website or upon request, a description of how the information may be obtained from the Registrant.

7.(i) *Schedule VI—Summary schedule of investments in securities of unaffiliated issuers* (17 CFR 210.12–12C) may be included in the financial statements required under Instructions 4.(i) and 5.(i) of this Item in lieu of *Schedule I—Investments in securities of unaffiliated issuers* (17 CFR 210.12–12) if: (A) the Registrant states in the report that the Registrant's complete schedule of investments in securities of unaffiliated issuers is available (*1*) without charge, upon request, by calling a specified toll-free (or collect) telephone number; (*2*) on the Registrant's Web site, if applicable; and (*3*) on the Commission's Web site at *http://www.sec.gov;* and (B) whenever the Registrant (or financial intermediary through which shares of the Registrant may be purchased or sold) receives a request for the Registrant's schedule of investments in securities of unaffiliated issuers, the Registrant (or financial intermediary) sends a copy of *Schedule I—Investments in securities of unaffiliated issuers* within 3 business days of receipt by first-class mail or other means designed to ensure equally prompt delivery.

(ii) In the case of a Registrant or sub-account of a Registrant that holds itself out as a money market account or sub-account and meets the maturity, quality, and diversification requirements of rule 2a–7 (17 CFR 270.2a–7) under the 1940 Act, *Schedule I—Investments in securities of unaffiliated issuers* (17 CFR 210.12–12C) may be omitted from the financial statements required under Instructions 4.(i) and 5.(i) of this Item, provided that: (A) the Registrant states in the report that the Registrant's complete schedule of investments in securities of unaffiliated issuers is available (*1*) without charge, upon request, by calling a specified toll-free (or collect) telephone number; (*2*) on the Registrant's website, if applicable; and (*3*) on the Commission's Web site at *http://www.sec.gov;* and (B) whenever the Registrant (or financial intermediary through which shares of the Registrant may be purchased or sold) receives a request for the Registrant's schedule of investments in securities of unaffiliated issuers, the Registrant (or financial intermediary) sends a copy of *Schedule I—Investments in securities of unaffiliated issuers* within 3 business days of receipt by first-class mail or other means designed to ensure equally prompt delivery.

8. See General Instruction G regarding incorporation by reference.

* * * * *

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT

Company Act of 1940

12. Form N–CSR (referenced in § § 249.331 and 274.128) is amended by:

a. Redesignating Items 7 and 8 as Items 8 and 9; and

b. Adding new Item 7 to read as follows:

Note: The text of Form N-CSR does not and this amendment will not appear in the Code of Federal Regulations.

Form N–CSR

* * * * *

Item 7. Schedule of Investments.

File *Schedule I–Investments in securities of unaffiliated issuers* as of the close of the reporting period as set forth in § 210.12–12 of Regulation S–X (17 CFR 210.12–12), unless the schedule is included as part of the report to shareholders filed under Item 9(a) of this Form.

Instruction.

Schedule I—Investments in securities of unaffiliated issuers filed under this Item must be audited, except that in the case of a report on this Form N–CSR as of the end of a fiscal half-year *Schedule I—Investments in securities of unaffiliated issuers* need not be audited.

13. Add Form N–Q (referenced in § 274.129) to read as follows:

Note: The text of Form N–Q will not appear in the Code of Federal Regulations.

United States Securities and Exchange Commission, Washington, DC 20549

Form N–Q—Quarterly Schedule of Portfolio Holdings of Registered Management Investment Company

Investment Company Act file number _____

(Exact name of registrant as specified in charter)

(Address of principal executive offices)

(Zip code)

(Name and address of agent for service)

Registrant's telephone number, including area code: _____

Date of fiscal year end: _____

Date of reporting period: _____

Form N–Q is to be used by registered management investment companies, other than small business investment companies registered on Form N–5 (§§ 239.24 and 274.5 of this chapter), to file reports with the Commission, not later than sixty days after the close of the first and third fiscal quarters, containing a schedule of portfolio holdings pursuant to section 30 of the Investment Company Act of 1940 and rule 30b1–4 thereunder (17 CFR 270.30b1–4). The Commission may use the information provided on Form N–Q in its regulatory, disclosure review, inspection, and policymaking roles.

A registrant is required to disclose the information specified by Form N–Q, and the Commission will make this information public. A registrant is not required to respond to the collection of information contained in Form N–Q unless the Form displays a currently valid Office of Management and Budget (''OMB'') control number. Please direct comments concerning the accuracy of the information collection burden estimate and any suggestions for reducing the burden to the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. The OMB has reviewed this collection of information under the clearance requirements of 44 U.S.C. § 3507.

General Instructions

A. Rule as to Use of Form N–Q

Form N–Q is to be used for quarterly reports pursuant to Section 30 of the Investment Company Act of 1940 (the ''Act'') and Rule 30b1–4 under the Act (17 CFR 270.30b1–4) by all registered management investment companies, other than small business investment companies registered on Form N–5 (§§ 239.24 and 274.5 of this chapter), to file their complete portfolio holdings as of the close of the first and third quarters of each fiscal year. A report on this form shall be filed not later than sixty days after the close of the covered reporting period.

B. Application of General Rules and Regulations

The General Rules and Regulations under the Act contain certain general requirements that are applicable to reporting on any form under the Act. These general requirements should be carefully read and observed in the preparation and filing of reports on this form, except that any provision in the form or in these instructions shall be controlling.

C. Preparation of Report

1. This Form is not to be used as a blank form to be filled in, but only as a guide in preparing the report in accordance with Rules 8b–11 (17 CFR 270.8b–11) and 8b–12 (17 CFR 270.8b–12) under the Act. The Commission does not furnish blank copies of this form to be filled in for filing.

2. These general instructions are not to be filed with the report.

D. Incorporation by Reference

A registrant may incorporate by reference information required by the Form. All incorporation by reference must comply with the requirements of this Form and the following rules on incorporation by reference: Rule 10(d) of Regulation S–K under the Securities Act of 1933 (17 CFR 229.10(d)) (general rules on incorporation by reference, which, among other things, prohibit, unless specifically required by this Form, incorporating by reference a document that includes incorporation by reference to another document, and limits incorporation to documents filed within the last 5 years, with certain exceptions); Rule 303 of Regulation S–T (17 CFR 232.303) (specific requirements for electronically filed documents); Rules 12b–23 and 12b–32 under the Securities Exchange Act of 1934 (additional rules on incorporation by reference for reports filed pursuant to Sections 13 and 15(d) of the Securities Exchange Act of 1934); and Rules 0–4, 8b–23, and 8b–32 under the Act (17 CFR 270.0–4, 270.8b–23, and 270.8b–32) (additional rules on incorporation by reference for investment companies).

E. Definitions

Unless the context clearly indicates the contrary, terms used in this Form N–Q have meanings as defined in the Act and the rules and regulations thereunder. Unless otherwise indicated, all references in the form to statutory sections or to rules are sections of the Act and the rules and regulations thereunder.

F. Signature and Filing of Report

1. If the report is filed in paper pursuant to a hardship exemption from electronic filing (see Item 201 *et seq.* of Regulation S–T (17 CFR 232.201 *et seq.*)), eight complete copies of the report shall be filed with the Commission. At least one complete copy of the report filed with the Commission must be manually signed. Copies not manually signed must bear typed or printed signatures.

2.(a) The report must be signed by the registrant, and on behalf of the registrant by its principal financial officer or officers.

(b) The name and title of each person who signs the report shall be typed or printed beneath his or her signature. Attention is directed to Rule 8b–11 under the Act (17 CFR 270.8b–11) concerning manual signatures and signatures pursuant to powers of attorney.

Item 1. Schedule of Investments

File the schedules as of the close of the reporting period as set forth in §§ 210.12–12—12–14 of Regulation S–X (17 CFR 210.12–12—12–14). The schedules need not be audited.

SIGNATURES

(*See* General Instruction F)

Pursuant to the requirements of the Investment Company Act of 1940, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

(Registrant) _____

By (Signature and Title)* _____

Date _____

*Print the name and title of each signing officer under his or her signature.

By the Commission.

Dated: December 18, 2002.

Margaret H. McFarland,

Deputy Secretary.

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Part III

Securities and Exchange Commission

17 CFR Parts 230 and 240

Exemption for Standardized Options From Provisions of the Securities Act of 1933 and From the Registration Requirements of the Securities Exchange Act of 1934; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230 and 240

[Release Nos. 33–8171; 34–47082; File No. S7–29–02]

RIN 3235–AI55

Exemption for Standardized Options From Provisions of the Securities Act of 1933 and From the Registration Requirements of the Securities Exchange Act of 1934

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: We are adopting new exemptions under the Securities Act of 1933 and the Securities Exchange Act of 1934 for most standardized options. The rules adopted today exempt standardized options issued by registered clearing agencies and traded on a registered national securities exchange or a registered national securities association from all provisions of the Securities Act, other than the section 17 antifraud provision, as well as the Exchange Act registration requirements. The rules also clarify that a security futures product that is cleared by a registered clearing agency or that is exempt from registration and traded on a registered national securities exchange or a registered national securities association is exempt from the registration requirements of Exchange Act section 12(g). The rules ensure comparable regulatory treatment of standardized options and security futures products.

EFFECTIVE DATE: The rules are effective January 2, 2003.

FOR FURTHER INFORMATION CONTACT: N. Sean Harrison, Special Counsel, Office of Rulemaking, Division of Corporation Finance at (202) 942–2910, at the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0312.

SUPPLEMENTARY INFORMATION: We are adopting new rule 238 [1] under the Securities Act of 1933 [2] and new rule 12a–9 [3] under the Securities Exchange Act of 1934.[4] We also are amending Exchange Act rules 9b–1[5] and 12h–1.[6]

I. Background

In July 2002, we proposed amendments that would exempt standardized options issued by registered clearing agencies and traded on a registered national securities exchange or an automated quotation system of a registered national securities association from all provisions of the Securities Act, other than the section 17 antifraud provision, as well as the Exchange Act registration requirements.[7] The purpose of the proposals was to harmonize the treatment of standardized options with security futures products under the Securities Act and the Exchange Act, and to remedy the longstanding paradox of applying the registration provisions to standardized options.

In 1973, we first permitted national securities exchanges to establish pilot programs for the trading of standardized options.[8] The Commission determined that the Options Clearing Corporation (''OCC'') [9] should be deemed to be the issuer of the standardized options to be listed on the Chicago Board Options Exchange (''CBOE'').[10] Therefore, OCC registered standardized options under both the Securities Act and the Exchange Act. At that time, all transactions in standardized options were registered under the Securities Act on form S–1, our general registration form. OCC filed a registration statement on form 10 [11] to register standardized options under the Exchange Act.[12]

In 1982, following recommendations of the Report of the Special Study of Options Markets (''Options Study''),[13] we extensively revised our system of regulation of standardized options.[14] First, we adopted form S–20 as a simplified Securities Act registration form customized for standardized options.[15] Form S–20 requires limited information about the clearing agency registrant and the options being registered.[16] We also adopted Securities Act rule 153b [17] to provide that the prospectus delivery requirement in Securities Act section 5(b)(2) [18] is satisfied by delivery of copies of the form S–20 prospectus to each options market trading the options covered by the prospectus.[19] These changes simplified the registration process for options and eliminated some of the costs associated with the distribution and annual redistribution of options prospectuses to investors.

The central element of the reformed registration system was the newly

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[1] 17 CFR 230.238.

[2] 15 U.S.C. 77a *et seq.*

[3] 17 CFR 240.12a–9.

[4] 15 U.S.C. 78a *et seq.*

[5] 17 CFR 240.9b–1.

[6] 17 CFR 240.12h–1.

[7] Release No. 33–8114 (July 25, 2002) (67 FR 50326).

[8] *See* Release No. 34–9985 (February 1, 1973). Section 9(b) of the Exchange Act (15 U.S.C. 78i(b)) prohibits the trading of options, by use of any facility of a national securities exchange, ''in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.'' CBOE established the first of these pilot programs. *See* Release No. 34–9985. The American Stock Exchange (*see* Release No. 34–11144 (December 19, 1974) (40 FR 3258)), Philadelphia Stock Exchange (*see* Release No. 34–11423 (May 15, 1975)), Pacific Exchange (*see* Release No. 34–12283 (March 30, 1976) (41 FR 14454)) and the Midwest Stock Exchange (*see* Release No. 34–13045 (December 8, 1976) (41 FR 54783)) also later began to list standardized options. In 1974, OCC became the common clearing agency for all exchange listed options (*see* Release No. 34–11146 (December 19, 1974)).

[9] Founded in 1973, OCC was the successor to CBOE's original clearing agency, the Chicago Board Options Exchange Clearing Corporation. OCC, which is a registered clearing agency under section 17A of the Exchange Act (15 U.S.C. 78q–1), is the issuer and clearing facility for all U.S. exchange listed securities options. The American Stock Exchange, Chicago Board Options Exchange, Pacific Exchange, Philadelphia Stock Exchange and International Securities Exchange share equal ownership of OCC.

[10] *See* Release No. 33–6411 (June 24, 1982) (47 FR 28688).

[11] 17 CFR 249.210.

[12] Registration of a class of securities under section 12 of the Exchange Act (15 U.S.C. 78l) generally imposes several reporting duties on the registrant, including the duty to file periodic and current reports under section 13(a) (15 U.S.C. 78m(a)). Additionally, the rules under Exchange Act sections 13(d), 13(e), 13(g), 14(d) and section 16 (15 U.S.C. 78m(d), 78m(e), 78m(g), 78n(d) and 78p) apply to classes of equity securities registered under section 12. Because the securities underlying standardized options are issued by persons other than the clearing agency and are themselves registered under section 12, it serves no purpose to require the clearing agency to file Exchange Act reports. The value of standardized options derives primarily from the value of the underlying security or index, not from matters peculiar to the issuing clearing agency. Moreover, because there is no possibility that a purchaser of standardized options could gain control over the clearing agency, there is no need for the disclosure mandated by sections 13(d) and 14(d) of the Exchange Act, which govern stock accumulations and tender offers. Clearing agency insiders have no informational advantages with respect to the issuers of the securities underlying standardized options. In recognition of these unique circumstances, we issued an order under section 12(h) (15 U.S.C. 78*l*(h)) exempting OCC from sections 13(a), 13(d), 13(e), 14(d), 15(d) and 16 of the Exchange Act. *See* Release No. 34–10483 (Nov. 7, 1973). This order will remain in effect to prevent OCC from becoming subject to reporting obligations pursuant to Exchange Act section 15(d) (15 U.S.C. 78o(d)). OCC would incur a reporting obligation under section 15(d) in the event that standardized options issued under a previously filed registration statement were held of record by more than 300 persons.

[13] 96th Cong., 1st Sess. (Comm. Print 1978).

[14] *See* Release No. 33–6426 (September 16, 1982) (47 FR 41950).

[15] 17 CFR 239.20.

[16] Part I of form S–20 requires the prospectus to include a description of the registrant and a brief summary of the securities being registered. Part II specifies information required to be included in the registration statement but not in the prospectus, including information as to the directors and executive officers of the registrant, material legal proceedings involving the registrant, certain exhibits and undertakings, and the registrant's financial statements.

[17] 17 CFR 230.153b.

[18] 15 U.S.C. 77e(b)(2).

[19] The options market must deliver the prospectus to any investor requesting it.

created options disclosure document (''ODD''), required by Exchange Act rule 9b–1.[20] The ODD discloses information relevant to standardized options trading generally, instead of information about the issuing clearing agency.[21] Broker-dealers are precluded from accepting orders to purchase or sell standardized options from a customer or from approving a customer's account for trading in these options unless the broker-dealer has furnished the customer with the ODD. The ODD is the only document required to be provided to options investors and thus has become the primary disclosure document with respect to trading in standardized options.[22] After today's adoption of the exemptions for standardized options, broker-dealers will continue to be required to furnish the ODD to their customers investing in standardized options.

Although our 1982 rulemaking streamlined and improved disclosure regarding standardized options, the Securities Act registration requirement continued to apply to offers and sales of standardized options. While this result was dictated by the statutory scheme, under which options are securities, it was anomalous because, in its role as an issuer of standardized options, a registered clearing agency is fundamentally different from a conventional issuer that registers transactions in its securities under the Securities Act. For example, the purchaser of a standardized option does not, except in the most formal sense, make an investment decision regarding the clearing agency that registers transactions in standardized options. As a result, information about the registrant's business, its officers and directors, and its financial statements, is less relevant to investors in standardized options.[23] In standardized option transactions, the investment risk is determined by the market performance of the underlying security rather than the performance of the clearing agency. Moreover, registered clearing agencies are self-regulatory organizations subject to Commission oversight under section 17A of the Exchange Act. Furthermore, unlike a conventional issuer, a registered clearing agency does not receive the proceeds from sales of the standardized options that it issues.[24] Registration does not appear to provide any additional protections to investors in standardized options.[25]

Compliance with Exchange Act registration requirements also has been more burdensome for the clearing agency issuer of standardized options than for a conventional issuer. Section 12(a) of the Exchange Act makes it unlawful for any broker or dealer to effect a transaction in a non-exempt security on a national securities exchange unless the security has been registered for trading on that exchange. Section 12(g)(1),[26] as modified by rule, requires any issuer with more than $10,000,000 in total assets and a class of equity securities held by 500 or more persons to register such security with the Commission.

Rule 12b–1 of the Exchange Act [27] prescribes the procedures for registration under both section 12(b) and section 12(g).[28] Standardized options are listed on national securities exchanges and, therefore, must be registered under section 12(b) of the Exchange Act. As the issuer of standardized options, OCC has registered the options on form 8–A.[29] Whenever an exchange has introduced options on a new underlying security or index of securities, OCC has filed an amended form 8–A to identify the underlying security or index of securities and the exchange or exchanges on which the option is to be traded. OCC also has provided an updated list of all classes of options being traded on all exchanges as part of the amendment. Because it has had to file a form 8–A amendment every time a new class of options has opened for trading, OCC typically has filed more than 200 form 8–A amendments each year. It is not clear that these numerous amendments have benefited investors.

The National Securities Markets Improvement Act of 1996 [30] conferred on the Commission authority to adopt exemptive rules under the Securities Act and the Exchange Act. By virtue of this authority, we are now able to resolve the anomalies associated with registration of standardized options that we were unable to resolve when standardized options began to trade nearly three decades ago or when we streamlined the registration of standardized options 20 years ago. Section 28 of the Securities Act authorizes us to exempt any person, security or transaction from any provision of the Securities Act by rule or regulation to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors.[31] Similarly, section 36 of the Exchange Act gives us the authority to exempt any person, security or transaction from any Exchange Act provision by rule, regulation or order, to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors. [32]

The enactment of the Commodity Futures Modernization Act of 2000 (''CFMA'') [33] is another significant factor

[20] 17 CFR 240.9b–1. Rule 9b–1 requires an options market, defined in rule 9b–1(a)(1) as a national securities exchange, an automated quotation system of a registered securities association or a foreign securities exchange on which standardized options are traded, to file the ODD with the Commission at least 60 days before the date that definitive copies are furnished to customers, or at least 30 days before that date with respect to an amended ODD if the information contained in the ODD becomes or will become materially inaccurate or incomplete or there is or will be an omission of material information necessary to make the ODD not misleading. Form S–20 prohibits the issuance of an option registered on the form unless a definitive ODD meeting the requirements of rule 9b–1 for the options class is available. As a practical matter, OCC works with the options markets to prepare and file the ODD. Rule 9b–1 allows an options exchange to use an ODD only if there is also an effective form S–20 registration statement for the same options classes that are the subject of the ODD. We are revising rules 9b–1(b)(1) and 9b–1(c)(8) (17 CFR 240.9b–1(b)(1) and 9b–1(c)(8)) to permit use of the ODD if the option class is the subject of an effective form S–20 registration statement or is exempt from registration.

[21] The ODD describes: The mechanics of buying, writing and exercising standardized options; the risks of trading these options; the market for the options; the tax consequences of standardized options trading; the issuer of standardized options; the instruments underlying an options class; the form S–20 registration process; and the availability of the options prospectus. We revised rule 9b–1 to explicitly state that amendments and supplements to the ODD are part of the ODD, and to describe more clearly the type of information to be included in the ODD. *See* Release No. 34–43461 (October 19, 2000) (65 FR 64137).

[22] Securities Act rules 134a and 135b also are part of the revised options disclosure regime (17 CFR 230.134a and 135b). Rule 134a provides that written materials, including advertisements, containing limited information concerning standardized options may be disseminated without being deemed to be a prospectus. Rule 135b provides that, solely for purposes of section 5 of the Securities Act, materials meeting the requirements of rule 9b–1 of the Exchange Act will not be deemed an ''offer to sell'' or ''offer to buy'' a security, nor will the materials be deemed a prospectus for purposes of sections 2(a)(10) and 12(a)(2) of the Securities Act. Rule 135b remains unchanged. Similarly, although rule 134a does not apply to standardized options exempted under rule 238, it continues to apply to any standardized options that remain subject to the registration provisions of the Securities Act.

[23] Options Study at 378.

[24] OCC does receive a clearing fee of up to $0.09 per option contract from its members.

[25] Information that is required in the form S–20 registration statement but is not required in the ODD, such as OCC's financial statements and a description of OCC's backup system, is publicly available on OCC's website, located at *www.optionsclearing.com.*

[26] 15 U.S.C. 78*l*(g)(1).

[27] 17 CFR 240.12b–1.

[28] 15 U.S.C. 78*l*(b) and (g).

[29] 17 CFR 240.208a.

[30] Pub. L. 104–290, 110 Stat. 3416 (1996).

[31] 15 U.S.C. 77z–3.

[32] 15 U.S.C. 78mm.

[33] Pub. L. No. 106–554 Stat. 2763 (2000).

motivating the adoption of these exemptions. The CFMA addressed the regulation of security futures products,[34] and permits the trading of futures on individual securities and on narrow-based security indices. The CFMA, among other things:

[sbull] Exempted from all provisions of the Securities Act, except the antifraud provisions of section 17 of the Securities Act; [35] any security futures product that is traded on a national securities exchange or a national securities association registered under section 15A(a) of the Exchange Act [36] and cleared by a clearing agency that is registered under section 17A of the Exchange Act or exempt from registration under section 17A(b)(7);

[sbull] Exempted security futures products from the provisions of section 12(a) of the Exchange Act; [37]

[sbull] Amended section 12(g)(5) of the Exchange Act [38] to state that, for purposes of section 12(g) of the Exchange Act, a security futures product will not be considered a class of equity security of the issuer of the securities underlying the security futures product; and

[sbull] Amended section 2(a)(3) of the Securities Act [39] to ensure that a security futures product could not be used by an issuer, affiliate of an issuer or underwriter to circumvent the registration requirements of section 5 with respect to an issuer's securities underlying the security futures product.[40]

Because security futures products can be used for financial purposes similar to those served by standardized options, we believe that it is appropriate to establish comparable regulatory treatment for standardized options by adopting parallel exemptions under the Securities Act and Exchange Act. By doing so, we eliminate any unjustified or unintended consequences that could result from differing regulatory treatment of these two types of securities.

[34] Securities Act section 2(a)(16) (15 U.S.C. 77b(a)(16)), Exchange Act section 3(a)(56) (15 U.S.C. 78c(a)(56)), and CEA section 1a(32) (7 U.S.C. 1a(32)) define ''security futures product'' as a security future or an option on a security future.

[35] Section 17(c) of the Securities Act (15 U.S.C. 77q(c)) states that the exemptions provided in section 3 of the Securities Act, including the exemption for security futures products, do not apply to the provisions of section 17.

[36] 15 U.S.C. 78o–3.

[37] 15 U.S.C. 78*l*(a).

[38] 15 U.S.C. 78*l*(g)(5).

[39] 15 U.S.C. 77b(a)(3).

[40] As amended, section 2(a)(3) provides ''Any offer or sale of a security futures product by or on behalf of the issuer of the securities underlying the security futures product, an affiliate of the issuer, or an underwriter, shall constitute a contract for sale of, sale of, offer for sale, or offer to sell the underlying securities.''

II. Discussion of the Amendments

We are adopting the new exemptions under the Securities Act and the Exchange Act for most standardized options substantially as proposed. The amendments:

[sbull] Exempt standardized options that are issued by a registered clearing agency and traded on a national securities exchange registered under section 6(a) of the Exchange Act, or on a national securities association registered under section 15A(a) of the Exchange Act, from all provisions of the Securities Act except the antifraud provisions of section 17 of the Securities Act; [41] and

[sbull] Make clear that any offer or sale of a standardized option by or on behalf of the issuer of the securities underlying the standardized option, an affiliate of the issuer, or an underwriter, will constitute a contract for sale of, sale of, offer for sale, or offer to sell (as these terms are defined in section 2(a)(3) of the Securities Act) the underlying securities.[42]

We also are adopting new Exchange Act rule 12a–9 [43] and revisions to rule 12h–1 to exempt standardized options from the registration requirements of section 12 of the Exchange Act,[44] and to clarify that any security futures product that is traded on a registered national securities exchange or on a national securities association registered pursuant to section 15A(a) of the Exchange Act and cleared by a clearing agency that is registered under section 17A of the Exchange Act or is exempt from registration under section 17A(b)(7) of the Exchange Act is exempt from registration under section 12(g).[45] The revisions to rule 12h–1 relating to security futures products have been modified slightly from the proposal so that the exemption under the rule is consistent with the statutory exemption from Securities Act registration for security futures products.

We received four letters of comment on the proposals.[46] Each commenter supported the proposals and our objective to establish comparable regulatory treatment of security futures and standardized options. One commenter, however, advocated a broadening of the proposed exemptions to cover standardized options issued by foreign clearing agencies and traded on foreign exchanges that are subject to the oversight of a foreign regulatory authority that is acceptable to the Commission.[47] We have considered the views of the commenters and are adopting the proposed amendments substantially as proposed.[48]

The terms of the adopted rules are substantively comparable to the Securities Act and Exchange Act exemptions provided by the CFMA for security futures products. New Securities Act rule 238 does not make form S–20 obsolete. We are retaining form S–20 for use by an issuer of standardized options that is not a clearing agency registered under section 17A of the Exchange Act, such as a

[41] Securities Act rule 238(a) and (b) (17 CFR 230.238(a) and (b)).

[42] Securities Act rule 238(c) (17 CFR 230.238(c)). Consequently, a transaction in a standardized option on the securities of an issuer by such persons also is a transaction in the issuer's securities that must be registered under the Securities Act unless an exemption from registration is available.

[43] Rule 12a–9 provides an exemption from section 12(a) of the Exchange Act for standardized options.

[44] Rule 12h–1(d) (17 CFR 240.12h–1(d)] provides an exemption from Exchange Act section 12(g) for standardized options. The exemption is necessary, even though standardized options currently are registered only pursuant to section 12(b) of the Exchange Act, because standardized options issued by a registered clearing agency and traded on a national securities exchange will no longer qualify for the exemption in section 12(g)(2)(A) (15 U.S.C. 78*l*(g)(2)(A)), which exempts any security listed and registered on a national securities exchange from registration under section 12(g). Pursuant to rule 12g–2 (17 CFR 240.12g–2), a class of securities that no longer is entitled to the section 12(g)(2)(A) exemption is deemed to automatically be registered under section 12(g) if, at the time that its section 12(b) registration terminates, the securities are not exempt from registration under section 12 or rules thereunder, and are held of record by 300 or more persons. Even if standardized options were not held of record by 300 or more persons when their section 12(b) registration terminated (OCC currently has only 126 clearing members that would be considered record holders for purposes of rule 12g–2), standardized options nevertheless would be required to be registered under section 12(g) if, at the end of any fiscal year, standardized options issued by the registered clearing agency were held of record by 500 or more persons. Rule 12h–1(d) exempts standardized options from section 12(g), thereby avoiding the possibility that standardized options might automatically be registered or required to be registered under that section.

[45] Rule 12h–1(e) (17 CFR 240.12h–1(e)) eliminates any uncertainty concerning the application of the section 12(g) registration requirements to security futures products. *See* note above.

[46] *See* comment letters of OCC, CBOE, the Canadian Derivative Clearing Corporation (''CDCC''), and Mr. Bernard E. Klein. These letters are available in our Public Reference Room at 450 Fifth Street, NW., Washington, DC, 20549, in File No. S7–29–02. Public comments submitted by electronic mail also are available on our website, *www.sec.gov*.

[47] *See* comment letter of CDCC.

[48] We are not extending the new exemptions to standardized options issued by a foreign clearing agency and traded on a foreign exchange at this time. We believe that the issues involving standardized options that are not issued by a registered clearing agency or traded on a registered national securities exchange are sufficiently different to warrant separate study. Nevertheless, once we have gained experience with the new exemptions, we may consider the issue further.

foreign clearing agency,[49] or for use by issuers of standardized options that do not trade on a registered national securities exchange or on a registered national securities association.

Similarly, new Exchange Act rule 12a–9 states that the provisions of Exchange Act section 12(a) do not apply in respect of any standardized option, as defined in rule 9b–1(a)(4),[50] that is issued by a clearing agency registered under section 17A of the Exchange Act and traded on a national securities exchange registered pursuant to section 6(a) of the Exchange Act. Exchange Act rule 12h–1(d) exempts issuers from the provisions of section 12(g) of the Exchange Act with respect to a standardized option, as defined by rule 9b–1(a)(4), that is issued by a clearing agency registered under section 17A of the Exchange Act and traded on a national securities exchange registered pursuant to section 6(a) of the Exchange Act or a national securities association registered pursuant to section 15A(a) of the Exchange Act.

The amendments do not affect the requirements under Exchange Act rule 9b–1(d)(1) [51] that preclude broker-dealers from accepting orders to purchase or sell standardized options from a customer or from approving a customer's account for trading in standardized options unless the broker-dealer has furnished the customer with an ODD, other than to make conforming changes to reflect the fact that some standardized options are exempt from Securities Act registration.

For the reasons stated above, including that investors will still receive the ODD informing them about standardized options trading in general, and that Securities Act registration provides little benefit relative to its costs, we believe that the amendments are in the public interest and consistent with the protection of investors.

III. Paperwork Reduction Act

The amendments affect ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[52] The title for the collection of information affected by the amendments is ''Form 8–A'' (OMB Control No. 3235–0056).[53] We published a notice requesting comment on the proposed change to the form 8–A collection of information requirements, and submitted a request to the Office of Management and Budget for approval of the change in accordance with the PRA.[54] The Office of Management and Budget approved the proposed change. We did not receive any comments on the PRA analysis contained in the proposing release. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information requirement unless it displays a currently valid OMB control number.

There is no mandatory retention period for the information disclosed and form 8–A is not kept confidential. We currently estimate that form 8–A results in a total annual compliance burden of 5,934 hours. The burden was calculated by multiplying the actual number of respondents filing form 8–A annually (1,978) by the estimated average number of hours each entity spends completing the form (3 hours).

The amendments will eliminate the need for OCC, the only clearing agency currently registered under Exchange Act section 17A that issues standardized options, to file form 8–A and amendments thereto. During fiscal year 2001, OCC filed four form 8–A registration statements and 214 form 8–A amendments. Therefore, we estimate that the total annual burden for form 8–A is 5,280 hours, a decrease of 654 hours.

IV. Cost-Benefit Analysis

The amendments are intended to harmonize the regulatory treatment of standardized options and security futures products under the Securities Act and the Exchange Act. It is anticipated that these amendments will benefit registered clearing agencies that issue standardized options covered by the exemptions by eliminating form S–20 and form 8–A filing requirements currently applicable to issuers of standardized options. We solicited comment to assist us in our evaluation of the costs and benefits associated with the amendments. In response, we received four comment letters. All of the commenters supported the amendments. Two noted that the amendments would eliminate unnecessary regulatory filings and reduce costs imposed on persons engaged in standardized options trading without compromising investor protection.[55]

The Securities Act and Exchange Act exemptions we are adopting today reflect our view that registration provides little useful information to investors in standardized options issued by registered clearing agencies and traded on a national securities exchange or on a registered national securities association and imposes costs on options market participants that are not justified by the marginal benefits to investors.

V. Regulatory Flexibility Act Certification

Pursuant to 5 U.S.C. 605(b), the Commission has certified that rule 238 under the Securities Act, rule 12a–9 under the Exchange Act, and amendments to rules 9b–1 and 12h–1 under the Exchange Act, will not have a significant economic impact on a substantial number of small entities. This certification, including our basis for requesting the certification, was included in the proposing release. We solicited comments on the potential impact of the amendments on small entities, but received none.

VI. Consideration of Impact on the Economy, Burden on Competition and Promotion of Efficiency, Competition and Capital Formation

Section 23(a)(2) of the Exchange Act [56] requires us to consider the anti-competitive effects of any rules that we adopt under the Exchange Act. Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Furthermore, section 2(b) of the Securities Act [57] and section 3(f) of the

[49] Presently, no foreign clearing agencies are registered under section 17A. Securities Act rule 153b prospectus delivery requirements currently apply and will continue to apply in connection with standardized option transactions registered on form S–20.

[50] Rule 9b–1(a)(4) under the Exchange Act (17 CFR 240.9b–1(a)(4)) defines standardized options as ''options contracts trading on a national securities exchange, an automated quotations system of a registered securities association, or a foreign securities exchange which relate to options classes the terms of which are limited to specific expiration dates and exercise prices, or such other securities as the Commission may, by order, designate.''

[51] 17 CFR 240.9b–1(d)(1).

[52] 44 U.S.C. 3501 *et seq.*

[53] The PRA defines a ''collection of information'' as ''the obtaining, causing to be obtained, soliciting or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format, calling for * * * answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons * * *'' The form S–20 does not constitute a ''collection of information'' under the PRA because fewer than ten entities file form S–20 registration statements.

[54] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[55] *See* comment letters of CBOE and OCC. OCC estimates that form 8–A filings, and amendments to form 8–A, result in an annual compliance cost to it of $23,000. It further estimates that form S–20 filings, and post-effective amendments to form S–20, result in a total annual compliance cost to it of $50,538 which includes $17,500 of in-house costs and $33,038 in fees for outside counsel and other expenses.

[56] 15 U.S.C. 78w(a)(2).

[57] 15 U.S.C 77b(b).

Exchange Act [58] require us, when engaging in rulemaking to consider or determine whether an action is necessary or appropriate in the public interest, and consider whether the action will promote efficiency, competition, and capital formation.

We requested comment on any anti-competitive effects of the proposals. One commenter indicated that, without the exemptions, dissimilar regulatory treatment between standardized options and security futures products would result in a competitive advantage for security futures products. Another suggested that the exemptions would improve efficiency by eliminating the costs associated with compliance with the Securities Act registration requirements. The purpose of these amendments is to harmonize the treatment of standardized options with security futures products under the Securities Act and the Exchange Act. We think that the amendments will promote efficiency by eliminating the potential for regulatory arbitrage opportunities that could result from discordant treatment of security futures products and standardized options, and by removing regulatory obstacles to trading of these securities. We believe the amendments will have a positive, but unquantifiable, effect on efficiency, competition, and capital formation.

VII. Effective Date

The new rules are effective upon publication in the **Federal Register**. Generally, the Administrative Procedure Act requires that, unless an exception applies, a substantive rule be published in the **Federal Register** at least 30 days prior to its effective date.[59] One exception to the 30-day publication requirement is if a substantive rule grants or recognizes an exemption or relieves a restriction.[60] New Securities Act rule 238 and Exchange Act rule 12a–9 would exempt certain standardized options from most of the provisions of the Securities Act and the registration provisions of the Exchange Act. The effect of the exemptions would be to remove most of the registration restrictions currently placed on covered issuers of standardized options that trade on a national securities exchange or registered national securities associations. In addition, new Exchange Act rule 12h–1(e) provides that covered security futures products are exempt from registration under section 12(g). The rule is intended to clarify that security futures products are not subject to the registration requirements of section 12(g).

VIII. Statutory Authority

The amendments contained in this release are being adopted under the authority set forth in sections 19 and 28 of the Securities Act and sections 12(h), 23(a) and 36 of the Exchange Act.

List of Subjects in 17 CFR Parts 230 and 240

Reporting and recordkeeping requirements, Securities.

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The general authority citation for part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77sss, 77z–3, 78c, 78d, 78*l*, 78m, 78n, 78o, 78t, 78w, 78*ll*(d), 78mm, 79t, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

2. Section 230.238 is added to read as follows:

§ 230.238 Exemption for standardized options.

(a) *Exemption.* Except as expressly provided in paragraphs (b) and (c) of this section, the Act does not apply to any standardized option, as that term is defined by section 240.9b–1(a)(4) of this chapter, that is:

(1) Issued by a clearing agency registered under section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q–1); and

(2) Traded on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a)) or on a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 (15 U.S.C. 780–3(a)).

(b) *Limitation.* The exemption provided in paragraph (a) of this section does not apply to the provisions of section 17 of the Act (15 U.S.C. 77q).

(c) *Offers and sales.* Any offer or sale of a standardized option by or on behalf of the issuer of the securities underlying the standardized option, an affiliate of the issuer, or an underwriter, will constitute a contract for sale of, sale of, offer for sale, or offer to sell the underlying securities as defined in section 2(a)(3) of the Act (15 U.S.C. 77b(a)(3)).

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

3. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–l, 78k, 78k–l, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll,* 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

4. Section 240.9b–1 is amended by:

a. Removing the authority citation following § 240.9b–1;

b. Revising the phrase ''under the Securities Act'' in the last sentence of paragraph (b)(1) to read ''under the Securities Act of 1933, or is exempt from registration under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*)''; and

c. Revising paragraph (c)(8).

The revisions read as follows:

§ 240.9b–1 Options disclosure document.

* * * * *

(c) * * *

(8) If the options are not exempt from registration under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*), the registration of the options on form S–20 (17 CFR 239.20) and the availability of the prospectus and the information in part II of the registration statement; and

* * * * *

5. Section 240.12a–9 is added to read as follows:

§ 240.12a–9 Exemption of standardized options from section 12(a) of the Act.

The provisions of section 12(a) of the Act (15 U.S.C. 78*l*(a)) do not apply in respect of any standardized option, as defined by section 240.9b–1(a)(4), issued by a clearing agency registered under section 17A of the Act (15 U.S.C. 78q–1) and traded on a national securities exchange registered pursuant to section 6(a) of the Act (15 U.S.C. 78f(a)).

6. Section 240.12h–1 is amended by:

a. Removing the authority citation following § 240.12h–1;

b. Removing ''and'' at the end of paragraph (b)(2);

c. Removing the period at the end of paragraph (c) and adding a semicolon; and

d. Adding paragraphs (d) and (e).

The addition reads as follows:

§ 240.12h–1 Exemptions from registration under section 12(g) of the Act.

* * * * *

(d) Any standardized option, as that term is defined in section 240.9b–1(a)(4), that is issued by a clearing

[58] 15 U.S.C. 78c(f).

[59] 5 U.S.C. 553(d).

[60] 5 U.S.C. 553(d)(1).

agency registered under section 17A of the Act (15 U.S.C. 78q–1) and traded on a national securities exchange registered pursuant to section 6(a) of the Act (15 U.S.C. 78f(a)) or on a national securities association registered pursuant to section 15A(a) of the Act (15 U.S.C. 780–3(a)); and

(e) Any security futures product that is traded on a national securities exchange registered pursuant to section 6 of the Act (15 U.S.C. 78f) or on a national securities association registered pursuant to section 15A(a) of the Act (15 U.S.C. 780–3(a)) and cleared by a clearing agency that is registered pursuant to section 17A of the Act (15 U.S.C. 78q–1) or is exempt from registration under section 17A(b)(7) of the Act (15 U.S.C. 78q–1(b)(7)).

Dated: December 23, 2002.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–32912 Filed 12–31–02; 8:45 am]

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Federal Register

Thursday,
January 2, 2003

Part IV

General Services Administration

41 CFR Chapter 301

Federal Travel Regulation; Maximum Per Diem Rates for Massachusetts, Michigan, Missouri, New Mexico, North Carolina, and Pennsylvania; Final Rule

GENERAL SERVICES ADMINISTRATION

41 CFR Chapter 301

[FTR Amendment 111]

RIN 3090–AH75

Federal Travel Regulation; Maximum Per Diem Rates for Massachusetts, Michigan, Missouri, New Mexico, North Carolina, and Pennsylvania

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: To improve the ability of the per diem rates to meet the lodging demands of Federal travelers to high cost travel locations, the General Services Administration (GSA) has integrated the contracting mechanism of the new Federal Premier Lodging Program (FPLP) into the per diem rate-setting process. An analysis of FPLP contracting actions and the lodging rate survey data reveals that the maximum per diem rate for the State of Massachusetts, city of Boston, including Suffolk County, and city of Cambridge, including Middlesex Counties (except for the city of Lowell); State of Michigan, city of Detroit, including Wayne County; State of Missouri, city of St. Louis, including St. Louis and St. Charles Counties; State of New Mexico, city of Albuquerque, including Bernalillo County; State of North Carolina, city of Charlotte, including Mecklenburg County; State of Pennsylvania, city of Pittsburgh, including Allegheny County, should be adjusted to provide for the reimbursement of Federal employees' lodging expenses covered by the per diem. This final rule amends the final rule published in the **Federal Register** on August 30, 2002 and amended on November 18, 2002 by adjusting the maximum lodging amounts in the prescribed areas.

DATES: This final rule is effective December 15, 2002, and applies to travel performed on or after that date.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 208–7312, for information pertaining to status or publication schedules. For clarification of content, contact Joddy P. Garner, Office of Governmentwide Policy, Travel Management Policy, at (202) 501–4857. Please cite FTR Amendment 111.

SUPPLEMENTARY INFORMATION:

A. Background

In the past, properties in high cost travel areas have been under no obligation to provide lodging to Federal travelers at the prescribed per diem rate. Thus, the General Services Administration (GSA) established the Federal Premier Lodging Program (FPLP) to contract directly with properties in high cost travel markets to make available a set number of rooms to Federal travelers at contract rates. FPLP contract results along with the lodging survey data are integrated together to determine reasonable per diem rates that more accurately reflect lodging costs in these areas. In addition, the FPLP will enhance the Government's ability to better meet its overall room night demand, and allow travelers to find lodging close to where they need to conduct business. After an analysis of this additional data, the maximum lodging amounts published in the **Federal Register** at 67 FR 56160, August 30, 2002 and amended at 67 FR 69634, November 18, 2002 are being changed in Boston and Cambridge, Massachusetts; Detroit, Michigan; St. Louis, Missouri; Charlotte, North Carolina; Albuquerque, New Mexico; and Pittsburgh, Pennsylvania.

B. Executive Order 12866

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

C. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for notice and comment; therefore, the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, does not apply.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FTR do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This final rule is also exempt from congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Chapter 301

Government employees, Travel and transportation expenses.

Dated: December 16, 2002.

Stephen A. Perry,

Administrator of General Services.

For the reasons set forth in the preamble, under 5 U.S.C. 5701–5709, GSA amends 41 CFR chapter 301 as set forth below:

CHAPTER 301—TEMPORARY DUTY (TDY) TRAVEL ALLOWANCES

1. Amend the table in Appendix A to chapter 301 as follows:

a. Under the State of Massachusetts, revise the entry for the city of Boston, including Suffolk County.

b. Under the State of Massachusetts, revise the entry for city of Cambridge, including Middlesex County (except Lowell).

c. Under the State of Michigan, city of Detroit, including Wayne County, amend the maximum lodging amount by removing ''109'' and adding ''108'' in its place; and amend the maximum per diem rate by removing ''159'' and adding ''158'' in its place.

d. Under the State of Missouri, city of St. Louis, including St. Louis and St. Charles Counties, amend the maximum lodging amount by removing ''90'' and adding ''102'' in its place; and amend the maximum per diem rate by removing ''140'' and adding ''152'' in its place.

e. Under the State of New Mexico, city of Albuquerque, including Bernalillo County, amend the maximum lodging amount by removing ''65'' and adding ''72'' in its place; and amend the maximum per diem rate by removing ''107'' and adding ''114'' in its place.

f. Under the State of North Carolina, city of Charlotte, including Mecklenburg County, amend the maximum lodging amount by removing ''71'' and adding ''81'' in its place; and amend the maximum per diem rate by removing ''113'' and adding ''123'' in its place.

g. Under the State of Pennsylvania, city of Pittsburgh, including Allegheny County, amend the maximum lodging amount by removing ''79'' and adding ''90'' in its place; and amend the maximum per diem rate by removing ''125'' and adding ''136'' in its place.

The revised pages containing the amendments to the table set forth above read as follows:

Appendix A to Chapter 301—Prescribed Maximum Per Diem Rates for CONUS

* * * * *

BILLING CODE 6820–24–P

Per diem locality:		Maximum lodging amount **(room rate only—no taxes)** (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
Key city[1]	County and/or other defined location [2, 3]					
Leonardtown/Lusby						
Ocean City	Worcester					
(June 15-October 31)		144		46		190
(November 1-June 14)		59		46		105
St. Michaels	Talbot	100		46		146
MASSACHUSETTS						
Andover	Essex	109		42		151
Boston	Suffolk					
(May 1-November 30)		192		50		242
(December 1-April 30)		159		50		209
Cambridge	Middlesex (except Lowell)					
(May 1-November 30)		192		50		242
(December 1-April 30)		159		50		209
Falmouth	City limits of Falmouth					
(June 1-September 30)		105		38		143
(October 1-May 31)		70		38		108
Hyannis	Barnstable	94		42		136
Lowell	City limits of Lowell (except Cambridge) (see Middlesex County)	99		38		137
Martha's Vineyard	Dukes					
(June 1-October 15)		150		46		196
(October 16-May 31)		85		46		131
Nantucket	Nantucket					
(June 15-October 15)		150		46		196
(October 16-June 14)		75		46		121
New Bedford	City limits of New Bedford (see Bristol County)					
(May 15-October 15)		75		38		113
(October 16-May 14)		65		38		103
Northampton	Hampshire	72		38		110
Pittsfield	Berkshire	65		42		107
Plymouth	Plymouth					
(June 15-October 15)		119		38		157
(October 16-June 14)		99		38		137
Quincy	Norfolk	74		42		116
Springfield	Hampden	99		38		137
Taunton	Bristol (except New Bedford)	74		34		108
Worcester	Worcester	79		38		117
MICHIGAN						
Ann Arbor	Washtenaw	75		42		117
Berrien County	Berrien	59		34		93
Charlevoix	Charlevoix					
(June 1-August 31)		105		42		147
(September 1-May 31)		59		42		101
Detroit	Wayne	108		50		158
East Lansing/Lansing	Ingham	65		42		107
Frankenmuth	Saginaw	69		34		103
Frankfort	Benzie	62		34		96
Gaylord	Otsego	65		38		103
Grand Rapids	Kent	62		38		100

Per diem locality:		Maximum lodging amount (**room rate only—no taxes**) (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
Key city[1]	County and/or other defined location [2, 3]					
Holland	Ottawa	60		38		98
Leland	Leelanau	75		38		113
Mackinac Island	Mackinac	165		46		211
Midland	Midland	72		38		110
Mount Pleasant	Isabella	65		38		103
Muskegon	Muskegon					
(May 1-August 31)		79		34		113
(September 1-April 30)		59		34		93
Ontonagon	Ontonagon	65		34		99
Petoskey	Emmet					
(June 1-October 31)		65		42		107
(November 1- May 31)		55		42		97
Pontiac/Troy/Auburn Hills	Oakland	94		42		136
Sault Ste Marie	Chippewa					
(May 15-October 15)		63		38		101
(October 16-May 14)		55		38		93
South Haven	Van Buren	76		38		114
Traverse City	Grand Traverse	125		46		171
Warren	Macomb	79		38		117
MINNESOTA						
Anoka County	Anoka	65		38		103
Dakota County	Dakota	80		38		118
Duluth	St. Louis					
(June 1-October 31)		85		42		127
(November 1-May 31)		56		42		98
Minneapolis/St. Paul	Hennepin County and Fort Snelling Military Reservation and Navy Astronautics Group (Detachment BRAVO), and Ramsey County	110		50		160
Rochester	Olmsted	73		38		111
MISSISSIPPI						
Bay St. Louis	Hancock					
(April 1-October 31)		69		38		107
(November 1-March 31)		55		38		93
Biloxi/Gulfport	Harrison	61		42		103
Robinsonville	Tunica	59		34		93
MISSOURI						
Branson	Taney					
(April 1-December 31)		62		38		100
(January 1-March 31)		55		38		93
Hannibal	Marion	57		34		91
Jefferson City	Cole	60		34		94
Kansas City	Jackson, Clay and Kansas City International Airport	84		46		130
Osage Beach	Camden	89		34		123
Platte	Platte (except Kansas City International Airport)	84		38		122
Springfield	Greene	63		34		97
St. Louis	St. Louis and St. Charles	102		50		152
St. Robert/Ft. Leonardwood	Pulaski	74		34		108

Per diem locality:		Maximum lodging amount (room rate only—no taxes) (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
Key city [1]	County and/or other defined location [2, 3]					
Freehold	City limits of Freehold (see Monmouth County)	85		38		123
Millville	Cumberland	58		34		92
Newark	Essex, Bergen, Hudson and Passaic	125		46		171
Ocean City	City limits of Ocean City (see Cape May County)					
(June 15-September 15)		215		42		257
(September 16-June 14)		80		42		122
Parsippany/Picatinney Arsenal/Dover	Morris	114		42		156
Piscataway/Belle Mead	Somerset; and City limits of Piscataway	144		42		186
Princeton/Trenton	Mercer	139		46		185
Tom's River	Ocean					
(May 15-September 15)		89		42		131
(September 16-May 14)		79		42		121
Union County	Union	107		42		149
NEW MEXICO						
Albuquerque	Bernalillo	72		42		114
Cloudcroft	Otero					
(June 1-October 31)		74		34		108
(November 1-May 31)		65		34		99
Las Cruces	Dona/Ana	60		34		94
Los Alamos	Los Alamos	71		38		109
Santa Fe	Santa Fe	99		46		145
Taos	Taos	75		38		113
NEW YORK						
Albany	Albany	96		46		142
The Bronx/Brooklyn/Queens	The boroughs of The Bronx, Brooklyn and Queens	168		46		214
Buffalo	Erie	78		42		120
Glens Falls	Warren					
(June 1-September 30)		74		38		112
(October 1-May 31)		55		38		93
Ithaca	Tompkins	69		38		107
Kingston	Ulster	79		42		121
Lake Placid	Essex					
(June 15-October 15)		86		42		128
(October 16-June 14)		59		42		101
Manhattan	The borough of Manhattan	208		50		258
Nassau County/Great Neck	Nassau	190		46		236
Niagara Falls	Niagara					
(May 1-October 31)		89		38		127
(November 1-April 30)		55		38		93
Nyack/Palisades	Rockland					
(April 1-September 30)		67		42		109
(October 1-March 31)		57		42		99
Owego	Tioga	73		34		107
Poughkeepsie	Dutchess	74		42		116
Rochester	Monroe	83		46		129
Saratoga Springs	Saratoga					

Per diem locality:		Maximum lodging amount **(room rate only—no taxes)** (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
Key city[1]	County and/or other defined location [2, 3]					
(July 1-October 31)		95		42		137
(November 1-June 30)		75		42		117
Staten Island	Richmond	120		46		166
Suffolk County	Suffolk	149		42		191
Syracuse	Onondaga	70		38		108
Tarrytown	Westchester (except White Plains)	114		46		160
Waterloo/Romulus	Seneca					
(June 15-September 15)		89		34		123
(September 16-June 14)		69		34		103
Watkins Glen	Schuyler	59		38		97
West Point	Orange	121		38		159
White Plains	City limits of White Plains (see Westchester County)	165		46		211
NORTH CAROLINA						
Atlantic Beach	Carteret					
(June 1-August 31)		64		34		98
(September 1-May 31)		55		34		89
Chapel Hill	Orange	80		42		122
Charlotte	Mecklenburg	81		42		123
Cherokee	Swain					
(April 1-October 31)		62		34		96
(November 1-March 31)		55		34		89
Fayetteville	Cumberland	63		38		101
Greensboro	Guilford	87		42		129
Greenville	Pitt	64		34		98
Kill Devil	Dare					
(May 1-September 30)		114		42		156
(October 1-February 28)		75		42		117
(March 1-April 30)		55		42		97
New Bern/Havelock	Craven	62		38		100
Raleigh	Wake	74		42		116
Research Triangle Park/Durham	Durham	85		46		131
Wilmington	New Hanover					
(April 1-September 15)		65		38		103
(September 16-March 31)		58		38		96
Winston-Salem	Forsyth	64		42		106
NORTH DAKOTA (See footnote 5)						
OHIO						
Akron	Summit	72		42		114
Bellevue	Huron	72		34		106
Cambridge	Guernsey	60		34		94
Cincinnati	Hamilton and Warren	69		50		119
Cleveland	Cuyahoga	86		46		132
Columbus	Franklin	75		42		117
Dayton	Montgomery, Wright-Patterson AFB	65		34		99
Fairborn	Greene	66		38		104

Per diem locality:		Maximum lodging amount (**room rate only—no taxes**) (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
Key city[1]	County and/or other defined location [2, 3]					
Mechanicsburg	Cumberland	74		34		108
Philadelphia	Philadelphia	124		50		174
Pittsburgh	Allegheny	90		46		136
Reading	Berks	75		42		117
Scranton	Lackawanna	60		34		94
Warminster	Bucks County; Naval Air Development Center	75		38		113
Wayne	City limits of Wayne (see Delaware County)	100		46		146
RHODE ISLAND						
East Greenwich	Kent County; Naval Construction Battalion Center, Davisville	79		42		121
Newport	Newport					
(April 1-December 31)		111		46		157
(January 1-March 31)		79		46		125
North Kingstown	Washington	89		30		119
Providence	Providence	89		46		135
SOUTH CAROLINA						
Aiken	Aiken	65		34		99
Charleston/Berkeley County	Charleston and Berkeley	106		42		148
Columbia	Richland	65		34		99
Greenville	Greenville	65		42		107
Hilton Head	Beaufort					
(March 15-September 30)		95		46		141
(October 1-March 14)		75		46		121
Myrtle Beach	Horry County; Myrtle Beach AFB					
(March 1-November 30)		99		46		145
(December 1-February 28)		59		46		105
SOUTH DAKOTA						
Custer	Custer					
(June 15-August 19)		70		34		104
(August 20-June 14)		55		34		89
Hot Springs	Fall River					
(June 15-October 15)		108		34		142
(October 16-June 14)		79		34		113
Rapid City	Pennington					
(May 15-September 30)		99		34		133
(October 1-May 14)		55		34		89
Sturgis	Meade					
(June 15-August 15)		79		30		109
(August 16-June 14)		55		30		85
TENNESSEE						
Alcoa/Townsend	Blount	63		34		97
Gatlinburg	Sevier					
(May 1-October 31)		78		42		120
(November 1-April 30)		70		42		112
Memphis	Shelby	75		42		117
Murfreesboro	Rutherford	57		34		91

* * * * *

[FR Doc. 02–32477 Filed 12–31–02; 8:45 am]

BILLING CODE 6820–24–C

Federal Register

Thursday,

January 2, 2003

Part V

Department of Commerce

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 679

Fisheries of the Exclusive Economic Zone Off Alaska; Steller Sea Lion Protection Measures for the Groundfish Fisheries Off Alaska; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 020718172–2303–02; I.D. 051402C]

RIN 0648–AQ08

Fisheries of the Exclusive Economic Zone Off Alaska; Steller Sea Lion Protection Measures for the Groundfish Fisheries Off Alaska

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to implement Steller sea lion protection measures to avoid the likelihood that the groundfish fisheries off Alaska will jeopardize the continued existence of the western distinct population segment (DPS) of Steller sea lions or adversely modify its critical habitat. These management measures will disperse fishing effort over time and area to provide protection from potential competition for important Steller sea lion prey species in waters adjacent to rookeries and important haulouts. The intended effect of this final rule is to protect the endangered western DPS of Steller sea lions, as required under the Endangered Species Act (ESA), and to conserve and manage the groundfish resources in the Bering Sea/Aleutian Islands management area (BSAI) and the Gulf of Alaska (GOA) in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Effective January 1, 2003.

ADDRESSES: Copies of the environmental assessment/regulatory impact review/final regulatory flexibility analysis (EA/RIR/FRFA) for the regulatory amendment to permit an investigation of the effect of commercial fishing on Walleye pollock distribution and abundance in localized areas off the east side of Kodiak Island; the supplemental environmental impact statement on Steller Sea Lion protection measures in the Federal groundfish fisheries off Alaska (SEIS), including the 2001 biological opinion (2001 BiOp) and regulatory impact review; the November 30, 2000, biological opinion (FMP BiOp); the final regulatory flexibility analysis; and the 2002 Stock Assessment and Fisheries Evaluation report for the BSAI Groundfish Fisheries may be obtained from the National Marine Fisheries Service, Alaska Region, P.O. Box 21668, Juneau, AK 99802–1668. The SEIS is also available on the NMFS Alaska Region home page at http://www.fakr.noaa.gov. Send comments on collection-of-information requirements to NMFS, Alaska Region, and to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB), Washington, DC 20503 (Attn: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Melanie Brown, Sustainable Fisheries Division, Alaska Region, 907–586–7228 or email at melanie.brown@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fisheries in the exclusive economic zone off Alaska under the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs). The North Pacific Fishery Management Council (Council) prepared the FMPs under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801, *et seq*. Regulations governing U.S. fisheries and implementing the FMPs appear at 50 CFR parts 600 and 679. NMFS also has management responsibility for certain threatened and endangered species, including Steller sea lions, under the ESA of 1973, 16 U.S.C. 1531, *et seq.*, and the authority to promulgate regulations to enforce provisions of the ESA to protect such species.

Background

On November 30, 2000, NMFS issued a biological opinion on the FMPs, which determined that the pollock, Pacific cod, and Atka mackerel fisheries were likely to jeopardize the continued existence of the western DPS of Steller sea lions and to adversely modify its critical habitat. It contained a reasonable and prudent alternative (RPA) that included large fishery closure areas, harvest limits, and seasonal distribution of harvest for the pollock, Pacific cod, and Atka mackerel fisheries. Before the RPA could be implemented, the President signed Public Law 106–554 on December 21, 2000, which contained a 1–year timetable to phase in the RPA. This year provided the Council with time to develop alternative protection measures that would avoid jeopardy and adverse modification of critical habitat for Steller sea lions.

The Council appointed an RPA Committee consisting of a variety of members including commercial fishery interests, the environmental community, the Alaska Department of Fish and Game (ADF&G), and NMFS. The RPA Committee, which met numerous times throughout 2001 to evaluate the best scientific and commercial data available developed, with the assistance of NMFS expertise, recommendations for Steller sea lion protection measures for the pollock, Pacific cod, and Atka mackerel fisheries. More details on the protection measures development process and the status of Steller sea lions are contained in the preamble to the proposed rule published September 4, 2002 (67 FR 56692).

In a section 7 consultation under the ESA, NMFS issued a 2001 BiOp, which determined that the groundfish fisheries managed under the protection measures in this final rule are unlikely to jeopardize the continued existence of the western DPS of Steller sea lions or adversely modify its critical habitat. Following this determination, the Council adopted and forwarded to NMFS the protection measures contained in this final rule, which are necessary to comply with section 7(a)(2) of the ESA. These measures were implemented in 2002 by emergency interim rule (67 FR 956, January 8, 2002; amended 67 FR 21600, May 1, 2002; corrected 67 FR 45671, July 10, 2002, 67 FR 47472, July 19, 2002, and 67 FR 64315, October 18, 2002; and extended 67 FR 34860, May 16, 2002).

A detailed history on past biological opinions and court cases regarding Steller sea lions and the Alaska groundfish fisheries and a description of how the protection measures meet the national standards in the Magnuson-Stevens Act are presented in the preamble to the January 8, 2002, emergency interim rule (67 FR 956).

Summary of the 2002 Protection Measures

For more detailed descriptions by topic, fishery, and area, see the preamble to the proposed rule (67 FR 56692, September 4, 2002). Closure areas apply to vessels named on a Federal Fisheries Permit issued under § 679.4(b) in the groundfish fisheries in the BSAI and GOA reporting areas, including the State waters within those reporting areas. The following is a summary of protection measures:

1. Area closures for all groundfish fishing within 0–3 nm of 39 rookery sites. These sites are considered the most sensitive for females with pups, and the nearshore marine critical habitat is the most important to protect from interactions between groundfish fisheries and Steller sea lions.

2. Protection measures for the Atka mackerel, pollock, and Pacific cod directed fisheries in the waters off Alaska, which include the following: (a)

a modified harvest control rule to prohibit directed fishing when the spawning biomass falls below 20 percent of the projected unfished spawning biomass, (b) closures within 10 or 20 nm of selected haulout and rookery sites to directed fishing for Atka mackerel, pollock, and Pacific cod in the GOA and BSAI, (c) closure of the Seguam foraging area and most of the Bogoslof area to all gear types, (d) a Vessel Monitoring System (VMS) requirement to facilitate enforcement of closed areas, (e) closure of the Chignik area to pot, trawl, and hook-and-line gears, (f) closure within 10 or 20 nm of 46 rookeries and haulouts to hook-and-line fishing for Pacific cod and 44 rookeries and haulouts to pot fishing for Pacific cod, (g) modifications to the Community Development Quota (CDQ) groundfish program, (h) revisions to the Federal Fisheries Permit requirements, and (i) changes to the catcher vessel fishing trip definition.

3. Aleutian Island subarea protection measures include the following: (a) conduct of any pollock directed fishery authorized in the Aleutian Islands subarea outside of critical habitat and apportionment to two seasons (40:60 percent), (b) Pacific cod total allowable catch (TAC) apportionment by season and gear, as well as gear specific area restrictions that alternate with the Atka mackerel fishery in critical habitat in waters west of 178[deg] W long., (c) closure of the Seguam foraging area to pollock, Atka mackerel, and Pacific cod directed fishing by all gear types, (d) critical habitat harvest limit of 60 percent for Atka mackerel in waters west of 178[deg] W long., (e) grouping of vessels for Atka mackerel fishing in critical habitat in waters west of 178[deg] W long., (f) requirements for two observers for critical habitat Atka mackerel directed fishing, (g) closures of at least 0–3 nm around all haulouts for Atka mackerel and Pacific cod trawl fishing, and (h) closure to Atka mackerel critical habitat directed fishing with trawl gear east of 178[deg] W long.

4. Bering Sea protection measures include the following: (a) two seasons (40:60 percent apportionment) for the pollock fishery with no more than 28 percent of the annual directed fishing allowance taken from the Steller sea lion conservation area (SCA) before April 1, (b) establishment of the Bering Sea Pollock Restriction Area (BSPRA) during the A season, (c) closure of the Catcher Vessel Operation Area (CVOA) to non-CDQ pollock trawl catcher/processors during the B season, (d) Pacific cod TAC apportionments by season and gear, as well as gear specific area restrictions, and (e) closure of all Bering Sea subarea critical habitat within 20 nm of rookeries and haulouts to Atka mackerel trawl fishing.

5. Gulf of Alaska protection measures include the following: (a) distribution of pollock harvest evenly among 4 seasons, (b) closure of directed fishing for pollock in areas that vary from 0–20 nm to 0–3 nm around rookeries and haulouts, (c) two seasons (60:40 percent apportionment) for Pacific cod fishing and area restrictions that are dependent on gear type and vessel size, and (d) continuation of the NMFS Chiniak Gully research project to explore the effects of commercial fisheries on pollock abundance and distribution in the GOA.

In November 2002, the State of Alaska Board of Fisheries (BOF) adopted the same protection measures for the State parallel fisheries, with two exceptions in the GOA Pacific cod pot fishery. The ADF&G should be contacted for details on Steller sea lion protection measures inside State waters. Under the Steller sea lion protection measures implemented in 2002 and in this final rule, Caton Island and Cape Barnabas are closed from 0–3 nm to Pacific cod fishing with pot gear by vessels named on a Federal Fisheries Permit issued under 50 CFR 679.4(b). The State did not adopt these closures. In October 2002, the Council recommended to open waters from 0–3 nm around Cape Barnabas and Caton Island to directed Pacific cod pot fishing by vessels named on a Federal Fisheries Permit. Opening these areas for the Pacific cod pot fishery will ensure consistency between State and Federal groundfish fisheries regulations and prevent unnecessary constraint on the Pacific cod pot fishery. NMFS will publish a notice of proposed rulemaking proposing the opening of these areas in early 2003.

Changes to the Steller Sea Lion Protection Measures From the Proposed Rule

The notice of proposed rulemaking explained that NMFS would use CDQ catch reports to determine when catch limits have been reached, when area closures should occur, and how pollock catch should be accounted for in the groundfish CDQ fisheries. See 67 FR 56698, column 1 (September 4, 2002). In order to use the CDQ catch reports to manage the CDQ fisheries as proposed, NMFS must be able to assign reported CDQ catch to the reporting vessels' target fisheries. However, the proposed rule text omitted a necessary provision specifically requiring vessels participating in CDQ fisheries to indicate their intended target species on the CDQ catch reports submitted to NMFS. This omission is corrected in this final rule at § 679.5(n)(2)(iii)(B)(4). This requirement was implemented by emergency interim rule in 2002 (67 FR 956, January 8, 2002) and was included in the Paperwork Reduction Act clearance submission prepared for the proposed rule.

The notice of proposed rulemaking specified that any vessel using pot, hook-and-line, or trawl gear in directed fisheries for Atka mackerel, Pacific cod, or pollock would have to register with NMFS and obtain endorsements for these directed fisheries on the vessel's Federal Fisheries Permit (FFP). A vessel would be prohibited from directed fishing for Atka mackerel, Pacific cod, or pollock without an endorsed FFP as described above. See 67 FR 56698, column 2, September 4, 2002. Although this language published in the proposed rule clearly indicates that the endorsement requirement and prohibition should apply only to vessels using pot, hook-and-line, or trawl gear, the proposed rule text would erroneously apply the prohibition to vessels using any type of gear. This error is corrected in this final rule at § 679.7(a)(1)(ii) by limiting this prohibition only to vessels using pot, hook-and-line, or trawl gear.

The proposed rule did not specify a first seasonal allowance of Pacific cod that would be available for harvest as an interim harvest specification at the beginning of a fishing year. Interim harvest specifications are established by regulations at § 679.20(c) to manage the annual fisheries during the period prior to the effective date of the final annual harvest specifications, which typically are not published until February or March. Pollock, Atka mackerel, and Pacific cod fisheries yield high economic value in the period from January through March because of the quality of the fish and high catch per unit of effort on spawning aggregations.

The interim specifications for pollock and Atka mackerel are specified by regulations as the first seasonal allowances for these species proposed in the annual notice of proposed harvest specifications. Although the proposed Steller sea lion protection measures explained that 60 percent of the Pacific cod TAC is allocated to the A season beginning in January each year (see 67 FR 56701, Table 2, September 4, 2002), the proposed rule text does not specifically make this first seasonal allowance of Pacific cod available for harvest under the interim specifications. This omission is corrected in the final rule at § § 679.20(c)(2) and 679.20(c)(2)(ii)(B) by specifying that the interim harvest specification for Pacific

cod fisheries will be the first seasonal allowance of Pacific cod proposed in the annual notice of proposed harvest specifications. A similar omission relating to the CDQ Atka mackerel and CDQ Pacific cod fisheries is corrected at § 679.20(c)(2)(ii)(B) in the final rule. These changes are necessary to achieve temporal dispersion of the pollock, Atka mackerel, and Pacific cod fisheries, as described in the notice of proposed rulemaking implementing the Steller sea lion protection measures.

In § 679.20(d)(4), the term ''biomass'' is changed to ''spawning biomass'' to clarify the type of biomass that is considered in the harvest control rule.

Text in § 679.22 is changed to clarify application of closure areas. The term ''federally permitted vessels'' is replaced with ''by vessels named on a Federal Fisheries Permit issued under § 679.4(b)''. NMFS may issue a number of different permits to owners of vessels for fishing activities in the BSAI and GOA. The permits are issued to an owner, and a vessel is named on the permit. This change will identify the vessels, and the type of permitting that is affected by the Steller sea lion protection measures, thereby reducing confusion.

Footnote 4 to Table 5 is changed in the final rule from the proposed rule to clarify the location of waters closed to pot and hook-and-line directed fishing for Pacific cod. Closures for these gear types are applicable to critical habitat in waters east of 173[deg] W long. Amlia I./East and Tanadak I. (Amlia) haulouts are located at nearly 173[deg] W long., and Footnote 4 to Table 5 in the final rule is corrected to indicate that the 20–nautical mile (nm) closures for these haulouts applies only to waters east of 173[deg] W long., as described in the preamble to the proposed rule.

The regulatory text in the emergency interim rule implementing 2002 Steller sea lion protection measures did not include applicability date language for Tables 21, 22, 23, and 24. Without applicability date language, the tables appeared to be a permanent regulatory amendment, which cannot be accomplished by emergency interim rule. This final rule replaces these tables with Tables 4, 5, 6, and 12. Tables 21, 22, 23, and 24 are removed to prevent confusion.

Response to Comments

NMFS received 2 letters with comments in response to the May 16, 2002, extension of the emergency interim rule (67 FR 34860) that implemented the Steller sea lion protection measures and the 2002 harvest specifications.

One letter supported the extension of the emergency interim rule to protect Steller sea lions. The writer agreed with the temporary constraint on the fisheries and was concerned about overexploitation of marine resources.

The second letter was a copy of the comments submitted by the writer regarding the January 8, 2002, emergency interim rule. Responses to these comments were provided in the preamble to the proposed rule (67 FR 56692, September 4, 2002) and no further response is needed.

One letter of comment was received before the proposed rule was published concerning the VMS requirements that this rule will implement. The letter made three points. First, VMS should only be required on vessels that had previous fishing violations. Second, VMS should not be required when vessels are engaged in fishing operations other than directed fishing for Pacific cod, Atka mackerel or pollock or when the vessel is being used for personal uses such as hunting. Third, VMS should not be required when a fishery is only open in another area. For example, if a fishery is only open in the BSAI, the vessel should not be required to use a VMS if it only fishes in the GOA.

NMFS disagrees with all three suggestions to relax VMS requirements. VMS is a tool to determine in near real time whether a violation may be occurring. If only those vessels with previous fishing violations were required to participate in a VMS program, NMFS would be unable to determine whether violations by vessels without previous violations were occurring. Using other traditional methods of enforcement, significantly less of the illegal incursions are likely to be discovered. While under most circumstances it is possible to determine from a vessel's VMS transmissions whether the vessel is fishing, it is not possible to determine what the vessel is harvesting. Enforcement would be most effective if all fishing vessels were required to operate a VMS at all times. However, in order to reduce impact on those vessels that do not engage in the Pacific cod, Atka mackerel, or pollock fisheries with pot, hook-and-line, or trawl gear, operating a VMS will only be required for those vessels that do participate in these fisheries, and only when these fisheries are open. Vessel owners intending to use their boats for purposes other than directed fishing for Pacific cod, Atka mackerel, or pollock may have NMFS remove the endorsement for those species from their FFP. Concerning the third point, the boundary between the Gulf of Alaska and the Bering Sea is long and many of the critical habitat areas straddle that boundary. If VMS were not required in both areas when a fishery is open in either area, enforcement would be unnecessarily complicated. Vessels that had turned their VMS transmitters off would be able to ''hide'' in the area where VMS was not required and enter the area where VMS was required making effective surveillance difficult or impossible.

NMFS received three letters with comments regarding the proposed rule for Steller sea lion protection measures. Two letters recommended that NMFS approve software-based VMS technologies that integrate electronics already on the vessel, at least as backup systems. NMFS believes that the modification of VMS standards is outside the scope of this rulemaking. First, NMFS did not propose this measure for public comment. Second, VMS standards are promulgated and amended on a national level and VMS components are approved for use off Alaska based on those standards. At this time, the software-based systems referred to in the comment do not meet the current standards. The comments from the third letter and responses are summarized below.

Comment 1. In general, the commentor disagreed that the groundfish fisheries are likely to jeopardize the continued existence of the western DPS of Steller sea lions or adversely affect its critical habitat. Little, if any, scientific evidence exists of competition between groundfish fisheries and Steller sea lions. NMFS is acting in a highly conservative and precautionary manner by imposing Steller sea lion protection measures contained in the proposed rule.

Response. The ESA requires NMFS to ensure the protection of endangered and threatened species. Sufficient evidence exists of the potential for competition for prey between the groundfish fisheries and Steller sea lions to warrant restrictions on the groundfish fisheries. The protection measures in the final rule ensure that the groundfish fisheries will be unlikely to jeopardize the continued existence of the western DPS of Steller sea lions or destroy or adversely modify its critical habitat.

Comment 2. The zonal approach of restricted fishing areas should not be changed until an evaluation is done. The year 2002 should be used as a baseline.

Response. The effectiveness of the protection measures will be evaluated before any changes are made.

Comment 3. The 2002 pup and non-pup Steller sea lion aerial survey results do not support the concept of groundfish fishery interaction leading to Steller sea lion declines. The locations of increases and decreases in counts are not consistent with areas of more or less amounts of fishing. This again demonstrates that NMFS is acting in a highly conservative and precautionary manner.

Response. NMFS is unable to draw conclusions about the effectiveness of Steller sea lion protection measures using the recent Steller sea lion survey estimate. NMFS has a number of research programs under way that are intended to provide further information about possible groundfish fishery interactions with Steller sea lions. The recently measured increase in the population may indicate the effects of protection measures implemented since 1999, natural environmental changes, or merely a statistical anomaly. In the 2002 FMP BiOp (see **ADDRESSES**), NMFS determined that we would need 6–10 years (roughly 3–5 surveys) to positively determine a change in the population trajectory given uncertainty in the estimates. NMFS will continue to evaluate this information as it becomes available and will use it to determine the relationship between Steller sea lion population trends and fisheries.

Comment 4. Table 5 should be corrected for five haulouts located just east of 173[deg] West long. The closure areas for these sites only apply to those waters located east of 173[deg] West long. and a footnote should be added to the table to indicate this.

Response. Two of the five haulouts should be corrected. Accordingly, Table 5 is changed from the proposed rule for Amlia I./East and Tanadak I. (Amlia). Footnote 4 to the Table has a sentence added indicating that the 20–nm closure for these haulouts for the hook-and-line and pot Pacific cod fisheries applies only to those waters located east of 173[deg] West long. Other Steller sea lion sites near the 173[deg] West long. are either rookeries with 10 or 20 nm closures or haulouts with 20 nm closures that are overlapped by the Seguam foraging area closure.

Comment 5. The word ''spawning'' should be inserted immediately before the term ''biomass'' whenever that term occurs in the regulatory text at § 679.20(d)(4) for the harvest control rule to be consistent with the preamble.

Response. The change is made in the final rule.

On October 5, 2002, the Council provided comment on the proposed rule by recommending the continued closure of the Aleutian Islands subarea to directed fishing for pollock in 2003 and the opening of this subarea in 2004 and beyond to directed fishing for pollock outside the critical habitat, apportioned seasonally (40:60 percent). The Council requested this change to allow for additional analysis of the potential effects of opening the pollock fishery. The Council recommended that NMFS analyze effects of the Aleutian Islands subarea directed pollock fishery on Steller sea lions, bycatch, and other fisheries, including cumulative effects.

The 2001 BiOp found that opening the seasonally apportioned pollock fishery outside of critical habitat in the Aleutian Islands subarea would not likely cause jeopardy or adverse modification of critical habitat for the western DPS of Steller sea lions. At this time, NMFS has no new information that would change the conclusion in the 2001 BiOp concerning the Aleutian Islands subarea directed pollock fishery.

The 2002 Stock Assessment and Fisheries Evaluation report for BSAI pollock (see **ADDRESSES**) provides an acceptable biological catch level for a directed pollock fishery in the Aleutian Islands subarea based on the condition of the pollock stock.

This final rule provides that any directed pollock fishery authorized in the Aleutian Islands subarea must be conducted outside of critical habitat with seasonal apportionments to temporally disperse the harvest. The pollock fishery conducted in this manner will meet the temporal and spatial dispersion of harvest required by the 2001 BiOp and FMP BiOp.

However, NMFS does acknowledge the concerns expressed by the Council regarding potential impacts of a new directed pollock fishery in the Aleutian Islands subarea on other ecosystem components and on other components of the fishing industry. As such, the 2003 harvest specifications for the BSAI will close the Aleutian Islands subarea to directed fishing for pollock and establish an Aleutian Islands subarea pollock TAC that allows only incidental catch of pollock in other Aleutian Islands subarea groundfish fisheries. NMFS will continue analysis of the potential impacts of a new Aleutian Islands subarea directed pollock fishery and will provide the Council with updated information.

Classification

The Administrator, Alaska Region, NMFS (Regional Administrator), has determined that this final rule is necessary for the conservation and management of the groundfish fisheries of the BSAI and GOA. The Regional Administrator also has determined that this final rule is consistent with the Magnuson-Stevens Act and other applicable laws. No relevant Federal rules exist that duplicate, overlap, or conflict with this action.

The Steller sea lion protection measures have been determined to be significant for purposes of Executive Order 12866.

NMFS prepared two final regulatory flexibility analyses (FRFA) that described the economic impact this final rule would have on small entities. Copies of these FRFAs are available from NMFS (see **ADDRESSES**). A description of the final action, the reason the action is being considered, and the legal basis for this action are contained at the beginning of this preamble.

One FRFA analyzed the Steller sea lion protection measures. NMFS received no comments on the Initial Regulatory Flexibility Analysis (IRFA). This FRFA concluded, based on the numbers of operations in 2000, that approximately 590 small entities would be directly regulated by the rule. This includes 514 catcher vessels, 33 catcher/processors, 37 shoreside processors, and 6 CDQ groups. The action will create the following new recordkeeping and reporting requirements: (a) questions will be added to the annual FFP renewal application and renewal forms to enable NMFS to identify which vessels will be directed fishing in the Pacific cod, pollock, and Atka mackerel fisheries; (b) vessels, other than jig vessels, will be required to operate a VMS while they are operating in the BSAI or GOA reporting areas when the pollock, Atka mackerel, or Pacific cod fishery they are permitted for is open; (c) an additional question asking CDQ operators to report target species has been added to each CDQ catch report; and (d) Atka mackerel vessels will have to carry additional observers when fishing in Aleutian Islands subarea critical habitat.

The Council and NMFS considered five regulatory alternatives. These were analyzed at length in the final SEIS. Three of these, Alternatives 2, 3 and 5, have adverse impacts on small entities that are greater than those in Alternative 4 (the preferred alternative). Alternative 2 dramatically reduced the TACs available to the fisheries. All three alternatives placed far more of the fisheries gross revenues ''at risk'' due to restrictions on fishing in closed or restricted critical habitat. These revenue reductions would have led to lower revenues for small entities in the fishery than the revenue reduction in Alternative 4. Alternative 1 had smaller adverse impacts on small entities than those in Alternative 4. However, this

alternative was the ''no action'' alternative under which regulatory measures, which were implemented by emergency rule and designed to protect Steller sea lions, would expire (note that not all regulations to protect the Steller sea lions had been implemented by emergency rule). This alternative was not adopted because the Council found it inadequate to avoid the likelihood that the groundfish fisheries would jeopardize the continued existence of the western DPS of Steller sea lions and adversely modify its critical habitat. Two additional options to Alternative 4 might have produced a reduced impact on the small vessel fleets. The first option would have exempted certain classes of small vessels from fishing restrictions in the vicinities of Chignik, and the second one would have established a system of ''gear zones'' along the coast in the GOA and would have restricted larger vessels to a greater extent than small ones in the zones closer to the shore. The additional small boat exemptions for Chignik were not included because opening these areas would reduce the value as a control site for evaluating management measures and increase the likelihood for competitive interactions with Steller sea lions, and also because this site has not been economically important to the small boat fleets. The Council decided not to include the GOA ''gear zone'' option due to potential conflicts with Magnuson-Stevens Act national standards 8 and 10 (i.e., local community access to fishing resources and safety). However, vessel owners' costs associated with VMS purchases required under the preferred alternative will be reimbursed through a NMFS grant to the Pacific States Marine Fisheries Commission.

A second FRFA has been prepared for the Chiniak Gully experiment implemented by this final rule. NMFS received no comments on the Initial Regulatory Flexibility Analysis (IRFA). This FRFA concluded that most of the vessels that would trawl for groundfish in the proposed Chiniak Gully area during late summer are small entities. This included 145 small entities. Most of these affected vessels are homeported in and operate out of the city of Kodiak, adjacent to the proposed closure area. Although vessels will be able to harvest in other locations in the vicinity of Kodiak Island and should be able to recover most of their lost revenues, they would be expected to incur some additional costs as a result of traveling greater distances to alternative fishing areas. Because harvest may be taken elsewhere and the restriction will last no more than 3 years, the overall impact on the affected vessels should not be large. As these small vessels potentially experience higher costs, they may see some reduction in their cash flow and profits while the program is in effect. Since the affected vessels are mostly small entities, and large trawl entities would not be affected by this trawl closure, the impact may be disproportionately large on small entities. This action imposes no additional reporting requirements on small entities. The alternatives of no action and of excluding small entities from the action were considered and would have reduced the burden on small entities, compared to the preferred alternative. However, the no action alternative would have prevented the experiment from proceeding. Excluding small entities would have eliminated most of the vessels active in the experimental area. Therefore these alternatives would not meet the objective of the action.

Pursuant to the National Environmental Policy Act, NMFS prepared an SEIS for the Steller sea lion protection measures; a notice of availability of the draft SEIS was published in the **Federal Register** on August 31, 2001 (66 FR 45984). Comments were received and responded to in the final SEIS, and the final document was issued November 23, 2001 (66 FR 58734). An analysis of the Chiniak experiment is provided in the EA/RIR/FRFA for the regulatory amendment to permit an investigation of the effect of commercial fishing on Walleye pollock distribution and abundance in localized areas off the east side of Kodiak Island. The final SEIS and EA/RIR/FRFA are available from NMFS (see **ADDRESSES**). No significant impacts on the human environment were anticipated from the Chiniak Gully experiment based on the analysis in the EA/RIR/FRFA. Based on a comparison of the effects of the other alternatives in the SEIS, NMFS determined that this action complies with ESA requirements. Potential impacts on marine mammals resulting from fishing activities conducted under this final rule are discussed in the SEIS for this action.

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) that have been approved by OMB. Public reporting burden for these collections is listed by OMB control number below.

OMB No. 0648–0206: for a Federal Fisheries Permit application (including the information necessary to register a vessel using trawl gear to conduct directed fishing operations for Atka mackerel in the harvest limit area), 21 minutes per response; OMB No. 0648–0445: 6 hours to install a VMS unit; 12 minutes to fax a check-in report that the VMS is operational; 5 seconds per automated position report; and 4 hours per year for VMS maintenance; and OMB No. 0648–0269: for CDQ target species reporting; 15 minutes per catch report.

These response time estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

Formal and informal section 7 consultations under the ESA were completed for this final rule under the FMPs for the groundfish fisheries of the BSAI and the GOA. In the 2001 BiOp and memorandum dated December 11, 2001, from the Office of Protected Resources (OPR) to the Office of Sustainable Fisheries, the Director of the OPR determined that fishing activities described in this final rule are not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of critical habitat.

On December 18, 2002, the United States District Court for the Western District of Washington entered an Order remanding the biological opinion prepared for the groundfish fisheries managed pursuant to this rule. *Greenpeace, et al.* v. *National Marine Fisheries Service,* No. C98–492Z (W.D. Wash.). The Court held that the biological opinion's findings of no jeopardy to the continued existence of endangered Steller sea lions and no adverse modification of their critical habitat were arbitrary and capricious. NMFS is seeking Plaintiff's agreement that the 2003 fisheries will commence pursuant to the Steller sea lion protection measures specified in the 2001 BiOp and implemented by this final rule pending completion of the remand. If such agreement is reached, it will be filed with the Court. If agreement is not reached, NMFS will take such other action as is necessary to ensure the fisheries' compliance with

section 7(a)(2) of the ESA pending completion of the remand.

The Steller sea lion protection measures in this rule must be effective by January 1, 2003, the date on which the emergency interim rule implementing these measures expires and the 2003 groundfish fisheries will open. The measures contained in this rule are substantially the same as those contained in the emergency interim rule dated January 8, 2002 (67 FR 956 and extended May 16, 2002, 67 FR 34860), and therefore this rule is largely a continuation of the status quo. Because the industry is already complying with similar measures, additional time is not required for compliance. Accordingly, there is good cause to waive the requirement of a 30–day delay in the effective date for this rule pursuant to 5 U.S.C. 553(d)(3). However, NMFS will make this rule effective on January 1, 2003, thereby providing a short delay in the effective date.

List of Subjects in 15 CFR Part 902 and 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: December 23, 2002.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

15 CFR Chapter IX

For the reasons set out in the preamble, 15 CFR part 902, chapter IX, is amended as follows:

PART 902— NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT; OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. In § 902.1, the table in paragraph (b) is amended by adding under 50 CFR the following entries in numerical order:

§ 902.1 OMB Control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number (All numbers begin with 0648–)
* * * * *	
50 CFR	
* * * * *	
679.4(b)(5)(vi)	–0206
679.20(a)(8)(iii)	–0269
679.28(f)(4), (f)(5), (f)(6)	–0445
* * * * *	

50 CFR Chapter VI

For reasons set out 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 part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Title II of Division C, Pub. L. 105–277; Sec. 3027, Pub. L. 106–31; 57 Stat. 113; 16 U.S.C. 1540(f); and Sec. 209, Pub. L. 106–554.

2. In § 679.2, the definition for ''Steller Sea Lion Protection Areas'' is removed, paragraph (1) of the definition for ''Fishing trip'' is revised, and the definition for ''harvest limit area (HLA) for Atka mackerel directed fishing'' is added in alphabetical order to read as follows:

§ 679.2 Definitions.

* * * * *

Fishing trip means:

(1) Retention requirements (MRA, IR/IU, and pollock roe stripping).

(i) With respect to retention requirements of MRA, IR/IU, and pollock roe stripping, an operator of a catcher/processor or mothership processor vessel is engaged in a fishing trip from the time the harvesting, receiving, or processing of groundfish is begun or resumed in an area until:

(A) The effective date of a notification prohibiting directed fishing in the same area under § 679.20 or § 679.21;

(B) The offload or transfer of all fish or fish product

from that vessel;

(C) The vessel enters or leaves an area where a different directed fishing prohibition applies;

(D) The vessel begins fishing with a different type of authorized fishing gear; or

(E) The end of a weekly reporting period, whichever comes first.

(ii) With respect to retention requirements of MRA, IR/IU, and pollock roe stripping, an operator of a catcher vessel is engaged in a fishing trip from the time the harvesting of groundfish is begun until the offload or transfer of all fish or fish product from that vessel.

* * * * *

Harvest limit area (HLA) for Atka mackerel directed fishing for the purposes of § § 679.4(b)(5)(vi)(B), 679.20(a)(8)(ii) and (iii), and 679.22(a)(8)(iv)(A), means the waters of statistical areas 542 and 543 that are (1) west of 178[deg] W long. and (2) within 20 nm seaward of sites listed in Table 6 of this part that are located west of 177[deg]57.00' W long.

* * * * *

3. In § 679.4, paragraph (b)(5)(vi) is revised to read as follows:

§ 679.4 Permits.

* * * * *

(b) * * *

(5) * * *

(vi) *Atka Mackerel, Pollock, and Pacific Cod Directed Fisheries.* (A) Indicate use of pot, hook-and-line, or trawl gear in the directed fisheries for pollock, Atka mackerel, or Pacific cod.

(B) Indicate directed fishing for Atka mackerel in the harvest limit area, as defined in § 679.2.

* * * * *

4. In § 679.5 paragraph (n)(2)(iii)(B)(*4*) is revised to read as follows:

§ 679.5 Recordkeeping and reporting.

* * * * *

(n) * * *

(2) * * *

(iii) * * *

(B) * * *

(*4*) Indicate the intended target species.

* * * * *

5. In § 679.7, paragraph (c)(3) is removed, paragraphs (a)(1), (a)(17), (a)(18), (a)(19), and (b) are revised to read as follows:

§ 679.7 Prohibitions.

* * * * *

(a) * * *

(1) *Federal Fisheries Permit.* (i) Fish for groundfish in the BSAI or GOA with a vessel of the United States that does not have on board a valid Federal Fisheries Permit issued under § 679.4.

(ii) Conduct directed fishing for Atka mackerel, Pacific cod, or pollock with pot, hook-and-line, or trawl gear from a vessel of the United States that does not have on board a valid Federal Fisheries Permit issued under § 679.4 and endorsed for Atka mackerel, Pacific cod, or pollock under § 679.4(b)(5)(vi).

* * * * *

(17) *Tender vessel.* (i) Use a catcher vessel or catcher/processor as a tender

vessel before offloading all groundfish or groundfish product harvested or processed by that vessel.

(ii) Use a catcher vessel or catcher/processor to harvest groundfish while operating as a tender vessel.

(18) *Pollock, Pacific Cod, and Atka Mackerel Directed Fishing and VMS.* Operate a vessel in any Federal reporting area when a vessel is authorized under § 679.4(b)(5)(vi) to participate in the Atka mackerel, Pacific cod, or pollock directed fisheries and the vessel's authorized species and gear type is open to directed fishing, unless the vessel carries an operable NMFS-approved Vessel Monitoring System (VMS) and complies with the requirements in § 679.28(f).

(19) *Atka Mackerel HLA Groundfish Prohibition.* For vessels registered for directed fishing for Atka mackerel HLA under § 679.20(a)(8)(iii), conduct directed fishing for groundfish, other than for Atka mackerel in an assigned HLA directed fishery under § 679.20(a)(8)(iii), during the time period that the first Atka mackerel HLA directed fishery to which the vessel is assigned under § 679.20(a)(8)(iii)(B) is open.

(b) *Prohibitions specific to the GOA.* (1) *Southeast outside trawl closure.* Use trawl gear in the GOA east of 140[deg] W long.

(2) *Catcher vessel trip limit for pollock.* Retain on board a catcher vessel at any time during a trip, more than 300,000 lb (136 mt) of unprocessed pollock.

(3) *Tender vessel restrictions for pollock.* (i) Operate as a tender vessel east of 157[deg]00' W long. for pollock harvested in the GOA.

(ii) Operate as a tender vessel west of 157[deg]00' W long. while retaining on board at any time more than 600,000 lb (272 mt) of unprocessed pollock.

* * * * *

6. In § 679.20:

a. Remove paragraphs (a)(7)(iii)(B) and (f)(3), and redesignate paragraph (a)(7)(iii)(C) and (D) as (a)(7)(iii)(B) and (C).

b. Revise paragraphs (a)(5)(i)(A), (a)(5)(i)(B), (a)(5)(ii)(B), (a)(6)(ii), (a)(6)(iii), (a)(7)(i)(C)(*2*) and (*3*), (a)(7)(ii)(A), (a)(7)(ii)(D), (a)(7)(iii)(A), the newly designated paragraph (a)(7)(iii)(B), (a)(8)(ii)(C), (a)(8)(iii), (a)(11), (b)(2)(i), (b)(2)(ii), (c)(2)(i) and (c)(2)(ii), and (d)(4).

c. Add paragraph (e)(2)(iv) to read as follows:

§ 679.20 General limitations.

* * * * *

(a) * * *

(5) * * *

(i) * * *

(A) *BSAI seasonal allowances*—(*1*) *Inshore, catcher/processor, mothership, and CDQ components.* The portions of the BSAI area pollock directed fishing allowances allocated to each component under Sections 206(a) and 206(b) of the AFA will be divided into two seasonal allowances corresponding to the two fishing seasons set out at § 679.23(e)(2), as follows: A Season, 40 percent; B Season, 60 percent.

(*2*) *Inseason adjustments.* Within any fishing year, the Regional Administrator may add or subtract any under harvest or over harvest of a seasonal allowance for a component to the subsequent seasonal allowance for the component through notification published in the **Federal Register**.

(B) *Steller sea lion conservation area (SCA) harvest limit.* For each component under Sections 206(a) and 206(b) of the AFA and for the open access fishery, no more than 28 percent of the annual pollock directed fishery allowance may be taken from the SCA before April 1. The SCA is defined at § 679.22(a)(7)(vii).

* * * * *

(ii) * * *

(B) GOA Western and Central Regulatory Areas seasonal apportionments. Each apportionment established under paragraph (a)(5)(ii)(A) of this section will be divided into four seasonal apportionments corresponding to the four fishing seasons set out at § 679.23(d)(2) as follows: A Season, 25 percent; B Season, 25 percent; C Season, 25 percent; and D Season, 25 percent. Within any fishing year, under harvest or over harvest of a seasonal apportionment may be added to or subtracted from remaining seasonal apportionments in a manner to be determined by the Regional Administrator, provided that any revised seasonal apportionment does not exceed 30 percent of the annual TAC apportionment for a GOA regulatory area.

* * * * *

(6) * * *

(ii) *GOA pollock.* The apportionment of pollock in all GOA regulatory areas and for each seasonal apportionment described in paragraph (a)(5)(ii) of this section will be allocated entirely to vessels catching 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.

(iii) *GOA Pacific cod.* The apportionment of Pacific cod in all GOA regulatory areas will be allocated 90 percent to vessels catching Pacific cod for processing by the inshore component in the GOA and 10 percent to vessels catching Pacific cod for processing by the offshore component in the GOA.

* * * * *

(*7*) * * *

(i) * * *

(C) * * *

(*2*) Harvest of Pacific cod by catcher vessels less than 60 ft (18.3 m) LOA using pot gear:

(*i*) Will accrue against the 18.3 percent specified in paragraph (a)(7)(i)(C)(*1*)(*iii*) of this section when the Pacific cod fishery for vessels equal to or greater than 60 ft (18.3 m) LOA using pot gear is open.

(*ii*) Will accrue against the 1.4 percent specified in paragraph (a)(7)(i)(C)(*1*)(*iv*) of this section when the Pacific cod fishery for vessels equal to or greater than 60 ft (18.3 m) LOA using pot gear is closed.

(*3*) Harvest of Pacific cod by catcher vessels less than 60 ft (18.3 m) LOA using hook-and-line gear:

(*i*) Will accrue against the 0.3 percent specified in paragraph (a)(7)(i)(C)(*1*)(*ii*) of this section when the Pacific cod fishery for vessels equal to or greater than 60 ft (18.3 m) LOA using hook-and-line gear is open.

(*ii*) Will accrue against the 1.4 percent specified in paragraph (a)(7)(i)(C)(*1*)(*iv*) of this section when the Pacific cod fishery for vessels equal to or greater than 60 ft (18.3 m) LOA using hook-and-line gear is closed.

* * * * *

(ii) * * *

(A) *Reallocation within the trawl sector.* If, during a fishing season, the Regional Administrator determines that either component of catcher vessels using trawl gear or catcher/processors using trawl gear will not be able to harvest the entire amount of Pacific cod in the BSAI allocated to those vessels under paragraph (a)(7)(i), (a)(7)(ii)(C), or (a)(7)(iii)(A) of this section, he/she may reallocate the projected unused amount of Pacific cod to vessels using trawl gear in the other component through notification in the **Federal Register** before any reallocation to vessels using other gear type(s).

* * * * *

(D) *Unused seasonal allowance for trawl.* Any unused portion of a seasonal allowance of Pacific cod for vessels using trawl gear under paragraph (a)(7)(ii) or (a)(7)(iii)(A) of this section may be reapportioned by the Regional

Administrator to the subsequent seasonal allocations for vessels using trawl gear.

(iii) * * *

(A) *Seasonal apportionment and gear allocations.* The Pacific cod BSAI gear allocations and apportionments by seasons, as specified in § 679.23 (e)(5), are as follows:

Gear Type	A season	B season	C season
(1) trawl	60 percent	20 percent	20 percent
(i) trawl CV	70 percent	10 percent	20 percent
(ii) trawl CP	50 percent	30 percent	20 percent
(2) hook-and-line ≥ 60 ft (18.3 m) LOA, non-CDQ pot vessels ≥ 60 ft (18.3 m) LOA, and jig vessels	60 percent	40 percent	
(3) all other nontrawl vessels	no seasonal apportionment		

(B) *Unused seasonal allowances.* Any unused portion of a seasonal allowance of Pacific cod allocated to vessels using hook-and-line or pot gear under paragraph (a)(7)(i)(C) of this section will be reallocated to the remaining seasons during the current fishing year in a manner determined by NMFS, after consultation with the Council.

(8) * * *

(ii) * * *

(C) *Harvest limit area (HLA) limits.* Atka mackerel harvest is limited in the HLA, as defined in § 679.2, as follows:

(*1*) The Regional Administrator will establish an HLA harvest limit of no more than 60 percent of the seasonal TAC as specified in paragraph (a)(8)(ii)(A) of this section.

(*2*) *CDQ fishing.* A CDQ group is prohibited from exceeding the CDQ portion of the percentage of annual Atka mackerel in areas 542 and/or 543 specified in paragraph (a)(8)(ii)(C)(1) of this section for the HLA.

(iii) *Atka mackerel HLA directed fishing*--(A) *Registration.* All vessels using trawl gear to conduct directed fishing for Atka mackerel in the HLA, as defined in § 679.2, are required to register with NMFS. To register, the vessel owner or operator must provide information required by § 679.4(b)(5)(vi) for an endorsement to the vessel's Federal Fisheries Permit issued under § 679.4.

(*1*) To participate in the A season HLA fishery, registration information must be received by NMFS, Restricted Access Management Program, by 4:30 p.m., A.l.t., of the first working day following January 1.

(*2*) To participate in the B season HLA fishery,

(*i*) The vessel must be registered for the A season HLA fishery and must maintain registration for the HLA fishery through the first working day following July 31, or

(*ii*) The vessel must be registered for the HLA fishery with NMFS, Restricted Access Management Program, by 4:30 p.m., A.l.t., of the first working day following July 31.

(B) *HLA assignment.* For each season, NMFS will manage the HLA directed fishery for the vessels registered to fish in areas 542 or 543 under paragraph (a)(8)(iii)(A) of this section as follows:

(*1*) *Lottery.* The Regional Administrator or his/her designee will randomly assign each vessel to one of two directed fisheries for each statistical area in which the vessel is registered under paragraph (a)(8)(iii)(A) of this section. Each HLA directed fishery within a statistical area will be assigned an equal number of vessels unless there is an odd number of vessels under paragraph (a)(8)(iii)(A) of this section. In the case of an odd number of vessels, the Regional Administrator or his/her designee will assign one additional vessel to one HLA directed fishery. Vessels registering under paragraph (a)(8)(iii)(A) of this section to fish in both area 542 and area 543 will be randomly assigned to an HLA directed fishery in area 542 and will be placed in the area 543 HLA directed fishery occurring at an alternate time during the season.

(*2*) *Notification.* The Regional Administrator will provide the results of the lottery under (a)(8)(iii)(B)(1) of this section by notification published in the **Federal Register** and other means of practicable notification.

(C) *HLA directed fisheries.* 48 hours after a prohibited directed fishing for Atka mackerel in area 541, the Regional Administrator will allow directed fishing within the HLA in areas 542 and 543. The Regional Administrator will provide notification by publication in the **Federal Register** of the opening and closure dates of the HLA directed fisheries, as determined by paragraph (a)(8)(iii)(E) of this section. Closures specified in Table 6 to this part and in § 679.22(a)(8) will remain in effect.

(D) *HLA harvest limit.* The Regional Administrator will establish the harvest limit for each HLA directed fishery for each area based on the seasonal apportionment at paragraph (a)(8)(ii)(C) of this section and in proportion to the number of vessels in an HLA directed fishery compared to the total number of vessels fishing in the HLA of an area during a season.

(E) *HLA directed fishery closure.* The Regional Administrator will establish the closure date of the Atka mackerel

HLA directed fishery for each statistical area based on the estimated fishing capacity of vessels registered to fish in the area and assigned to the HLA directed fishery under paragraph (a)(8)(iii)(B) of this section. Each HLA directed fishery will last no longer than 14 days.

(F) *Groundfish directed fishery prohibition.* Vessels registering under paragraph (a)(8)(iii)(A) of this section are prohibited from participating in any groundfish directed fishery other than the one assigned under paragraph (a)(8)(iii)(B) of this section during the opening of the first HLA directed fishery assigned to the vessel in a season, as specified in § 679.7(a)(19).

* * * * *

(11) *GOA Pacific cod TAC*—(i) *Seasonal apportionment.* The TAC established for Pacific cod in the Western and Central Regulatory Areas of the GOA will be divided 60 percent to the A season and 40 percent to the B season, as specified in § 679.23(d)(3).

(ii) The Regional Administrator may apply any underage or overage of Pacific cod harvest from one season to the subsequent season. In adding or subtracting any underages or overages to the subsequent season, the Regional Administrator shall consider bycatch needed to optimize catch by gear groups and sectors.

(iii) Pacific cod catch between the A and B seasons. Pacific cod harvested between the closure of the A season and opening of the B season shall be deducted from the B season TAC apportionment.

* * * * *

(b) * * *

(2) * * *

(i) *Pollock inshore-offshore reapportionment.* Any amounts of the GOA reserve that are reapportioned to pollock as provided by paragraph (b) of this section must be apportioned for processing by the inshore component in the GOA and the offshore component in the GOA in the same proportions specified in paragraph (a)(6)(ii) of this section.

(ii) *Pacific Cod inshore-offshore reapportionment.* Any amounts of the GOA reserve that are reapportioned to Pacific cod as provided by paragraph (b) of this section must be apportioned for processing by the inshore component in the GOA and the offshore component in the GOA in the same proportion specified in paragraph (a)(6)(iii) of this section.

* * * * *

(c)

(2)

(i) GOA. One-fourth of each proposed TAC and apportionment thereof (not including the reserves or the first seasonal allowances of pollock or Pacific cod), one-fourth of the proposed halibut prohibited species catch amounts, and the proposed first seasonal allowances of pollock and Pacific cod.

(ii) *BSAI.* Except for pollock, Pacific cod, Atka mackerel, and the hook-and-line and pot gear allocation of sablefish, one quarter of each proposed initial TAC and apportionment thereof, one quarter of each CDQ reserve established by paragraph (b)(1)(iii) of this section, and one quarter of the proposed PSQ reserve and prohibited species catch allowances established by § 679.21.

(A) The interim specifications for pollock, Pacific cod, and Atka mackerel will be equal to the first seasonal allowances for pollock, Pacific cod, and Atka mackerel that are published in the proposed specifications under paragraph (c)(1) of this section.

(B) The interim specifications for CDQ pollock, CDQ Atka mackerel, and CDQ Pacific cod will be equal to the first seasonal allowances that are published in the proposed specifications under paragraph (c)(1) of this section.

* * * * *

(d) * * *

(4) *Harvest control for pollock, Atka mackerel, and Pacific cod.* If a biological assessment of stock condition for pollock, Pacific cod, or Atka mackerel within an area projects that the spawning biomass in that area will be equal to or below 20 percent of the projected unfished spawning biomass during a fishing year, the Regional Administrator will prohibit the directed fishery for the relevant species within the area. The Regional Administrator will prohibit the directed fishery under this paragraph by notification published in the **Federal Register**. The directed fishery will remain closed until a subsequent biological assessment projects that the spawning biomass for the species in the area will exceed 20 percent of the projected unfished spawning biomass during a fishing year.

* * * * *

(e) * * *

(2) * * *

(iv) The maximum retainable amount for vessels fishing during an individual fishing trip in areas closed to directed fishing and in areas open to directed fishing is the lowest maximum retainable amount applicable to the prohibited species or species group in any of these areas, and this maximum retainable amount must be applied for the duration of the individual fishing trip.

* * * * *

7. In § 679.22, paragraphs (a)(5), (a)(7), (a)(8), (b)(2), and (b)(3) are revised to read as follows:

§ 679.22 Closures.

(a) * * *

(5) *Catcher Vessel Operational Area (CVOA)*—(i) *Definition.* The CVOA is defined as that part of the BSAI that is south of 56[deg]00' N lat. and between 163[deg]00' W long. and 167[deg]30' W long., and north of the Aleutian Islands (Figure 2 to part 679).

(ii) *Catcher/processor restrictions.* A catcher/processor vessel authorized to fish for BSAI pollock under § 679.4 is prohibited from conducting directed fishing for pollock in the CVOA during the B pollock season defined at § 679.23(e)(2)(ii), unless it is operating under a CDP approved by NMFS.

* * * * *

(7) *Steller sea lion protection areas, Bering Sea subarea*—(i) *Bogoslof area*—(A) *Boundaries.* The Bogoslof area consists of all waters of area 518 as described in Figure 1 of this part south of a straight line connecting 55[deg]00' N lat./170[deg]00' W long., and 55[deg]00' N lat./168[deg]11'4.75'' W long.;

(B) *Fishing prohibition.* All waters within the Bogoslof area are closed to directed fishing for pollock, Pacific cod, and Atka mackerel by vessels named on a Federal Fisheries Permit under § 679.4(b), except as provided in paragraph (a)(7)(i)(C) of this section.

(C) *Bogoslof Pacific cod exemption area.* (*1*) All catcher vessels less than 60 ft (18.3 m) LOA using jig or hook-and-line gear for directed fishing for Pacific cod are exempt from the Pacific cod fishing prohibition as described in paragraph (a)(7)(i)(B) of this section in the portion of the Bogoslof area south of a line connecting a point 3 nm north of Bishop Point (54[deg]01'25'' N lat./166[deg] 57'00'' W long.) to Cape Tanak (53[deg]33'50'' N lat./168[deg]00'00'' W long.), not including waters of the Bishop Point Pacific cod fishing closures as described in Table 5 of this part.

(*2*) If the Regional Administrator determines that 113 mt of Pacific cod have been caught by catcher vessels less than 60 ft (18.3 m) LOA using jig or hook-and-line gear in the exemption area described in paragraph (a)(7)(i)(C)(1) of this section, the Regional Administrator will prohibit directed fishing for Pacific cod by catcher vessels less than 60 ft (18.3 m) LOA using jig or hook-and-line gear in the exemption area by notification published in the **Federal Register**.

(ii) *Bering Sea Pollock Restriction Area.* (A) *Boundaries.* The Bering Sea Pollock Restriction Area consists of all waters of the Bering Sea subarea south

of a line connecting the points 163[deg]0'00'' W long./55[deg]46'30'' N lat., 165[deg]08'00'' W long./54[deg]42'9'' N lat., 165[deg]40'00'' W long./54[deg]26'30'' N lat., 166[deg]12'00'' W long./54[deg]18'40'' N lat., and 167[deg]0'00'' W long./54[deg]8'50'' N lat.

(B) *Fishing prohibition.* All waters within the Bering Sea Pollock Restriction Area are closed during the A season, as defined at § 679.23(e)(2), to directed fishing for pollock by vessels named on a Federal Fisheries Permit under § 679.4(b).

(iii) *Groundfish closures.* Directed fishing for groundfish by vessels named on a Federal Fisheries Permit under § 679.4(b) is prohibited within 3 nm of selected sites. These sites are listed in Table 12 of this part and are identified by ''Bering Sea'' in column 2.

(iv) *Pollock closures.* Directed fishing for pollock by vessels named on a Federal Fisheries Permit under § 679.4(b) is prohibited within pollock no-fishing zones around selected sites. These sites are listed in Table 4 of this part and are identified by ''Bering Sea'' in column 2.

(v) *Pacific cod closures.* Directed fishing for Pacific cod by vessels named on a Federal Fisheries Permit under § 679.4(b) and using trawl, hook-and-line, or pot gear is prohibited within the Pacific cod no-fishing zones around selected sites. These sites and gear types are listed in Table 5 of this part and are identified by ''BS'' in column 2.

(vi) *Atka mackerel closures.* Directed fishing for Atka mackerel by vessels named on a Federal Fisheries Permit under § 679.4(b) and using trawl gear is prohibited within Atka mackerel no-fishing zones around selected sites. These sites are listed in Table 6 to this part and are identified by ''Bering Sea'' in column 2.

(vii) *Steller sea lion conservation area (SCA)*—(A) *General.* Directed fishing for pollock by vessels catching pollock for processing by the inshore component, catcher/processors in the offshore component, motherships in the offshore component, or directed fishing for CDQ pollock, is prohibited within the SCA until April 1 when the Regional Administrator announces, by notification in the **Federal Register**, that the criteria set out in paragraph (a)(7)(vii)(C) of this section have been met by that industry component.

(B) *Boundaries.* The SCA consists of the area of the Bering Sea subarea between 170[deg]00' W long. and 163[deg]00' W long., south of straight lines connecting the following points in the order listed:

55[deg]00' N lat. 170[deg]00' W long.;
55[deg]00' N lat. 168[deg]00' W long.;
55[deg]30' N lat. 168[deg]00' W long.;
55[deg]30' N lat. 166[deg]00' W long.;
56[deg]00' N lat. 166[deg]00' W long.; and,
56[deg]00' N lat. 163[deg]00' W long.

(C) *Criteria for closure—1) General.* The directed fishing closures identified in paragraph (a)(7)(vii)(A) of this section will take effect when the Regional Administrator determines that the harvest limit for pollock within the SCA, as specified in § 679.20(a)(5)(i)(B) is reached before April 1. The Regional Administrator shall prohibit directed fishing for pollock in the SCA by notification published in the **Federal Register.**

(*2*) *Inshore catcher vessels greater than 99 ft (30.2 m) LOA.* The Regional Administrator will prohibit directed fishing for pollock by vessels greater than 99 ft (30.2 m) LOA, catching pollock for processing by the inshore component before reaching the inshore SCA harvest limit before April 1 to accommodate fishing by vessels less than or equal to 99 ft (30.2 m) inside the SCA until April 1. The Regional Administrator will estimate how much of the inshore seasonal allowance is likely to be harvested by catcher vessels less than or equal to 99 ft (30.2 m) LOA and reserve a sufficient amount of the inshore SCA allowance to accommodate fishing by such vessels after the closure of the SCA to inshore vessels greater than 99 ft (30.2 m) LOA. The Regional Administrator will prohibit directed fishing for all inshore catcher vessels within the SCA when the harvest limit specified in § 679.20(a)(5)(i)(B) has been met before April 1.

(8) *Steller sea lion protection areas, Aleutian Islands subarea*—(i) *Seguam Foraging area.* (A) The Seguam foraging area is all waters within the area between 52[deg]N lat. and 53[deg] N lat. and between 173[deg]30' W long. and 172[deg]30' W long.

(B) Directed fishing for pollock, Pacific cod, and Atka mackerel by vessels named on a Federal Fisheries Permit under § 679.4(b) is prohibited in the Seguam Foraging area as described in paragraph (a)(8)(i)(A) of this section.

(ii) *Pollock Closure.* Directed fishing for pollock by vessels named on a Federal Fisheries Permit under § 679.4(b) is prohibited within the pollock no-fishing zones around selected sites. These sites are listed in Table 4 of this part and are identified by ''Aleutian I.'' in column 2.

(iii) *Groundfish closures.* Directed fishing for groundfish by vessels named on a Federal Fisheries Permit under § 679.4(b) is prohibited within 3 nm of selected sites. These sites are listed in Table 12 of this part and are identified by ''Aleutian Islands'' in column 2.

(iv) *Pacific cod closures*—(A) *HLA Closure.* Directed fishing for Pacific cod by vessels named on a Federal Fisheries Permit under § 679.4(b) and using trawl gear is prohibited in the HLA in area 542 or area 543, as defined in § 679.2 when the Atka mackerel HLA directed fishery in area 542 or area 543 is open.

(B) *Gear specific closures.* Directed fishing for Pacific cod by vessels named on a Federal Fisheries Permit under § 679.4(b) and using trawl, hook-and-line, or pot gear is prohibited within the Pacific cod no-fishing zones around selected sites. These sites and gear types are listed in Table 5 of this part and are identified by ''AI'' in column 2.

(v) *Atka mackerel closures.* Directed fishing for Atka mackerel by vessels named on a Federal Fisheries Permit under § 679.4(b) and using trawl gear is prohibited within Atka mackerel no-fishing zones around selected sites. These sites are listed in Table 6 of this part and are identified by ''Aleutian Islands'' in column 2.

* * * * *

(b) * * *

(2) *Steller sea lion protection areas*—(i) *Groundfish closures.* Directed fishing for groundfish by vessels named on a Federal Fisheries Permit under § 679.4(b) is prohibited within 3 nm of selected sites. These sites are listed in Table 12 of this part and are identified by ''Gulf of Alaska'' in column 2.

(ii) *Pollock closures.* Directed fishing for pollock by vessels named on a Federal Fisheries Permit under § 679.4(b) is prohibited within pollock no-fishing zones around selected sites. These sites are listed in Table 4 of this part and are identified by ''Gulf of Alaska'' in column 2.

(iii) *Pacific cod closures.* Directed fishing for Pacific cod by vessels named on a Federal Fisheries Permit under § 679.4(b) and using trawl, hook-and-line, or pot gear in the federally managed Pacific cod or State of Alaska parallel groundfish fisheries, as defined in Alaska Administrative Code (5 AAC 28.087(c), January 3, 2002), is prohibited within Pacific cod no-fishing zones around selected sites. These sites and gear types are listed in Table 5 of this part and are identified by ''GOA'' in column 2.

(iv) *Atka mackerel closure.* Directed fishing for Atka mackerel by vessels named on a Federal Fisheries Permit under § 679.4(b) within the Gulf of Alaska subarea is prohibited at all times.

(3) *Chiniak Gully Research Area* (applicable through December 31, 2004).

(i) *Description of Chiniak Gully Research Area.* The Chiniak Gully Research Area is defined as that part of area 630 bounded by straight lines connecting the coordinates in the order listed:

57.81[deg] N lat., 152.37[deg] W long.;
57.81[deg] N lat., 151.85[deg] W long.;
57.22[deg] N lat., 150.64[deg] W long.;
56.98[deg] N lat., 151.27[deg] W long.;
57.62[deg] N lat., 152.16[deg] W long.;
and hence counterclockwise along the shoreline of Kodiak Island to 57.81[deg] N lat., 152.37[deg] W long.

(ii) *Closure*—(A) The Chiniak Gully Research Area is closed to vessels named on a Federal Fisheries Permit under § 679.4(b) and using trawl gear from August 1 to a date no later than September 20, except that trawl gear may be tested in the manner described at § 679.24(d)(2) in the Kodiak Test Area defined at § 679.24 (d)(4)(i) and illustrated in Figure 7 to this part.

(B) Prior to September 20, the Regional Administrator may publish notification in the **Federal Register** rescinding the trawl closure in the Chiniak Gully Research Area described in paragraph (b)(3)(ii)(A) of this section.

* * * * *

8. In § 679.23, paragraphs (d)(2), (d)(3), (e)(2), (e)(3), (e)(4)(iii), (e)(5) and (i) are revised to read as follows:

§ 679.23 Seasons.

* * * * *

(d) * * *

(2) *Directed fishing for pollock.* Subject to other provisions of this part, directed fishing for pollock in the Western and Central Regulatory Areas is authorized only during the following four seasons:

(i) *A season.* From 1200 hours, A.l.t., January 20 through 1200 hours, A.l.t., February 25;

(ii) *B season.* From 1200 hours, A.l.t., March 10 through 1200 hours, A.l.t., May 31;

(iii) *C season.* From 1200 hours, A.l.t., August 25 through 1200 hours, A.l.t., September 15; and

(iv) *D season.* From 1200 hours, A.l.t., October 1 through 1200 hours, A.l.t., November 1.

(B) B season. From 1200 hours, A.l.t., September 1 through 2400 hours, A.l.t., December 31.

(ii) *Trawl gear.* Subject to other provisions of this part, directed fishing for Pacific cod with trawl gear in the Western and Central Regulatory Areas is authorized only during the following two seasons:

(A) *A season.* From 1200 hours, A.l.t., January 20 through 1200 hours, A.l.t., June 10; and

(B) B season. From 1200 hours, A.l.t., September 1 through 1200 hours, A.l.t., November 1.

* * * * *

(e) * * *

(2) *Directed fishing for pollock in the Bering Sea/Aleutian Islands area by inshore, offshore catcher/processor, and mothership components and pollock CDQ fisheries.* Subject to other provisions of this part, directed fishing for pollock by vessels catching pollock for processing by the inshore component, catcher/processors in the offshore component, and motherships in the offshore component in the Bering Sea/Aleutian Islands area or directed fishing for CDQ pollock in the Bering Sea/Aleutian Islands area is authorized only during the following two seasons:

(i) *A season.* From 1200 hours, A.l.t., January 20 through 1200 hours, A.l.t., June 10; and

(ii) *B season.* From 1200 hours, A.l.t., June 10 through 1200 hours, A.l.t., November 1.

(3) *Directed fishing for Atka mackerel with trawl gear.* Subject to other provisions of this part, non-CDQ directed fishing for Atka mackerel with trawl gear in the Aleutian Islands subarea is authorized only during the following two seasons:

(i) *A season.* From 1200 hours, A.l.t., January 20 through 1200 hours, A.l.t., April 15; and

(ii) *B season.* From 1200 hours, A.l.t., September 1 through 1200 hours, A.l.t., November 1.

* * * * *

(4) * * *

(iii) *Groundfish CDQ.* Fishing for groundfish CDQ species, other than CDQ pollock; hook-and-line, jig, or trawl CDQ Pacific cod; and fixed gear CDQ sablefish under subpart C of this part, is authorized from 0001 hours, A.l.t., January 1 through the end of each fishing year, except as provided under paragraph (c) of this section.

(5) *Directed fishing for Pacific cod*—(i) *Hook-and-line and jig gear.* Subject to other provisions of this part, directed fishing for CDQ and non-CDQ Pacific cod with vessels equal to or greater than 60 ft (18.3 m) LOA using hook-and-line gear and with vessels using jig gear in the BSAI is authorized only during the following two seasons:

(A) *A season.* From 0001 hours, A.l.t., January 1 through 1200 hours, A.l.t., June 10; and

(B) *B season.* From 1200 hours, A.l.t., June 10 through 2400 hours, A.l.t., December 31.

(ii) *Trawl gear.* Subject to other provisions of this part, directed fishing for CDQ and non-CDQ Pacific cod with trawl gear in the BSAI is authorized only during the following three seasons:

(A) *A season.* From 1200 hours, A.l.t., January 20 through 1200 hours, A.l.t., April 1;

(B) *B season.* From 1200 hours, A.l.t., April 1 through 1200 hours, A.l.t., June 10; and

(C) *C season.* From 1200 hours, A.l.t., June 10 through 1200 hours, A.l.t., November 1.

(iii) *Pot gear.* Subject to other provisions of this part, non-CDQ directed fishing for Pacific cod with vessels equal to or greater than 60 ft (18.3 m) LOA using pot gear in the BSAI is authorized only during the following two seasons:

(A) *A season.* From 0001 hours, A.l.t., January 1 through 1200 hours, A.l.t., June 10; and

(B) *B season.* From 1200 hours, A.l.t., September 1 through 2400 hours, A.l.t., December 31.

* * * * *

(i) *Catcher vessel exclusive fishing seasons for pollock.* Catcher vessels are prohibited from participating in directed fishing for pollock under the following conditions. Vessels less than 125 ft (38.1 m) LOA are exempt from this restriction when fishing east of 157[deg]00' W long. GOA and BSAI seasons are specified at § 679.23(d)(2) and § 679.23(e)(2).

(3) *Directed fishing for Pacific cod* (i) *Hook-and-line, pot, or jig gear.* Subject to other provisions of this part, directed fishing for Pacific cod with hook-and-line, pot, or jig gear in the Western and Central Regulatory Areas is authorized only during the following two seasons:

(A) *A season.* From 0001 hours, A.l.t., January 1 through 1200 hours, A.l.t., June 10; and

	If you own or operate a catcher vessel and engage in directed fishing for pollock in the	During the...	Then you are prohibited from subsequently engaging in directed fishing for pollock with that catcher vessel in the...
(1)	BSAI	(i) A season	GOA until the following C season
		(ii)B season	GOA until the A season of the next year
(2)	GOA	(i) A season	BSAI until the following B season
		(ii) B season	BSAI until the following B season
		(iii) C season	BSAI until the A season of the following year
		(iv) D season	BSAI until the A season of the following year

9. In § 679.28, paragraphs (f)(3)(ii) and (f)(3)(iii) are revised, and paragraphs (f)(4), (f)(5), and (f)(6) are added to read as follows:

§ 679.28 Equipment and operational requirements.

* * * * *

(f) * * *

(3) * * *

(ii) Activate the VMS transmitter and receive confirmation from NMFS that the VMS transmissions are being received before engaging in operations when a VMS is required.

(iii) Continue the VMS transmissions until no longer engaged in operations requiring VMS.

* * * * *

(4) What must the vessel owner do before activating a VMS transmitter for the first time? If you are a vessel owner who must use a VMS and you are activating a VMS transmitter for the first time, you must:

(i) Contact the NMFS enforcement division by FAX at 907–586–7703 and provide: the VMS transmitter ID, the vessel name, the Federal Fisheries Permit number, and approximately when and where the vessel will begin fishing.

(ii) Call NMFS enforcement at 907–586–7225, Monday through Friday, between the hours of 0800 hours, A.l.t., and 1630 hours, A.l.t., at least 72 hours before leaving port and receive confirmation that the transmissions are being received.

(5) *What must the vessel owner do when the vessel replaces a VMS transmitter?* If you are a vessel owner who must use a VMS and you wish to replace a transmitter, you must either:

(i) Have followed the reporting and confirmation procedure for the replacement transmitter, as described above in paragraph (f)(4) of this section, or

(ii) Contact the NMFS Enforcement Division by phone or FAX and provide: the replacement VMS transmitter ID, the vessel name and the vessel's Federal Fisheries Permit Number and receive confirmation that the transmissions are being received before beginning operations.

(6) *When must the VMS transmitter be transmitting?* Your vessel's transmitter must be transmitting if the vessel is operating in any Reporting Area (see definitions at § 679.2) off Alaska while any fishery requiring VMS, for which the vessel has a species and gear endorsement on its Federal Fisheries Permit under § 679.4(b)(5)(vi), is open.

§ 679.32 [Amended]

10. In § 679.32, paragraph (e) is removed and reserved.

11. In § 679.50, paragraph (c)(1)(x) is revised to read as follows:

§ 679.50 Groundfish Observer Program applicable through December 31, 2007.

* * * * *

(c) * * *

(1) * * *(x) A vessel directed fishing with trawl gear for Atka mackerel in the Aleutian Islands subarea must carry two NMFS-certified observers at all times while directed fishing for Atka mackerel in the HLA directed fishery, as specified in § 679.20(a)(8).

* * * * *

12. In 50 CFR part 679, Tables 21, 22, 23, and 24 are deleted, Tables 4, 5, and 6 are revised, Table 12 is added, and Table 13 is removed and reserved to read as follows:

BILLING CODE 3510–22–S

Table 4 to 50 CFR Part 679 Steller Sea Lion Protection Areas Pollock Fisheries Restrictions

Column Number 1	2	3	4	5	6	7
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pollock No-fishing Zones for Trawl Gear[2,6] (nm)
		Latitude	Longitude	Latitude	Longitude	
St. Lawrence I./S Punuk I.	Bering Sea	63 04.00 N	168 51.00 W			20
St. Lawrence I./SW Cape	Bering Sea	63 18.00 N	171 26.00 W			20
Hall I.	Bering Sea	60 37.00 N	173 00.00 W			20
St. Paul I./Sea Lion Rock	Bering Sea	57 06.00 N	170 17.50 W			3
St. Paul I./NE Pt.	Bering Sea	57 15.00 N	170 06.50 W			3
Walrus I. (Pribilofs)	Bering Sea	57 11.00 N	169 56.00 W			10
St. George I./Dalnoi Pt.	Bering Sea	56 36.00 N	169 46.00 W			3
St. George I./S Rookery	Bering Sea	56 33.50 N	169 40.00 W			3
Cape Newenham	Bering Sea	58 39.00 N	162 10.50 W			20
Round (Walrus Islands)	Bering Sea	58 36.00 N	159 58.00 W			20
Attu I./Cape Wrangell	Aleutian I.	52 54.60 N	172 27.90 E	52 55.40 N	172 27.20 E	20
Agattu I./Gillon Pt.	Aleutian I.	52 24.13 N	173 21.31 E			20
Attu I./Chirikof Pt.	Aleutian I.	52 49.75 N	173 26.00 E			20
Agattu I./Cape Sabak	Aleutian I.	52 22.50 N	173 43.30 E	52 21.80 N	173 41.40 E	20
Alaid I.	Aleutian I.	52 46.50 N	173 51.50 E	52 45.00 N	173 56.50 E	20
Shemya I.	Aleutian I.	52 44.00 N	174 08.70 E			20
Buldir I.	Aleutian I.	52 20.25 N	175 54.03 E	52 20.38 N	175 53.85 E	20
Kiska I./Cape St. Stephen	Aleutian I.	51 52.50 N	177 12.70 E	51 53.50 N	177 12.00 E	20
Kiska I./Sobaka & Vega	Aleutian I.	51 49.50 N	177 19.00 E	51 48.50 N	177 20.50 E	20
Kiska I./Lief Cove	Aleutian I.	51 57.16 N	177 20.41 E	51 57.24 N	177 20.53 E	20
Kiska I./Sirius Pt.	Aleutian I.	52 08.50 N	177 36.50 E			20

Column Number 1	2	3	4	5	6	7
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pollock No-fishing Zones for Trawl Gear [2,8](nm)
		Latitude	Longitude	Latitude	Longitude	
Tanadak I. (Kiska)	Aleutian I.	51 56.80 N	177 46.80 E			20
Segula I.	Aleutian I.	51 59.90 N	178 05.80 E	52 03.06 N	178 08.80 E	20
Ayugadak Point	Aleutian I.	51 45.36 N	178 24.30 E			20
Rat I./Krysi Pt.	Aleutian I.	51 49.98 N	178 12.35 E			20
Little Sitkin I.	Aleutian I.	51 59.30 N	178 29.80 E			20
Amchitka I./Column Rocks	Aleutian I.	51 32.32 N	178 49.28 E			20
Amchitka I./East Cape	Aleutian I.	51 22.26 N	179 27.93 E	51 22.00 N	179 27.00 E	20
Amchitka I./Cape Ivakin	Aleutian I.	51 24.46 N	179 24.21 E			20
Semisopochnoi/Petrel Pt.	Aleutian I.	52 01.40 N	179 36.90 E	52 01.50 N	179 39.00 E	20
Semisopochnoi I./Pochnoi Pt.	Aleutian I.	51 57.30 N	179 46.00 E			20
Amatignak I. Nitrof Pt.	Aleutian I.	51 13.00 N	179 07.80 W			20
Unalga & Dinkum Rocks	Aleutian I.	51 33.67 N	179 04.25 W	51 35.09 N	179 03.66 W	20
Ulak I./Hasgox Pt.	Aleutian I.	51 18.90 N	178 58.90 W	51 18.70 N	178 59.60 W	20
Kavalga I.	Aleutian I.	51 34.50 N	178 51.73 W	51 34.50 N	178 49.50 W	20
Tag I.	Aleutian I.	51 33.50 N	178 34.50 W			20
Ugidak I.	Aleutian I.	51 34.95 N	178 30.45 W			20
Gramp Rock	Aleutian I.	51 28.87 N	178 20.58 W			20
Tanaga I./Bumpy Pt.	Aleutian I.	51 55.00 N	177 58.50 W	51 55.00 N	177 57.10 W	20
Bobrof I.	Aleutian I.	51 54.00 N	177 27.00 W			20
Kanaga I./Ship Rock	Aleutian I.	51 46.70 N	177 20.72 W			20
Kanaga I./North Cape	Aleutian I.	51 56.50 N	177 09.00 W			20
Adak I.	Aleutian I.	51 35.50 N	176 57.10 W	51 37.40 N	176 59.60 W	20
Little Tanaga Strait	Aleutian I.	51 49.09 N	176 13.90 W			20

Column Number 1	2	3	4	5	6	7
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pollock No-fishing Zones for Trawl Gear[2,8] (nm)
		Latitude	Longitude	Latitude	Longitude	
Great Sitkin I.	Aleutian I.	52 06.00 N	176 10.50 W	52 06.60 N	176 07.00 W	20
Anagaksik I.	Aleutian I.	51 50.86 N	175 53.00 W			20
Kasatochi I.	Aleutian I.	52 11.11 N	175 31.00 W			20
Atka I./North Cape	Aleutian I.	52 24.20 N	174 17.80 W			20
Amlia I./Sviech. Harbor[11]	Aleutian I.	52 01.80 N	173 23.90 W			20
Sagigik I.[11]	Aleutian I.	52 00.50 N	173 09.30 W			20
Amlia I./East[11]	Aleutian I.	52 05.70 N	172 59.00 W	52 05.75 N	172 57.50 W	20
Tanadak I. (Amlia[11])	Aleutian I.	52 04.20 N	172 57.60 W			20
Agligadak I.[11]	Aleutian I.	52 06.09 N	172 54.23 W			20
Seguam I./Saddleridge Pt.[11]	Aleutian I.	52 21.05 N	172 34.40 W	52 21.02 N	172 33.60 W	20
Seguam I./Finch Pt.	Aleutian I.	52 23.40 N	172 27.70 W	52 23.25 N	172 24.30 W	20
Seguam I./South Side	Aleutian I.	52 21.60 N	172 19.30 W	52 15.55 N	172 31.22 W	20
Amukta I. & Rocks	Aleutian I.	52 27.25 N	171 17.90 W			20
Chagulak I.	Aleutian I.	52 34.00 N	171 10.50 W			20
Yunaska I.	Aleutian I.	52 41.40 N	170 36.35 W			20
Uliaga[3]	Bering Sea	53 04.00 N	169 47.00 W	53 05.00 N	169 46.00 W	10
Chuginadak	Gulf of Alaska	52 46.70 N	169 41.90 W			20
Kagamil[3]	Bering Sea	53 02.10 N	169 41.00 W			10
Samalga	Gulf of Alaska	52 46.00 N	169 15.00 W			20
Adugak I.[3]	Bering Sea	52 54.70 N	169 10.50 W			10
Umnak I./Cape Aslik[3]	Bering Sea	53 25.00 N	168 24.50 W			BA
Ogchul I.	Gulf of Alaska	52 59.71 N	168 24.24 W			20
Bogoslof I./Fire I.[3]	Bering Sea	53 55.69 N	168 02.05 W			BA

Column Number 1	2	3	4	5	6	7
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pollock No-fishing Zones for Trawl Gear[2,8] (nm)
		Latitude	Longitude	Latitude	Longitude	
Polivnoi Rock	Gulf of Alaska	53 15.96 N	167 57.99 W			20
Emerald I.	Gulf of Alaska	53 17.50 N	167 51.50 W			20
Unalaska/Cape Izigan	Gulf of Alaska	53 13.64 N	167 39.37 W			20
Unalaska/Bishop Pt.[9]	Bering Sea	53 58.40 N	166 57.50 W			10
Akutan I./Reef-lava[9]	Bering Sea	54 08.10 N	166 06.19 W	54 09.10 N	166 05.50 W	10
Unalaska I./Cape Sedanka[6]	Gulf of Alaska	53 50.50 N	166 05.00 W			20
Old Man Rocks[6]	Gulf of Alaska	53 52.20 N	166 04.90 W			20
Akutan I./Cape Morgan[6]	Gulf of Alaska	54 03.39 N	165 59.65 W	54 03.70 N	166 03.68 W	20
Akun I./Billings Head[9]	Bering Sea	54 17.62 N	165 32.06 W	54 17.57 N	165 31.71 W	10
Rootok[6]	Gulf of Alaska	54 03.90 N	165 31.90 W	54 02.90 N	165 29.50 W	20
Tanginak I.[6]	Gulf of Alaska	54 12.00 N	165 19.40 W			20
Tigalda/Rocks NE[6]	Gulf of Alaska	54 09.60 N	164 59.00 W	54 09.12 N	164 57.18 W	20
Unimak/Cape Sarichef[9]	Bering Sea	54 34.30 N	164 56.80 W			10
Aiktak[6]	Gulf of Alaska	54 10.99 N	164 51.15 W			20
Ugamak I.[6]	Gulf of Alaska	54 13.50 N	164 47.50 W	54 12.80 N	164 47.50 W	20
Round (GOA)[6]	Gulf of Alaska	54 12.05 N	164 46.60 W			20
Sea Lion Rock (Amak)[9]	Bering Sea	55 27.82 N	163 12.10 W			10
Amak I. And rocks[9]	Bering Sea	55 24.20 N	163 09.60 W	55 26.15 N	163 08.50 W	10
Bird I.	Gulf of Alaska	54 40.00 N	163 17.2 W			10
Caton I.	Gulf of Alaska	54 22.70 N	162 21.30 W			3
South Rocks	Gulf of Alaska	54 18.14 N	162 41.3 W			10
Clubbing Rocks (S)	Gulf of Alaska	54 41.98 N	162 26.7 W			10
Clubbing Rocks (N)	Gulf of Alaska	54 42.75 N	162 26.7 W			10

Column Number 1	2	3	4	5	6	7
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pollock No-fishing Zones for Trawl Gear [2,8](nm)
		Latitude	Longitude	Latitude	Longitude	
Pinnacle Rock	Gulf of Alaska	54 46.06 N	161 45.85 W			3
Sushilnoi Rocks	Gulf of Alaska	54 49.30 N	161 42.73 W			10
Olga Rocks	Gulf of Alaska	55 00.45 N	161 29.81 W	54 59.09 N	161 30.89 W	10
Jude I.	Gulf of Alaska	55 15.75 N	161 06.27 W			20
Sea Lion Rocks (Shumagins)	Gulf of Alaska	55 04.70 N	160 31.04 W			3
Nagai I./Mountain Pt.	Gulf of Alaska	54 54.20 N	160 15.40 W	54 56.00 N	160 15.00 W	3
The Whaleback	Gulf of Alaska	55 16.82 N	160 05.04 W			3
Chernabura I.	Gulf of Alaska	54 45.18 N	159 32.99 W	54 45.87 N	159 35.74 W	20
Castle Rock	Gulf of Alaska	55 16.47 N	159 29.77 W			3
Atkins I.	Gulf of Alaska	55 03.20 N	159 17.40 W			20
Spitz I.	Gulf of Alaska	55 46.60 N	158 53.90 W			3
Mitrofania	Gulf of Alaska	55 50.20 N	158 41.90 W			3
Kak	Gulf of Alaska	56 17.30 N	157 50.10 W			20
Lighthouse Rocks	Gulf of Alaska	55 46.79 N	157 24.89 W			20
Sutwik I.	Gulf of Alaska	56 31.05 N	157 20.47 W	56 32.00 N	157 21.00 W	20
Chowiet I.	Gulf of Alaska	56 00.54 N	156 41.42 W	55 00.30 N	156 41.60 W	20
Nagai Rocks	Gulf of Alaska	55 49.80 N	155 47.50 W			20
Chirikof I.	Gulf of Alaska	55 46.50 N	155 39.50 W	55 46.44 N	155 43.46 W	20
Puale Bay	Gulf of Alaska	57 40.60 N	155 23.10 W			10
Kodiak/Cape Ikolik	Gulf of Alaska	57 17.20 N	154 47.50 W			3
Takli I.	Gulf of Alaska	58 01.75 N	154 31.25 W			10
Cape Kuliak	Gulf of Alaska	58 08.00 N	154 12.50 W			10
Cape Gull	Gulf of Alaska	58 11.50 N	154 09.60 W	58 12.50 N	154 10.50 W	10

Column Number 1	2	3	4	5	6	7
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pollock No-fishing Zones for Trawl Gear[2,8] (nm)
		Latitude	Longitude	Latitude	Longitude	
Kodiak/Cape Ugat	Gulf of Alaska	57 52.41 N	153 50.97 W			10
Sitkinak/Cape Sitkinak	Gulf of Alaska	56 34.30 N	153 50.96 W			10
Shakun Rock	Gulf of Alaska	58 32.80 N	153 41.50 W			10
Twoheaded I.	Gulf of Alaska	56 54.50 N	153 32.75 W	56 53.90 N	153 33.74 W	10
Cape Douglas (Shaw I.)	Gulf of Alaska	59 00.00 N	153 22.50 W			10
Kodiak/Cape Barnabas	Gulf of Alaska	57 10.20 N	152 53.05 W			3
Kodiak/Gull Point[4]	Gulf of Alaska	57 21.45 N	152 36.30 W			10, 3
Latax Rocks	Gulf of Alaska	58 40.10 N	152 31.30 W			10
Ushagat I./SW	Gulf of Alaska	58 54.75 N	152 22.20 W			10
Ugak I.[4]	Gulf of Alaska	57 23.60 N	152 17.50 W	57 21.90 N	152 17.40 W	10, 3
Sea Otter I.	Gulf of Alaska	58 31.15 N	152 13.30 W			10
Long I.	Gulf of Alaska	57 46.82 N	152 12.90 W			10
Sud I.	Gulf of Alaska	58 54.00 N	152 12.50 W			10
Kodiak/Cape Chiniak	Gulf of Alaska	57 37.90 N	152 08.25 W			10
Sugarloaf I.	Gulf of Alaska	58 53.25 N	152 02.40 W			20
Sea Lion Rocks (Marmot)	Gulf of Alaska	58 20.53 N	151 48.83 W			10
Marmot I.[5]	Gulf of Alaska	58 13.65 N	151 47.75 W	58 09.90 N	151 52.06 W	15, 20
Nagahut Rocks	Gulf of Alaska	59 06.00 N	151 46.30 W			10
Perl	Gulf of Alaska	59 05.75 N	151 39.75 W			10
Gore Point	Gulf of Alaska	59 12.00 N	150 58.00 W			10
Outer (Pye) I.	Gulf of Alaska	59 20.50 N	150 23.00 W	59 21.00 N	150 24.50 W	20
Steep Point	Gulf of Alaska	59 29.05 N	150 15.40 W			10
Seal Rocks (Kenai)	Gulf of Alaska	59 31.20 N	149 37.50 W			10

Column Number 1	2	3	4	5	6	7
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pollock No-fishing Zones for Trawl Gear [2,8] (nm)
		Latitude	Longitude	Latitude	Longitude	
Chiswell Islands	Gulf of Alaska	59 36.00 N	149 34.00 W			10
Rugged Island	Gulf of Alaska	59 50.00 N	149 23.10 W	59 51.00 N	149 24.70 W	10
Point Elrington[7, 10]	Gulf of Alaska	59 56.00 N	148 15.20 W			20
Perry I.[7]	Gulf of Alaska	60 44.00 N	147 54.60 W			
The Needle[7]	Gulf of Alaska	60 06.64 N	147 36.17 W			
Point Eleanor[7]	Gulf of Alaska	60 35.00 N	147 34.00 W			
Wooded I. (Fish I.)	Gulf of Alaska	59 52.90 N	147 20.65 W			20
Glacier Island[7]	Gulf of Alaska	60 51.30 N	147 14.50 W			
Seal Rocks (Cordova)[10]	Gulf of Alaska	60 09.78 N	146 50.30 W			20
Cape Hinchinbrook[10]	Gulf of Alaska	60 14.00 N	146 38.50 W			20
Middleton I.	Gulf of Alaska	59 28.30 N	146 18.80 W			10
Hook Point[10]	Gulf of Alaska	60 20.00 N	146 15.60 W			20
Cape St. Elias	Gulf of Alaska	59 47.50 N	144 36.20 W			20

[1] Where two sets of coordinates are given, the baseline extends in a clock-wise direction from the first set of geographic coordinates along the shoreline at mean lower-low water to the second set of coordinates. Where only one set of coordinates is listed, that location is the base point.

[2] Closures as stated in 50 CFR 679.22(a)(7)(iv), (a)(8)(ii) and (b)(2)(ii).

[3] This site lies within the Bogoslof area (BA). The BA consists of all waters of area 518 as described in Figure 1 of this part south of a straight line connecting 55°00' N/170°00' W, and 55°00' N/168°11'4.75" W.

[4] The trawl closure between 0 nm to 10 nm is effective from January 20 through May 31. Trawl closure between 0 nm to 3 nm is effective from August 25 through November 1.

[5] Trawl closure between 0 nm to 15 nm is effective from January 20 through May 31. Trawl closure between 0 nm to 20 nm is effective from August 25 to November 1.

[6] Restriction area includes only waters of the Gulf of Alaska Area.

[7] Contact the Alaska Department of Fish and Game for fishery restrictions at these sites.

[8] No-fishing zones are the waters between 0 nm and the nm specified in column 7 around each site and within the BA.

[9] This site is located in the Bering Sea Pollock Restriction Area, closed to pollock trawling during the A season. This area consists of all waters of the Bering Sea subarea south of a line connecting the points 163° 0'00" W long./55°46'30" N lat., 165°08'00" W long./54°42'9" N lat., 165°40'00" long./54°26'30" N lat., 166°12'00" W long./54°18'40" N lat., and 167°0'00" W long./54°8'50" N lat.

[10] The 20 nm closure around this site is effective in federal waters outside of State of Alaska waters of Prince William Sound.

[11] Some or all of the restricted area is located in the Seguam Foraging area (SFA) which is closed to all gears types. The SFA is established as all waters within the area between 52° N lat. and 53° N lat. and between 173°30' W long. and 172°30' W long.

Table 5 to 50 CFR Part 679 Steller Sea Lion Protection Areas Pacific Cod Fisheries Restrictions

Column Number 1	2	3	4	5	6	7	8	9
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm)
		Latitude	Longitude	Latitude	Longitude			
St. Lawrence I./S Punuk I.	BS	63 04.00 N	168 51.00 W			20	20	20
St. Lawrence I./SW Cape	BS	63 18.00 N	171 26.00 W			20	20	20
Hall I.	BS	60 37.00 N	173 00.00 W			20	20	20
St. Paul I./Sea Lion Rock	BS	57 06.00 N	170 17.50 W			3	3	3
St. Paul I./NE Pt.	BS	57 15.00 N	170 06.50 W			3	3	3
Walrus I. (Pribilofs)	BS	57 11.00 N	169 56.00 W			10	3	3
St George I./Dalnoi Pt.	BS	56 36.00 N	169 46.00 W			3	3	3
St. George I./S. Rookery	BS	56 33.50 N	169 40.00 W			3	3	3
Cape Newenham	BS	58 39.00 N	162 10.50 W			20	20	20
Round (Walrus Islands)	BS	58 36.00 N	159 58.00 W			20	20	20
Attu I./Cape Wrangell[11]	AI	52 54.60 N	172 27.90 E	52 55.40 N	172 27.20 E	20, 10	3	3
Agattu I./Gillon Pt.[11]	AI	52 24.13 N	173 21.31 E			20, 10	3	3
Attu I./Chirikof Pt.[11]	AI	52 49.75 N	173 26.00 E			20, 3		
Agattu I./Cape Sabak[11]	AI	52 22.50 N	173 43.30 E	52 21.80 N	173 41.40 E	20, 10	3	3
Alaid I.[11]	AI	52 46.50 N	173 51.50 E	52 45.00 N	173 56.50 E	20, 3		
Shemya I.[11]	AI	52 44.00 N	174 08.70 E			20, 3		
Buldir I.[11]	AI	52 20.25 N	175 54.03 E	52 20.38 N	175 53.85 E	20, 10	10	10
Kiska I./Cape St. Stephen[11]	AI	51 52.50 N	177 12.70 E	51 53.50 N	177 12.00 E	20, 10	3	3

Column Number 1	2	3	4	5	6	7	8	9
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm)
		Latitude	Longitude	Latitude	Longitude			
Kiska I. Sobaka & Vega[11]	AI	51 49.50 N	177 19.00 E	51 48.50 N	177 20.50 E	20, 3		
Kiska I./Lief Cove[11]	AI	51 57.16 N	177 20.41 E	51 57.24 N	177 20.53 E	20, 10	3	3
Kiska I./Sirius Pt.[11]	AI	52 08.50 N	177 36.50 E			20, 3		
Tanadak I. (Kiska)[11]	AI	51 56.80 N	177 46.80 E			20, 3		
Segula I.[11]	AI	51 59.90 N	178 05.80 E	52 03.06 N	178 08.80 E	20, 3		
Ayugadak Point[11]	AI	51 45.36 N	178 24.30 E			20, 10	3	3
Rat I./Krysi Pt.[11]	AI	51 49.98 N	178 12.35 E			20, 3		
Little Sitkin I.[11]	AI	51 59.30 N	178 29.80 E			20, 3		
Amchitka I./Column[11]	AI	51 32.32 N	178 49.28 E			20, 10	3	3
Amchitka I./East Cape[11]	AI	51 22.26 N	179 27.93 E	51 22.00 N	179 27.00 E	20,10	3	3
Amchitka I./Cape Ivakin[11]	AI	51 24.46 N	179 24.21 E			20, 3		
Semisopochnoi/Petrel Pt.[11]	AI	52 01.40 N	179 36.90 E	52 01.50 N	179 39.00 E	20, 10	3	3
Semisopochnoi I./Pochnoi Pt.[11]	AI	51 57.30 N	179 46.00 E			20, 10	3	3
Amatignak I./Nitrof Pt.[11]	AI	51 13.00 N	179 07.80 W			20, 3		
Unalga & Dinkum Rocks[11]	AI	51 33.67 N	179 04.25 W	51 35.09 N	179 03.66 W	20, 3		
Ulak I./Hasgox Pt.[11]	AI	51 18.90 N	178 58.90 W	51 18.70 N	178 59.60 W	20, 10	3	3
Kavalga I.[11]	AI	51 34.50 N	178 51.73 W	51 34.50 N	178 49.50 W	20, 3		
Tag I.[11]	AI	51 33.50 N	178 34.50 W			20, 10	3	3
Ugidak I.[11]	AI	51 34.95 N	178 30.45 W			20, 3		
Gramp Rock[11]	AI	51 28.87 N	178 20.58 W			20, 10	3	3
Tanaga I./Bumpy Pt.	AI	51 55.00 N	177 58.50 W	51 55.00 N	177 57.10 W	3		

Column Number 1	2	3	4	5	6	7	8	9
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm)
		Latitude	Longitude	Latitude	Longitude			
Bobrof I.	AI	51 54.00 N	177 27.00 W			3		
Kanaga I./Ship Rock	AI	51 46.70 N	177 20.72 W			3		
Kanaga I./North Cape	AI	51 56.50 N	177 09.00 W			3		
Adak I.	AI	51 35.50 N	176 57.10 W	51 37.40 N	176 59.60 W	10	3	3
Little Tanaga Strait	AI	51 49.09 N	176 13.90 W			3		
Great Sitkin I.	AI	52 06.00 N	176 10.50 W	52 06.60 N	176 07.00 W	3		
Anagaksik I.	AI	51 50.86 N	175 53.00 W			3		
Kasatochi I.	AI	52 11.11 N	175 31.00 W			10	3	3
Atka I./N. Cape	AI	52 24.20 N	174 17.80 W			3		
Amlia I./Sviech. Harbor[4]	AI	52 01.80 N	173 23.90 W			3		
Sagigik I.[4]	AI	52 00.50 N	173 09.30 W			3		
Amlia I./East[4]	AI	52 05.70 N	172 59.00 W	52 05.75 N	172 57.50 W	3	20	20
Tanadak I. (Amlia)[4]	AI	52 04.20 N	172 57.60 W			3	20	20
Agligadak I.[4]	AI	52 06.09 N	172 54.23 W			20	20	20
Seguam I./Saddleridge Pt.[4]	AI	52 21.05 N	172 34.40 W	52 21.02 N	172 33.60 W	10	20	20
Seguam I./Finch Pt.	AI	52 23.40 N	172 27.70 W	52 23.25 N	172 24.30 W	3	20	20
Seguam I./South Side	AI	52 21.60 N	172 19.30 W	52 15.55 N	172 31.22 W	3	20	20
Amukta I. & Rocks	AI	52 27.25 N	171 17.90 W			3	20	20
Chagulak I.	AI	52 34.00 N	171 10.50 W			3	20	20
Yunaska I.	AI	52 41.40 N	170 36.35 W			10	20	20
Uliaga[5, 14]	BS	53 04.00 N	169 47.00 W	53 05.00 N	169 46.00 W	10	BA	BA
Chuginadak[14]	GOA	52 46.70 N	169 41.90 W			20	10	20

Column Number 1	2	3	4	5	6	7	8	9
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm)
		Latitude	Longitude	Latitude	Longitude			
Kagamil[5, 14]	BS	53 02.10 N	169 41.00 W			10	BA	BA
Samalga	GOA	52 46.00 N	169 15.00 W			20	10	20
Adugak I.[5]	BS	52 54.70 N	169 10.50 W			10	BA	BA
Umnak I./Cape Aslik[5]	BS	53 25.00 N	168 24.50 W			BA	BA	BA
Ogchul I.	GOA	52 59.71 N	168 24.24 W			20	10	20
Bogoslof I./Fire I.[5]	BS	53 55.69 N	168 02.05 W			BA	BA	BA
Polivnoi Rock[9]	GOA	53 15.96 N	167 57.99 W			20	10	20
Emerald I.[13, 9]	GOA	53 17.50 N	167 51.50 W			20	10	20
Unalaska/Cape Izigan[9]	GOA	53 13.64 N	167 39.37 W			20	10	20
Unalaska/Bishop Pt.[6, 13]	BS	53 58.40 N	166 57.50 W			10	10	3
Akutan I./Reef-lava[6]	BS	54 08.10 N	166 06.19 W	54 09.10 N	166 05.50 W	10	10	3
Unalaska I./Cape Sedanka[9]	GOA	53 50.50 N	166 05.00 W			20	10	20
Old Man Rocks[9]	GOA	53 52.20 N	166 04.90 W			20	10	20
Akutan I./Cape Morgan[9]	GOA	54 03.39 N	165 59.65 W	54 03.70 N	166 03.68 W	20	10	20
Akun I./Billings Head	BS	54 17.62 N	165 32.06 W	54 17.57 N	165 31.71 W	10	3	3
Rootok[9]	GOA	54 03.90 N	165 31.90 W	54 02.90 N	165 29.50 W	20	10	20
Tanginak I.[9]	GOA	54 12.00 N	165 19.40 W			20	10	20
Tigalda/Rocks NE[9]	GOA	54 09.60 N	164 59.00 W	54 09.12 N	164 57.18 W	20	10	20
Unimak/Cape Sarichef	BS	54 34.30 N	164 56.80 W			10	3	3
Aiktak[9]	GOA	54 10.99 N	164 51.15 W			20	10	20
Ugamak I.[9]	GOA	54 13.50 N	164 47.50 W	54 12.80 N	164 47.50 W	20	10	20
Round (GOA)[9]	GOA	54 12.05 N	164 46.60 W			20	10	20
Sea Lion Rock (Amak)	BS	55 27.82 N	163 12.10 W			10	7	7

Column Number 1	2	3	4	5	6	7	8	9
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm)
		Latitude	Longitude	Latitude	Longitude			
Amak I. And rocks	BS	55 24.20 N	163 09.60 W	55 26.15 N	163 08.50 W	10	3	3
Bird I.	GOA	54 40.00 N	163 17.2 W			10		
Caton I.	GOA	54 22.70 N	162 21.30 W			3	3	3
South Rocks	GOA	54 18.14 N	162 41.3 W			10		
Clubbing Rocks (S)	GOA	54 41.98 N	162 26.7 W			10	3	3
Clubbing Rocks (N)	GOA	54 42.75 N	162 26.7 W			10	3	3
Pinnacle Rock	GOA	54 46.06 N	161 45.85 W			3	3	3
Sushilnoi Rocks	GOA	54 49.30 N	161 42.73 W			10		
Olga Rocks	GOA	55 00.45 N	161 29.81 W	54 59.09 N	161 30.89 W	10		
Jude I.	GOA	55 15.75 N	161 06.27 W			20		
Sea Lion Rocks (Shumagins)	GOA	55 04.70 N	160 31.04 W			3	3	3
Nagai I./Mountain Pt.	GOA	54 54.20 N	160 15.40 W	54.56.00 N	160.15.00 W	3	3	3
The Whaleback	GOA	55 16.82 N	160 05.04 W			3	3	3
Chernabura I.	GOA	54 45.18 N	159 32.99 W	54 45.87 N	159 35.74 W	20	3	3
Castle Rock	GOA	55 16.47 N	159 29.77 W			3	3	3
Atkins I.	GOA	55 03.20 N	159 17.40 W			20	3	3
Spitz I.	GOA	55 46.60 N	158 53.90 W			3	3	3
Mitrofania	GOA	55 50.20 N	158 41.90 W			3	3	3
Kak	GOA	56 17.30 N	157 50.10 W			20	20	20
Lighthouse Rocks	GOA	55 46.79 N	157 24.89 W			20	20	20
Sutwik I.	GOA	56 31.05 N	157 20.47 W	56 32.00 N	157 21.00 W	20	20	20
Chowiet I.	GOA	56 00.54 N	156 41.42 W	56 00.30 N	156 41.60 W	20	20	20

Column Number 1	2	3	4	5	6	7	8	9
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm)
		Latitude	Longitude	Latitude	Longitude			
Nagai Rocks	GOA	55 49.80 N	155 47.50 W			20	20	20
Chirikof I.	GOA	55 46.50 N	155 39.50 W	55 46.44 N	155 43.46 W	20	20	20
Puale Bay	GOA	57 40.60 N	155 23.10 W			10		
Kodiak/Cape Ikolik	GOA	57 17.20 N	154 47.50 W			3	3	3
Takli I.	GOA	58 01.75 N	154 31.25 W			10		
Cape Kuliak	GOA	58 08.00 N	154 12.50 W			10		
Cape Gull	GOA	58 11.50 N	154 09.60 W	58 12.50 N	154 10.50 W	10		
Kodiak/Cape Ugat	GOA	57 52.41 N	153 50.97 W			10		
Sitkinak/Cape Sitkinak	GOA	56 34.30 N	153 50.96 W			10		
Shakun Rock	GOA	58 32.80 N	153 41.50 W			10		
Twoheaded I.	GOA	56 54.50 N	153 32.75 W	56 53.90 N	153 33.74 W	10		
Cape Douglas (Shaw I.)	GOA	59 00.00 N	153 22.50 W			10		
Kodiak/Cape Barnabas	GOA	57 10.20 N	152 53.05 W			3	3	3
Kodiak/Gull Point[7]	GOA	57 21.45 N	152 36.30 W			10, 3		
Latax Rocks	GOA	58 40.10 N	152 31.30 W			10		
Ushagat I./SW	GOA	58 54.75	152 22.20 W			10		
Ugak I.[7]	GOA	57 23.60 N	152 17.50 W	57 21.90 N	152 17.40 W	10, 3		
Sea Otter I.	GOA	58 31.15 N	152 13.30 W			10		
Long I.	GOA	57 46.82 N	152 12.90 W			10		
Sud I.	GOA	58 54.00 N	152 12.50 W			10		
Kodiak/Cape Chiniak	GOA	57 37.90 N	152 08.25 W			10		
Sugarloaf I.	GOA	58 53.25 N	152 02.40 W			20	10	10
Sea Lion Rocks (Marmot)	GOA	58 20.53 N	151 48.83 W			10		

Column Number 1	2	3	4	5	6	7	8	9
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm)
		Latitude	Longitude	Latitude	Longitude			
Marmot I.[8]	GOA	58 13.65 N	151 47.75 W	58 09.90 N	151 52.06 W	15, 20		
Nagahut Rocks	GOA	59 06.00 N	151 46.30 W			10		
Perl	GOA	59 05.75 N	151 39.75 W			10		
Gore Point	GOA	59 12.00 N	150 58.00 W			10		
Outer (Pye) I.	GOA	59 20.50 N	150 23.00 W	59 21.00 N	150 24.50 W	20	10	10
Steep Point	GOA	59 29.05 N	150 15.40 W			10		
Seal Rocks (Kenai)	GOA	59 31.20 N	149 37.50 W			10		
Chiswell Islands	GOA	59 36.00 N	149 34.00 W			10		
Rugged Island	GOA	59 50.00 N	149 23.10 W			10		
Point Elrington[10, 12]	GOA	59 56.00 N	148 15.20 W			20		
Perry I.[10]	GOA	60 44.00 N	147 54.60 W					
The Needle[10]	GOA	60 06.64 N	147 36.17 W					
Point Eleanor[10]	GOA	60 35.00 N	147 34.00 W					
Wooded I. (Fish I.)	GOA	59 52.90 N	147 20.65 W			20	3	3
Glacier Island[10]	GOA	60 51.30 N	147 14.50 W					
Seal Rocks (Cordova)[12]	GOA	60 09.78 N	146 50.30 W			20	3	3
Cape Hinchinbrook[12]	GOA	60 14.00 N	146 38.50 W			20		
Middleton I.	GOA	59 28.30 N	146 18.80 W			10		
Hook Point[12]	GOA	60 20.00 N	146 15.60 W			20		
Cape St. Elias	GOA	59 47.50 N	144 36.20 W			20		

BS = Bering Sea, AI = Aleutian Islands, GOA = Gulf of Alaska

[1]Where two sets of coordinates are given, the baseline extends in a clock-wise direction from the first set of geographic coordinates along the shoreline at mean lower-low water to the second set of coordinates. Where only

one set of coordinates is listed, that location is the base point.
[2] Closures as stated in 50 CFR 679.22(a)(7)(v), (a)(8)(iv) and (b)(2)(iii).
[3] No-fishing zones are the waters between 0 nm and the nm specified in columns 7, 8, and 9 around each site and within the Bogoslof area (BA) and the Seguam Foraging Area (SFA).
[4] Some or all of the restricted area is located in the SFA which is closed to all gears types. The SFA is established as all waters within the area between 52° N lat. and 53° N lat. and between 173°30' W long. and 172°30' W long. Amlia I./East, and Tanadak I. (Amlia) haulouts 20 nm hook-and-line and pot closures apply only to waters located east of 173° W longitude.
[5]This site lies within the BA which is closed to all gear types. The BA consists of all waters of area 518 as described in Figure 1 of this part south of a straight line connecting 55°00'N/170°00'W, and 55°00' N/168°11'4.75" W.
[6]Hook-and-line no-fishing zones apply only to vessels greater than or equal to 60 feet LOA in waters east of 167° W long. For Bishop Point the 10 nm closure west of 167° W. long. applies to all hook and line and jig vessels.
[7]The trawl closure between 0 nm to 10 nm is effective from January 20 through June 10. Trawl closure between 0 nm to 3 nm is effective from September 1 through November 1.
[8] The trawl closure between 0 nm to 15 nm is effective from January 20 through June 10. Trawl closure between 0 nm to 20 nm is effective from September 1 through November 1.
[9]Restriction area includes only waters of the Gulf of Alaska Area.
[10]Contact the Alaska Department of Fish and Game for fishery restrictions at these sites.
[11]Directed fishing for Pacific cod using trawl gear is prohibited in the harvest limit area (HLA) as defined at § 679.2 until the HLA Atka mackerel directed fishery in the A or B seasons is completed. The 20 nm closure around Gramp Rock applies only to waters west of 178°W long. After closure of the Atka mackerel HLA directed fishery, directed fishing for Pacific cod using trawl gear is prohibited in the HLA between 0 nm to 10 nm of rookeries and between 0 nm to 3 nm of haulouts.
[12] The 20 nm closure around this site is effective only in waters outside of the State of Alaska waters of Prince William Sound.
[13] See 50 CFR 679.22(a)(7)(i)(C) for exemptions for catcher vessels less than 60 feet (18.3 m) LOA using jig or hook-and-line gear between Bishop Point and Emerald Island closure areas.
[14]Trawl closure around this site is limited to waters east of 170°0'00" W long.

Table 6 to 50 CFR Part 679 Steller Sea Lion Protection Areas Atka Mackerel Fisheries Restrictions

Column Number 1	2	3	4	5	6	7
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Atka mackerel No-fishing Zones for Trawl Gear [2,3](nm)
		Latitude	Longitude	Latitude	Longitude	
St. Lawrence I./S Punuk I.	Bering Sea	63 04.00 N	168 51.00 W			20
St. Lawrence I./SW Cape	Bering Sea	63 18.00 N	171 26.00 W			20
Hall I.	Bering Sea	60 37.00 N	173 00.00 W			20
St. Paul I./Sea Lion Rock	Bering Sea	57 06.00 N	170 17.50 W			20
St. Paul I./NE Pt.	Bering Sea	57 15.00 N	170 06.50 W			20
Walrus I. (Pribilofs)	Bering Sea	57 11.00 N	169 56.00 W			20
St. George I./Dalnoi Pt.	Bering Sea	56 36.00 N	169 46.00 W			20
St. George I./S Rookery	Bering Sea	56 33.50 N	169 40.00 W			20
Cape Newenham	Bering Sea	58 39.00 N	162 10.50 W			20
Round (Walrus Islands)	Bering Sea	58 36.00 N	159 58.00 W			20
Attu I./Cape Wrangell	Aleutian Islands	52 54.60 N	172 27.90 E	52 55.40 N	172 27.20 E	10
Agattu I./Gillon Pt.	Aleutian Islands	52 24.13 N	173 21.31 E			10
Attu I./Chirikof Pt.	Aleutian Islands	52 49.75 N	173 26.00 E			3
Agattu I./Cape Sabak	Aleutian Islands	52 22.50 N	173 43.30 E	52 21.80 N	173 41.40 E	10
Alaid I.	Aleutian Islands	52 46.50 N	173 51.50 E	52 45.00 N	173 56.50 E	3
Shemya I.	Aleutian Islands	52 44.00 N	174 08.70 E			3
Buldir I.	Aleutian Islands	52 20.25 N	175 54.03 E	52 20.38 N	175 53.85 E	15
Kiska I./Cape St. Stephen	Aleutian Islands	51 52.50 N	177 12.70 E	51 53.50 N	177 12.00 E	10
Kiska I./Sobaka & Vega	Aleutian Islands	51 49.50 N	177 19.00 E	51 48.50 N	177 20.50 E	3
Kiska I./Lief Cove	Aleutian Islands	51 57.16 N	177 20.41 E	51 57.24 N	177 20.53 E	10

Column Number 1	2	3	4	5	6	7
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Atka mackerel No-fishing Zones for Trawl Gear [2,3](nm)
		Latitude	Longitude	Latitude	Longitude	
Kiska I./Sirius Pt.	Aleutian Islands	52 08.50 N	177 36.50 E			3
Tanadak I. (Kiska)	Aleutian Islands	51 56.80 N	177 46.80 E			3
Segula I.	Aleutian Islands	51 59.90 N	178 05.80 E	52 03.06 N	178 08.80 E	3
Ayugadak Point	Aleutian Islands	51 45.36 N	178 24.30 E			10
Rat I./Krysi Pt.	Aleutian Islands	51 49.98 N	178 12.35 E			3
Little Sitkin I.	Aleutian Islands	51 59.30 N	178 29.80 E			3
Amchitka I./Column Rocks	Aleutian Islands	51 32.32 N	178 49.28 E			10
Amchitka I./East Cape	Aleutian Islands	51 22.26 N	179 27.93 E	51 22.00 N	179 27.00 E	10
Amchitka I./Cape Ivakin	Aleutian Islands	51 24.46 N	179 24.21 E			3
Semisopochnoi/Petrel Pt.	Aleutian Islands	52 01.40 N	179 36.90 E	52 01.50 N	179 39.00 E	10
Semisopochnoi I./Pochnoi Pt.	Aleutian Islands	51 57.30 N	179 46.00 E			10
Amatignak I. Nitrof Pt.	Aleutian Islands	51 13.00 N	179 07.80 W			3
Unalga & Dinkum Rocks	Aleutian Islands	51 33.67 N	179 04.25 W	51 35.09 N	179 03.66 W	3
Ulak I./Hasgox Pt.	Aleutian Islands	51 18.90 N	178 58.90 W	51 18.70 N	178 59.60 W	10
Kavalga I.	Aleutian Islands	51 34.50 N	178 51.73 W	51 34.50 N	178 49.50 W	3
Tag I.	Aleutian Islands	51 33.50 N	178 34.50 W			10
Ugidak I.	Aleutian Islands	51 34.95 N	178 30.45 W			3
Gramp Rock[7]	Aleutian Islands	51 28.87 N	178 20.58 W			10, 20
Tanaga I./Bumpy Pt.	Aleutian Islands	51 55.00 N	177 58.50 W	51 55.00 N	177 57.10 W	20
Bobrof I.	Aleutian Islands	51 54.00 N	177 27.00 W			20
Kanaga I./Ship Rock	Aleutian Islands	51 46.70 N	177 20.72 W			20
Kanaga I./North Cape	Aleutian Islands	51 56.50 N	177 09.00 W			20
Adak I.	Aleutian Islands	51 35.50 N	176 57.10 W	51 37.40 N	176 59.60 W	20

Column Number 1	2	3	4	5	6	7
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Atka mackerel No-fishing Zones for Trawl Gear [2,3] (nm)
		Latitude	Longitude	Latitude	Longitude	
Little Tanaga Strait	Aleutian Islands	51 49.09 N	176 13.90 W			20
Great Sitkin I.	Aleutian Islands	52 06.00 N	176 10.50 W	52 06.60 N	176 07.00 W	20
Anagaksik I.	Aleutian Islands	51 50.86 N	175 53.00 W			20
Kasatochi I.	Aleutian Islands	52 11.11 N	175 31.00 W			20
Atka I./North Cape	Aleutian Islands	52 24.20 N	174 17.80 W			20
Amlia I./Sviech. Harbor[5]	Aleutian Islands	52 01.80 N	173 23.90 W			20
Sagigik I.[5]	Aleutian Islands	52 00.50 N	173 09.30 W			20
Amlia I./East[5]	Aleutian Islands	52 05.70 N	172 59.00 W	52 05.75 N	172 57.50 W	20
Tanadak I. (Amlia)[5]	Aleutian Islands	52 04.20 N	172 57.60 W			20
Agligadak I.[5]	Aleutian Islands	52 06.09 N	172 54.23 W			20
Seguam I./Saddleridge Pt.[5]	Aleutian Islands	52 21.05 N	172 34.40 W	52 21.02 N	172 33.60 W	20
Seguam I./Finch Pt.[5]	Aleutian Islands	52 23.40 N	172 27.70 W	52 23.25 N	172 24.30 W	20
Seguam I./South Side[5]	Aleutian Islands	52 21.60 N	172 19.30 W	52 15.55 N	172 31.22 W	20
Amukta I. & Rocks	Aleutian Islands	52 27.25 N	171 17.90 W			20
Chagulak I.	Aleutian Islands	52 34.00 N	171 10.50 W			20
Yunaska I.	Aleutian Islands	52 41.40 N	170 36.35 W			20
Uliaga[6]	Bering Sea	53 04.00 N	169 47.00 W	53 05.00 N	169 46.00 W	20
Kagamil[6]	Bering Sea	53 02.10 N	169 41.00 W			20
Adugak I.[6]	Bering Sea	52 54.70 N	169 10.50 W			20
Umnak I./Cape Aslik[6]	Bering Sea	53 25.00 N	168 24.50 W			BA
Bogoslof I./Fire I.[6]	Bering Sea	53 55.69 N	168 02.05 W			BA
Unalaska/Bishop Pt.	Bering Sea	53 58.40 N	166 57.50 W			20
Akutan I./Reef-lava	Bering Sea	54 08.10 N	166 06.19 W	54 09.10 N	166 05.50 W	20

Column Number 1	2	3	4	5	6	7
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Atka mackerel No-fishing Zones for Trawl Gear [2,3] (nm)
		Latitude	Longitude	Latitude	Longitude	
Akun I./Billings Head	Bering Sea	54 17.62 N	165 32.06 W	54 17.57 N	165 31.71 W	20
Unimak/Cape Sarichef	Bering Sea	54 34.30 N	164 56.80 W			20
Sea Lion Rock (Amak)	Bering Sea	55 27.82 N	163 12.10 W			20
Amak I. And rocks	Bering Sea	55 24.20 N	163 09.60 W	55 26.15 N	163 08.50 W	20

[1]Where two sets of coordinates are given, the baseline extends in a clock-wise direction from the first set of geographic coordinates along the shoreline at mean lower-low water to the second set of coordinates.

[2] Closures as stated in 50 CFR 679.22 (a)(7)(vi) and (a)(8)(v).

[3] No-fishing zones are the waters between 0 nm and the nm specified in column 7 around each site and within the Bogoslof area (BA).

[4] The 20 nm Atka mackerel fishery closure around the Tanaga I./Bumpy Pt. Rookery is established only for that portion of the area east of 178° W longitude.

[5] Some or all of the restricted area is located in the Seguam Foraging Area (SFA) which is closed to all gears types. The SFA is established as all waters within the area between 52° N lat. and 53° N lat. and between 173°30' W long. and 172°30' W long.

[6] This site lies in the BA, closed to all gear types. The BA consists of all waters of Area 518 described in Figure 1 of this part south of a straight line connecting 55°00'N/170°00'W and 55°00'N/168°11'4.75" W.

[7]Directed fishing for Atka mackerel by vessels using trawl gear is prohibited in waters located 0-20 nm seaward of Gramp Rock and east of 178°W long.

* * * * *

Table 12 to 50 CFR Part 679 Steller Sea Lion Protection Areas 3nm No Groundfish Fishing Sites

Column Number 1	2	3	4	5	6	7
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		No transit[2]
		Latitude	Longitude	Latitude	Longitude	3 nm
Walrus I. (Pribilofs)	Bering Sea	57 11.00 N	169 56.00 W			Y
Attu I./Cape Wrangell	Aleutian I.	52 54.60 N	172 27.90 E	52 55.40 N	172 27.20 E	Y
Agattu I./Gillon Pt.	Aleutian I.	52 24.13 N	173 21.31 E			Y
Agattu I./Cape Sabak	Aleutian I.	52 22.50 N	173 43.30 E	52 21.80 N	173 41.40 E	Y
Buldir I.	Aleutian I.	52 20.25 N	175 54.03 E	52 20.38 N	175 53.85 E	Y
Kiska I./Cape St. Stephen	Aleutian I.	51 52.50 N	177 12.70 E	51 53.50 N	177 12.00 E	Y
Kiska I./Lief Cove	Aleutian I.	51 57.16 N	177 20.41 E	51 57.24 N	177 20.53 E	Y
Ayugadak Point	Aleutian I.	51 45.36 N	178 24.30 E			Y
Amchitka I./Column Rocks	Aleutian I.	51 32.32 N	178 49.28 E			Y
Amchitka I./East Cape	Aleutian I.	51 22.26 N	179 27.93 E	51 22.00 N	179 27.00 E	Y
Semisopochnoi/Petrel Pt.	Aleutian I.	52 01.40 N	179 36.90 E	52 01.50 N	179 39.00 E	Y
Semisopochnoi I./Pochnoi Pt.	Aleutian I.	51 57.30 N	179 46.00 E			Y
Ulak I./Hasgox Pt.	Aleutian I.	51 18.90 N	178 58.90 W	51 18.70 N	178 59.60 W	Y
Tag I.	Aleutian I.	51 33.50 N	178 34.50 W			Y
Gramp Rock	Aleutian I.	51 28.87 N	178 20.58 W			Y
Adak I.	Aleutian I.	51 35.50 N	176 57.10 W	51 37.40 N	176 59.60 W	Y
Kasatochi I.	Aleutian I.	52 11.11 N	175 31.00 W			Y
Agligadak I.	Aleutian I.	52 06.09 N	172 54.23 W			Y
Seguam I./Saddleridge Pt.	Aleutian I.	52 21.05 N	172 34.40 W	52 21.02 N	172 33.60 W	Y
Yunaska I.	Aleutian I.	52 41.40 N	170 36.35 W			Y
Adugak I.	Bering Sea	52 54.70 N	169 10.50 W			Y
Ogchul I.	Gulf of Alaska	52 59.71 N	168 24.24 W			Y
Bogoslof I./Fire I.	Bering Sea	53 55.69 N	168 02.05 W			Y

Column Number 1	2	3	4	5	6	7
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		No transit[2]
		Latitude	Longitude	Latitude	Longitude	3 nm
Akutan I./Cape Morgan	Gulf of Alaska	54 03.39 N	165 59.65 W	54 03.70 N	166 03.68 W	Y
Akun I./Billings Head	Bering Sea	54 17.62 N	165 32.06 W	54 17.57 N	165 31.71 W	Y
Ugamak I.	Gulf of Alaska	54 13.50 N	164 47.50 W	54 12.80 N	164 47.50 W	Y
Sea Lion Rock (Amak)	Bering Sea	55 27.82 N	163 12.10 W			Y
Clubbing Rocks (S)	Gulf of Alaska	54 41.98 N	162 26.7 W			Y
Clubbing Rocks (N)	Gulf of Alaska	54 42.75 N	162 26.7 W			Y
Pinnacle Rock	Gulf of Alaska	54 46.06 N	161 45.85 W			Y
Chernabura I.	Gulf of Alaska	54 45.18 N	159 32.99 W	54 45.87 N	159 35.74 W	Y
Atkins I.	Gulf of Alaska	55 03.20 N	159 17.40 W			Y
Chowiet I.	Gulf of Alaska	56 00.54 N	156 41.42 W	55 00.30 N	156 41.60 W	Y
Chirikof I.	Gulf of Alaska	55 46.50 N	155 39.50 W	55 46.44 N	155 43.46 W	Y
Sugarloaf I.	Gulf of Alaska	58 53.25 N	152 02.40 W			Y
Marmot I.	Gulf of Alaska	58 13.65 N	151 47.75 W	58 09.90 N	151 52.06 W	Y
Outer (Pye) I.	Gulf of Alaska	59 20.50 N	150 23.00 W	59 21.00 N	150 24.50 W	Y
Wooded I. (Fish I.)	Gulf of Alaska	59 52.90 N	147 20.65 W			
Seal Rocks (Cordova)	Gulf of Alaska	60 09.78 N	146 50.30 W			

[1] Where two sets of coordinates are given, the baseline extends in a clock-wise direction from the first set of geographic coordinates along the shoreline at mean lower-low water to the second set of coordinates. Where only one set of coordinates is listed, that location is the base point.

[2] See 50 CFR 223.202(a)(2)(i) for regulations regarding 3 nm no transit zones.

Note: No groundfish fishing zones are the waters between 0 nm to 3 nm surrounding each site.

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Thursday,

January 2, 2003

Part VI

Environmental Protection Agency

40 CFR Part 82

Protection of Stratospheric Ozone: Process for Exempting Quarantine and Preshipment Applications of Methyl Bromide; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–7434–1]

Protection of Stratospheric Ozone: Process for Exempting Quarantine and Preshipment Applications of Methyl Bromide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: With this rulemaking, EPA is taking final action to amend the accelerated phaseout regulations that govern the production, import, export, transformation and destruction of substances that deplete the ozone layer under the authority of Title VI of the Clean Air Act Amendments of 1990 (CAA or the Act). Today's amendments incorporate an exemption permitted under the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol) and required by changes in Title VI of the CAA. Specifically, EPA is creating an exemption from the consumption and production phaseout for quantities of Class I, Group VI controlled substances (methyl bromide) that are used for quarantine and preshipment.

DATES: This rule is effective January 1, 2003.

ADDRESSES: Materials relevant to this rulemaking are contained in Docket No. A–2000–24. The Docket is located at EPA West, 1301 Constitution Avenue NW., Room B108, Mail Code 6102T, Washington, DC 20460, Phone: (202)–566–1742, Fax: (202)–566–1741. The materials may be inspected from 8:30 a.m. until 4:30 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Kate Choban, U.S. Environmental Protection Agency, Global Programs Division (6205J), 1200 Pennsylvania Ave., NW., Washington, DC, 20460, 202–564–3524.

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Entities potentially regulated by this action are those associated with methyl bromide that is used for quarantine and preshipment applications. In addition, this action potentially regulates entities importing and exporting methyl bromide. Potentially regulated categories and entities include:

Category	Examples of regulated entities
Industry	Producers, Importers and Exporters of methyl bromide. Distributors of methyl bromide used for quarantine and preshipment. Applicators of methyl bromide used for quarantine and preshipment. Commodity Owners or Shippers of Goods that request the quarantine or preshipment application of methyl bromide in accordance with official controls or requirements.

The above 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, company, business, organization, etc. is regulated by this action, you should carefully examine the regulations promulgated at 40 CFR part 82, subpart A. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION 000000CONTACT** section.

I. What Is the Background of the Phaseout Regulations for Ozone-Depleting Substances?

The current regulatory requirements of the Stratospheric Ozone Protection Program that limit production and consumption of ozone-depleting substances were promulgated by the Environmental Protection Agency (EPA or the Agency) in the **Federal Register** on December 20, 1994 (59 FR 65478), May 10, 1995 (60 FR 24970), August 4, 1998 (63 FR 41625), and October 5, 1998 (63 FR 53290). The regulatory program was originally published in the **Federal Register** on August 12, 1988 (53 FR 30566), in response to the 1987 signing of the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol).[1] The U.S. was one of the original signatories to the 1987 Montreal Protocol and the U.S. ratified the Protocol on April 21, 1988. Congress then enacted, and President Bush signed into law, the Clean Air Act Amendments of 1990 (CAA or the Act) that included Title VI on Stratospheric Ozone Protection.

Today's action amends the existing EPA regulations published under Title VI of the CAA that govern the production and consumption of ozone-depleting substances. Today's action establishes an exemption from the methyl bromide production and import reduction and phaseout schedule for quantities to be used for quarantine and preshipment applications. Today's amendments are intended to implement requirements of the Protocol and the CAA, including amendments to Title VI as created by Section 764 of the 1999 Omnibus Consolidated and Emergency

[1] Several revisions to the original 1988 rule were issued on the following February 9, 1989 (54 FR 6376), April 3, 1989 (54 FR 13502), July 5, 1989 (54 FR 28062), July 12, 1989 (54 FR 29337), February 13, 1990 (55 FR 5005), June 15, 1990 (55 FR 24490) and June 22, 1990 (55 FR 25812) July 30, 1992 (57 FR 33754), December 10, 1993 (58 FR 65018).

Supplemental Appropriations Act (Public Law 105–277, October 21, 1998) (section 604(d)(5) of the Clean Air Act).

The requirements contained in the final rules published in the **Federal Register** on December 20, 1994 and May 10, 1995 establish an Allowance Program. The Allowance Program and its history are described in the notice of proposed rulemaking (NPRM) published in the **Federal Register** on November 10, 1994 (59 FR 56276). The control and the phaseout of production and consumption of ozone-depleting substances, as required under the Protocol and CAA, are accomplished through the Allowance Program.

In developing the Allowance Program, EPA collected information on the amounts of ozone-depleting substances produced, imported, exported, transformed and destroyed within the United States for specific baseline years for specific chemicals. This information was used to establish the U.S. production and consumption ceilings for these chemicals. The data were also used to assign company-specific production and import rights to companies that were in most cases producing or importing during the specific year of data collection. For methyl bromide, 1991 was the baseline year used to establish the ceiling and assign company-specific production and import rights. Production or import rights are called ''allowances.'' Production allowances and consumption allowances continue to exist for only one specific class I controlled ozone-depleting substance—methyl bromide. All other production or consumption of class I controlled substances is prohibited under the Protocol and the CAA, save for a few exemptions. For methyl bromide, the remaining schedule for the phaseout of production and consumption allowances is as follows: 50 percent reduction of baseline beginning January 29, 2001, 70 percent reduction of baseline beginning January 1, 2003, and a 100 percent reduction of baseline beginning January 1, 2005, with narrow exemptions for critical uses and emergencies, as well as for quarantine and preshipment uses.

In the context of the regulatory program, the use of the term consumption may be misleading. Consumption does not mean the ''use'' of a controlled substance, but rather is defined as the formula: consumption = production + imports—exports, of controlled substances (Article 1 of the Protocol and section 601 of the CAA). Class I controlled substances that were produced or imported through the expenditure of allowances prior to their phaseout date can continue to be used by industry and the public after that specific chemical's phaseout under these regulations, unless otherwise precluded under separate regulations.

The specific names and chemical formulas for the controlled ozone-depleting substances in Groups of class I controlled substances are in appendix A and appendix F in subpart A of 40 CFR part 82. The specific names and chemical formulas for the class II controlled ozone-depleting substances are in appendix B and appendix F in subpart A.

II. What Is the Background for Today's Action?

EPA published an interim final rule in the **Federal Register** on July 19, 2001 (66 FR 37752) to provide methyl bromide users in the United States with an exemption to the phaseout of methyl bromide for quarantine and preshipment applications. The interim final rule solicited public comment on a number of issues related to EPA's implementation of the Quarantine and Preshipment Exemption. Today's action responds to public comment and finalizes the specifications for the exemption.

III. What Is Methyl Bromide?

Methyl bromide is an odorless, colorless, toxic gas, which is used as a broad-spectrum pesticide. Methyl bromide is used in the United States and throughout the world as a fumigant to control a variety of pests, such as insects, weeds, rodents, pathogens, and nematodes. Additional characteristics and details about the uses of methyl bromide can be found in the proposed rule published in the **Federal Register** on March 18, 1993 (58 FR 15014) and the final rule published in the **Federal Register** on December 10, 1993 (58 FR 65018). Information on methyl bromide can be found at the following sites of the World Wide Web: *http://www.epa.gov/ozone/mbr/* and *http://www.teap.org* or by contacting the Stratospheric Ozone Protection Hotline at 1–800–296–1996.

IV. What Are Examples of Quarantine and Preshipment Uses of Methyl Bromide?

An example of a quarantine application of methyl bromide is the fumigation of a commodity, such as rice and spices, which are subject to infestation by a specific and officially recognized quarantine pest, such as the khapra beetle (Trogoderma granarium Everts) when the fumigation is conducted before transport of the commodity to meet official quarantine requirements (see discussion in part VI below). The purpose of quarantine fumigation is to prevent the introduction of specific quarantine pest(s) into a defined geographical area, such as an importing country. An example of a preshipment use of methyl bromide is the application to wheat immediately before shipment (see discussion in part VI below) because of official phytosanitary requirements of the destination country.

In 1998, the Methyl Bromide Technical Options Committee (MBTOC), a sub-group under the independent advisory body of the Technical and Economic Assessment Panel (TEAP) to the Montreal Protocol, published an assessment that gives further details about uses of methyl bromide and possible alternatives and substitutes for controlling pests. The MBTOC and TEAP assessments can be found on the web at *http://www.teap.org/html/methyl—bromide—reports.html* and *http://www.teap.org/*.

V. What Is the Legal Authority for Exempting the Production and Import of Methyl Bromide for Use in Quarantine and Preshipment Applications?

In Article 2H of the Montreal Protocol, which establishes the phaseout schedule for methyl bromide for developed countries, paragraph 6 states that, ''[t]he calculated levels of consumption and production under this Article shall not include the amounts used by the Party for quarantine and pre-shipment applications.'' EPA notes that paragraph 6, of Article 2H indicates that the exemption is to exclude from the U.S.'s calculation of methyl bromide consumption and production the amounts used by the U.S. for quarantine and preshipment applications. In addition, Article 7 requires each Party to report on, ''the annual amount used for quarantine and preshipment applications.'' Beyond the critical uses allowed in Article 2H, Paragraph 5, quarantine and preshipment uses are the only exemptions explicitly allowed for under the Montreal Protocol.

In 1998 Congress added several provisions to the Clean Air Act regarding methyl bromide including a provision title ''Sanitation and Food Protection,'' which is related to the Protocol exemption for quarantine and preshipment. This provision, which was codified as section 604(d)(5) of the CAA, was added by section 764(b) of the 1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act (Public Law 105–277). Section 604(d)(5) says, ''To the extent consistent with the Montreal Protocol's quarantine and

preshipment provisions, the Administrator shall exempt the production, importation, and consumption of methyl bromide to fumigate commodities entering or leaving the United States or any State (or political subdivision thereof) for purposes of compliance with Animal and Plant Health Inspection Service requirements or with any international, Federal, State or local sanitation or food protection standard.'' Prior to Congressional passage of section 604(d)(5), the CAA did not provide authority for creating such an exemption to the methyl bromide phaseout schedule. In today's final regulation, EPA is implementing the express language provided in Article 2H, paragraph 6, of the Protocol under the authority provided by section 604(d)(5) of the CAA. EPA is also acting in a manner consistent with, and to fulfill the obligations of, section 614(b) of the CAA. Section 614(b) of the CAA states that, ''[t]his title as added by the Clean Air Act Amendments of 1990 shall be construed, interpreted, and applied as a supplement to the terms and conditions of the Montreal protocol, as provided in Article 2, paragraph 11 thereof, and shall not be construed, interpreted, or applied to abrogate the responsibilities or obligations of the United States to implement fully the provisions of the Montreal Protocol. In the case of a conflict between any provision of this title and any provision of the Montreal Protocol, the more stringent provision shall govern.''

EPA's interim final rule related to the process for exempting quarantine and preshipment applications of methyl bromide, published in the **Federal Register** on July 19, 2001 (66 FR 37752), defined quarantine and preshipment applications as agreed by the Parties to the Montreal Protocol in Decisions VII/5 and XI/12, respectively. EPA received ten comments regarding our decision to adhere to the language of the Parties' Decisions. All commenters stated that Decisions of the Parties do not have the same force of law as the Protocol itself, its amendments, or adjustments adopted by the Parties and, as such, EPA is not bound to their language. The comments submitted to EPA in response to the interim final rule echo a legal memorandum submitted to EPA by the legal counsel of the Methyl Bromide Industry Panel at a July 1999 meeting. A more detailed discussion of the arguments made in this memorandum can be found in the interim final rule published in the **Federal Register** on July 19, 2001 (66 FR 37752).

EPA responded directly to the legal memorandum submitted by the Methyl Bromide Industry Panel in the interim final rule. EPA has reconsidered the issue as it was raised by the comments submitted in response to the interim final rule and has concluded that its approach reflects widely accepted principles of customary international law. The provisions of the Vienna Convention on the Law of Treaties (VCLT), 8 International Legal Materials 679 (1969), that concern treaty interpretation generally reflect customary international law. Paragraph 1 of Article 31 of the VCLT provides that a treaty ''shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.'' Paragraph 3 of Article 31 of the VCLT states, ''[t]here shall be taken into account, together with any context: * * * (a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions.'' Decisions VI/11, VII/5, XI/12 and XI/13 constitute subsequent consensus agreements among the Parties to the Montreal Protocol (including the United States) regarding the interpretation and application of the quarantine and preshipment provision of Article 2H. Therefore it is appropriate for EPA, when determining what is consistent with the ''Montreal Protocol's quarantine and preshipment provisions,'' to take into account the Decisions of the Parties.

Furthermore, in amending the CAA, Congress specifically cited the plural ''quarantine and preshipment provisions.'' If Congress intended for this phrase to be limited to the single provision in the Protocol referencing quarantine and preshipment in Article 2H, and not the subsequent Decisions between the Parties regarding interpretation or application of the treaty, Congress would have presumably directed the Agency to be consistent with the singular provision.

Precedents within the current regulations (40 CFR part 82) demonstrate that the United States has routinely considered Decisions that clarify and interpret obligations under the Montreal Protocol to be authoritative and that such Decisions of the Parties are currently implemented through regulations under the CAA. Examples of such regulatory implementation of Decisions of the Parties include the current U.S. definitions of ''controlled substance'' (based on Decision IV/12) and ''essential use''. Additional examples of how U.S. regulations incorporate Decisions by the Parties to the Protocol can be found in the preamble of the interim final rule published in the **Federal Register** on July 19, 2001 (66 FR 37752) and in 40 CFR part 82, subpart A.

VI. What Are the Definitions of Quarantine and Preshipment Applications?

In today's final action, EPA is defining quarantine applications and preshipment applications, as agreed by the Parties to the Montreal Protocol. The Parties to the Protocol agreed to the following definition of ''quarantine applications'' in Decision VII/5: ''quarantine applications, with respect to methyl bromide, are treatments to prevent the introduction, establishment and/or spread of quarantine pests (including diseases), or to ensure their official control, where: (i) Official control is that performed by, or authorized by, a national plant, animal, or environmental protection or health authority; (ii) quarantine pests are pests of potential importance to the areas endangered thereby and not yet present there, or present by not widely distributed and being officially controlled.''

The Parties to the Protocol first agreed to the following definition for preshipment applications of methyl bromide in Decision VI/11 and VII/5: ''preshipment applications are those treatments applied directly preceding and in relation to export, to meet the phytosanitary or sanitary requirements of the importing country or existing phytosanitary or sanitary requirements of the exporting country.'' At the 11th Meeting of the Parties in December 1999, the Parties further clarified the intent of the term preshipment by agreeing to the following definition in Decision XI/12: ''* * * preshipment applications are those non-quarantine applications within 21 days prior to export to meet the official requirements of the importing country or the existing official requirements of the exporting country. Official requirements are those which are performed by, or authorized by, a national plant, animal, environmental, health or stored product authority.''

EPA adopted the above definition of preshipment applications in the interim final rule and received nine related comments. All of the commenters raised the concern that the 21-day limitation on treatments to qualify as a preshipment application is unduly restrictive and arbitrary. One commenter stated that the time restriction is unrelated to the purpose of the preshipment exemption and that so long as a treatment is done to meet the official non-quarantine requirements of

the importing or exporting country it ought to qualify as a preshipment application.

EPA believes that the incorporation of a time restriction within the definition of preshipment application is necessary to meet the purpose of this exemption as intended by the Parties to the Montreal Protocol. The preshipment exemption applies to treatments of commodities near the time of export to meet the official non-quarantine requirements of the exporting or importing country. Eliminating the time requirement would invite misuse of the exemption. With no established time window, the argument could be made that a pre-plant soil application of methyl bromide qualifies as a preshipment application because the crop being cultivated would eventually be exported from U.S. soil. By imposing a time restriction, Decision XI/12 of the Parties demonstrates that their intent was not to imbue the preshipment exemption with a lifecycle-wide scope. The 21-day restriction was agreed upon by the Parties (based on the advice of global experts) as a reasonable time limitation for the preshipment exemption. EPA has received no comment indicating that another time limitation would be better justified and meet the intent of the Parties in implementing the preshipment exemption.

In addition to the above, the definition of quarantine applications is qualified by the scope of the exemption as stated in the CAA. As passed by Congress, the CAA specifically applies the quarantine and preshipment exemption to quantities of methyl bromide used to ''fumigate commodities entering or leaving the United States or any State (or political subdivision thereof)* * *''(CAA section 504(d)(5)). This language makes clear Congress's intent to apply the exemption only where there is the transport of goods from one distinct locality to another, and thus to prevent the potential for the geographic spread of pests. As a result, today's action adds the following sentence to the definition of quarantine applications: ''This definition excludes treatments of commodities not entering or leaving the United States or any State (or political subdivision thereof).'' Section III.D. further discusses the uses of methyl bromide that are excluded from today's exemption for quarantine applications.

With today's final action, EPA is defining quarantine applications and preshipment applications as follows:

Quarantine applications, with respect to class I, Group VI controlled substances, are treatments to prevent the introduction, establishment and/or spread of quarantine pests (including diseases), or to ensure their official control, where: (i) Official control is that performed by, or authorized by, a national (including state, tribal or local) plant, animal or environmental protection or health authority; (ii) quarantine pests are pests of potential importance to the areas endangered thereby and not yet present there, or present but not widely distributed and being officially controlled. This definition excludes treatments of commodities not entering or leaving the United States or any State (or political subdivision thereof).

Preshipment applications, with respect to class I, Group VI controlled substances, are those non-quarantine applications within 21 days prior to export to meet the official requirements of the importing country or existing official requirements of the exporting country. Official requirements are those which are performed by, or authorized by, a national plant, animal, environmental, health or stored product authority.

As specified in the above definitions, a quarantine application of methyl bromide must be ''performed by, or authorized by, a national (including state, tribal or local) plant, animal or environmental protection, or health authority.'' In addition, as delineated in the above definition, quarantine applications must be directed at quarantine pests. Today's definition of preshipment applications is limited to applications ''to meet the official requirements of the importing country or existing official requirements of the exporting country.'' The definition of preshipment applications specifies that the phrase ''official requirements'' means ''those which are preformed by, or authorized by, a national plant, animal, environmental, health or stored product authority.''

A. Are There Clarifications Regarding Trade Within the U.S.?

The interim final rule interpreted ''quarantine applications'' as including interstate and inter-county treatments required to control quarantine pests. This interpretation is consistent with the Technical and Economic Assessment Panel's (TEAP) recommendation that the Parties of the Protocol interpret Decision VII/5 to include officially required treatments for intra-country trade within the territory of the Party and reconciles the language of the Montreal Protocol with section 604(d)(5) of the CAA on Sanitation and Food Protection, which refers to international, Federal, state and local requirements.

In recognizing official state, county, tribal, and local quarantine requirements, EPA's final rulemaking interprets the definition of quarantine applications such that an intra-country quarantine treatment required by state, county, tribal, or local plant, animal, environmental, or health government authorities constitutes an official control. Today's action adds parenthetically that ''national'' is meant to include state, tribal or local authorities for purposes of the definition of quarantine applications.

In contrast to the definition of quarantine applications, which accommodates intra-country trade, the Protocol definition of preshipment applications is specific to trade between countries because of the phrase ''applications within 21 days prior to export.'' This distinction was noted in the interim final rule and EPA received no comment. Therefore, for the purposes of today's final action, the exemption for preshipment applications remains limited to the movement of goods from the U.S. to another country, and does not include movement of goods within the U.S.

B. Are There Additional Qualifiers Associated With the Definition of Preshipment Applications?

The interim final rule noted, in agreement with the 1998 TEAP interim explanatory notes for the Parties, the focus within the definition of ''preshipment applications'' on applications to meet ''official requirements'' and not ''informal or purely contractual or commercial arrangements not required under official regulations'' (April 1998 TEAP Report, page 145). EPA is continuing to stress the importance of this limitation in the scope of the preshipment exemption. The definition of preshipment applications specifies that the phrase ''official requirements'' means, ''those which are performed by, or authorized by, a national plant, animal, environmental, health, or stored product authority.''

The interim final rule's definition of preshipment applications further qualifies the term ''official requirements'' as it relates to exporting countries to include only ''existing official requirements''. EPA interpreted this phrase to imply the need to establish a cutoff date. EPA asked for comment on four possible interpretations for the term ''existing official requirements of the exporting country''. The options listed were to exempt applications pursuant to official

preshipment requirements of the exporting country that were: (1) In effect prior to the date the Parties to the Protocol adopted Decision XI/12, which was December 3, 1999, (2) in effect at the time the interim final rule was published in the **Federal Register**, which was July 19, 2001, (3) in place at the time this final rule on the quarantine and preshipment exemption is published in the **Federal Register**, or (4) existing at the time of the methyl bromide application (since it would be an ''existing'' requirement of the exporting country upon going into effect).

EPA received eight comments related to the interpretation of ''existing official requirements.'' All commenters supported the fourth option, which is to exempt applications pursuant to official preshipment requirements of the exporting country that exist at the time of the methyl bromide application. Commenters noted that this interpretation recognizes the possibility of future outbreaks of new pests requiring official action. EPA notes the value to such flexibility within the rule and believes that this interpretation is consistent with the intended purpose of the exemption.

It should be noted that the qualifier ''existing'', as used within the preshipment application definition, applies only to the official requirement of the exporting country (the U.S.) and not to the preshipment requirements of importing countries. Thus, if an importing country were to establish a new official requirement for the preshipment application of methyl bromide, nothing in this rule would prevent a U.S. exporter from using methyl bromide to meet the new requirement of the importing country.

C. Are There Additional Qualifiers Associated With the Definition of Quarantine Applications?

With today's final action EPA is establishing the following parameters for the quarantine exemption. For commodities imported to, exported from, and transported within the U.S., the exemption for quarantine applications will apply when: (1) Methyl bromide is identified within quarantine regulations as the unique treatment option for specific quarantine pests; (2) methyl bromide is identified within quarantine regulations as one among a list of treatment options for specific quarantine pests; and (3) methyl bromide is required for an emergency quarantine application. Under section 3, section 18, and section 24a of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), EPA is notified of emergency quarantine applications of methyl bromide in accordance with specific requirements published under FIFRA. In addition to the above, for commodities being exported from the U.S. to a foreign nation, the exemption applies to quarantine applications when there is a broad performance-based quarantine requirement. In other words, the exemption applies when an importing country has quarantine regulations which broadly require U.S. exported commodities to be free of quarantine pests without specifying the types of treatments.

The above follows EPA's decision in the interim final rule. The Agency received 12 comments on the scope of the quarantine exemption. Every commenter said that the broadest possible option should be implemented by the Agency. EPA believes that the scope of the exemption described above is the broadest interpretation that it can reasonably adopt for each given type of commodity. For example, for imports, USDA/APHIS requirements are explicit regarding treatment options acceptable for the control of specific crop/pest combinations. EPA considered limiting the scope of the quarantine exemption to only those instances where APHIS lists methyl bromide as the only acceptable treatment option for a given pest. However, as many commenters noted, variations in climate, etc. can affect the level of efficacy of treatment options in different regions. Thus, EPA chose to adopt a broader definition of the quarantine exemption which applies to quantities of methyl bromide used to meet quarantine requirements where fumigation with methyl bromide is the listed, or one of the listed, treatment options.

While EPA believes that such an interpretation is sufficiently broad for the purposes of imported and domestically traded commodities given the applicable U.S. regulations, the Agency recognizes that some foreign countries lack such specificity within their quarantine regulations for imported commodities. EPA chose to create even greater flexibility within the quarantine exemption in order to accommodate the broad, performance-based quarantine requirements of these foreign trade partners.

D. How Does the Exemption for Quarantine Applications Apply to Commodities Issued ''Phytosanitary Certificates''?

Today's final action exempts methyl bromide in situations when a foreign country's regulations require a certification that U.S. commodities be exported free of quarantine pests. EPA understands that both USDA/APHIS and State agencies issue ''phytosanitary certificates'' that accompany U.S. commodities exported to foreign countries. These phytosanitary certificates are often required by importing foreign countries to ensure that U.S. exports are free of quarantine pests. To the extent that methyl bromide is used by a U.S. exporter to meet a foreign quarantine requirement, the phytosanitary certificates (PPQ Form 577, PPQ Form 578, and PPQ Form 579) issued by USDA/APHIS or an authorized State agency will be an additional means for EPA to cross-check quarantine applications of methyl bromide under today's exemption.

As was noted in the interim final rule, and for this final action, EPA is not exempting methyl bromide used for non-quarantine applications, even if the foreign country requires the U.S. exporter to obtain a phytosanitary certificate. Today's exemption applies to the use of methyl bromide to meet an official foreign quarantine requirement. If PPQ Forms or other types of certificates are issued for commodities meeting state or local quarantine requirements then methyl bromide used in these cases is considered exempt under today's action, provided that methyl bromide is one of the listed treatment options.

E. How Do the Definitions of Preshipment and Quarantine Applications Apply to Food Sanitation?

The language of the Clean Air Act related to the quarantine and preshipment exemption explicitly limits the exemption to quantities of methyl bromide used ''to fumigate commodities *entering or leaving* the United States or any State (or political division thereof) for purposes of compliance with Animal and Plant Health Inspection Service requirements * * *'' (emphasis added). By applying the quarantine and preshipment exemption only to quantities of methyl bromide used to fumigate commodities being transported from one geographical location to another, Congress imposed limitations on how the definitions of preshipment and quarantine applications apply to food sanitation.

As defined in today's action, preshipment applications are those non-quarantine applications within 21 days prior to export to meet the official requirements of the importing country or existing official requirements of the exporting country. Official requirements are those which are performed by, or authorized by, a national plant, animal, environmental, health or stored product

authority. Methyl bromide used any time within 21 days prior to export of a commodity to meet ''official requirements'' related to food sanitation would qualify under the preshipment exemption. Any treatment performed outside of this 21 day window, by definition, does not qualify for the preshipment exemption.

The exemption of methyl bromide for quarantine applications, as defined by the interim final action, did not apply to preventative treatments to meet food sanitation standards. EPA received 4 comments about the interaction between food sanitation standards and the quarantine exemption. All commenters asserted that preventative treatments of commodities with methyl bromide to meet food sanitation requirements should qualify as ''quarantine applications'' because ''such standards are geared to preventing the dissemination of pests, although admittedly for human health and food sanitation purposes.''

EPA's final action is bound by the limitations imposed on the quarantine exemption by the definitions and determination of scope agreed upon by the Parties to the Montreal Protocol and adopted by Congress in the Clean Air Act. EPA understands that certain industries often use methyl bromide as a prophylactic treatment for periodic quality control fumigations associated with food sanitation. Stored commodities, such as dried fruits, nuts, and cocoa beans, as well as grain mills and pasta manufacturing facilities are often fumigated periodically with methyl bromide to prevent populations of pests, such as insects and rodents, from increasing to a point where they would adversely affect food quality. Such *in situ* population control measures do not qualify as quarantine applications since they are not performed on ''commodities entering or leaving the United States or any state (or political subdivision thereof) * * *''

Additionally, food sanitation requirements that are directed at controlling population levels of pests endemic to the region would not qualify under the definition of ''quarantine applications''. The quarantine definition, as established in today's final action, stresses that exempt applications of methyl bromide are ''to prevent the introduction, establishment and/or spread of quarantine pests (including diseases).'' Quarantine pests are defined as ''pests of potential importance to the areas endangered thereby and not yet present there, or present but not widely distributed and being officially controlled.'' Endemic pests are not quarantine pests.

The above limitations were noted in the interim final version of this rule. Likewise, the Agency noted in that publication its interest in comments related to prophylactic uses of methyl bromide to meet food sanitation standards in order to use this information in the Agency's development of the Critical Use Exemption to the phaseout of methyl bromide. Please see the discussion below (Section VIIIA) related to the Critical Use Exemption.

F. How Do These Definitions Apply to ''Propagative Material''?

The use of methyl bromide to fumigate the soil for growing propagative material, such as strawberry rhizomes, differs from many quarantine applications of methyl bromide. The Agency sought comment on the use of methyl bromide for propagative materials and received a variety of information on relevant quarantine regulations, planting and fumigating practices, and propagative materials (other than strawberry rhizomes) that use methyl bromide to meet quarantine requirements.

With today's final action, the exemption for quarantine applications applies to methyl bromide used for growing propagative material if the methyl bromide is being used to grow propagative material to meet official quarantine requirements of the destination to which the propagative material will be transported. Although the interim final rule only cited strawberry rhizomes in the discussion of the exemption for propagative material, with today's action EPA wishes to clarify that the exemption also covers other propagative material, including tree seedlings, when the methyl bromide is used to meet an official quarantine requirement of the destination to which the propagative material will be transported.

EPA notes the following qualifiers in the application of the quarantine exemption to methyl bromide used to grow propagative material (also referred to as ''plants for planting''). First, as noted above (see discussion in part VI.C.), the Clean Air Act language specifies that the scope of the quarantine exemption is limited to use of methyl bromide for fumigation of goods for transport from one distinct locality to another. Thus, the exemption for propagative materials only applies for use with ''plants for planting'' that are to be transported (complete with rootstock) from one distinct locality to another. Second, today's action only exempts the use of methyl bromide for pre-plant fumigation of soil to meet official quarantine requirements specifying that the underground portions of the propagative material are to be free from quarantine pests. The purpose of such regulations is ensuring that quarantine pests are not spread to the region where the regulated rootstock will be replanted. This exemption does not apply to pre-plant soil treatment for commodities transported without their attached rootstock, or commodities transported for any purpose other than for replant.

Finally, with this action, EPA is only exempting quantities of methyl bromide used to grow propagative material to meet official quarantine requirements of the destination to which such material will be transported. If the material is transported to a destination that has no applicable official quarantine requirements, then the methyl bromide used does not qualify for this exemption. This is true even in an instance where a farmer legitimately justified using exempted methyl bromide to meet a quarantine requirement for propagative materials, yet due to economic or market conditions the farmer does not send the seedlings to the planned destination, and instead sends the seedlings to a region without relevant quarantine requirements. EPA recognizes that many of the propagative materials for which this exemption applies are planted far in advance of their trade and transplant and that farmers face some difficulty in accurately predicting their commodities' ultimate destination. The Agency reminds methyl bromide users that non-exempted quantities will be available until the January 1, 2005 phaseout date and that the Critical Use Exemption will become available after the phaseout (see discussion in part VIII.A. below).

The use of exempted methyl bromide to grow propagative material that the grower planned to ship to a destination with a propagative material quarantine requirement, but which the grower ultimately shipped to a destination without such a requirement, may raise compliance issues for the United States under the Protocol. Such quantities of methyl bromide would count against the U.S. cap for domestic methyl bromide consumption. The U.S. could exceed its control obligations under the Protocol if all U.S. production and consumption allowances for methyl bromide were expended in a particular control period (calendar year) and some methyl bromide in the same control period was mistakenly exempted for quarantine applications when, in fact, the propagative material was sent to a place without quarantine requirements. With this action, EPA is implementing the

following options for rectifying such discrepancies. The methyl bromide user found to be incorrectly using exempt quantities of methyl bromide for propagative uses as described above may choose either of the following options to rectify their actions. First, a methyl bromide user in the above situation may choose to buy an equivalent amount of production allowances for any ozone-depleting substance, on an ozone-depleting potential (ODP) weighted basis, and retire those allowances, thus rendering them unable to be expended for new production in accordance with subpart A of 40 CFR part 82. Alternatively, a person who uses exempted methyl bromide to meet a propagative material quarantine requirement, and who ultimately changes the material's destination to one without a quarantine requirement, can choose to destroy an amount of any ozone-depleting substance that is equivalent on an ODP-weighted basis to the amount of methyl bromide used. This approach differs from the first option, in that it requires the person to physically destroy an existing quantity of an ozone-depleting chemical rather than reduce the overall quantity produced in the future.

Those users of methyl bromide required to perform one of the compensatory measures described above to rectify a non-compliance situation must submit to EPA a letter of certification detailing the following information: (1) The quantity of exempt methyl bromide used on propagative materials that were shipped to a destination lacking a quarantine requirement; (2) the compensatory option chosen (see discussion above); (3) the ozone-depleting substance destroyed or the type of production allowance obtained; and (4) the quantity of ozone-depleting substance destroyed or production allowances retired. See the section above entitled **FOR FURTHER INFORMATION CONTACT** for submittal information.

Monitoring and compliance issues are a concern associated with the use of methyl bromide for pre-plant propagative material uses. EPA expressed a concern in the interim final rule about situations where propagative materials are grown in proximity to crops that do not qualify for quarantine and preshipment exemption. EPA believed that it would be difficult to ensure that exempted quantities of methyl bromide were being properly used. However, the Agency received input from 3 commenters that state that propagative material is rarely, if ever, grown in proximity to other crops, which alleviates the Agency's concern. The Agency will continue to monitor this possibility.

G. How Do These Definitions Apply to In-Transit Applications?

EPA understands that some users of methyl bromide may be testing and/or using ''on-ship'' fumigation of commodities while they are ''in-transit.'' With today's final action, EPA is interpreting the definition of quarantine application to apply to these quantities of methyl bromide used ''in-transit'' when the use is to meet an official U.S. quarantine requirement and is in accordance with other U.S. regulations for commodities being imported into the U.S., (see discussion in part VI.C. above for more information on what is considered an official quarantine requirement for an imported commodity) or for commodities moving from one location to another within the U.S. However, today's action does not exempt quantities of methyl bromide used outside of U.S. jurisdiction on U.S. exported commodities to meet the importing country's official quarantine requirements while the commodities are ''in-transit.'' Today's action, likewise, does not exempt quantities of methyl bromide used on U.S. exported commodities when they are being transshipped through a foreign country en route to the destination importing country. Finally, today's action does not exempt quantities of methyl bromide used to meet an importing country's requirements when a commodity is simply being transshipped through the U.S. from the exporting foreign country en route to the importing foreign country.

It should be noted that use of methyl bromide after a shipment leaves the Unites States is not an exempt preshipment application because the application did not occur ''within 21 days prior to export'' from the U.S., where the word ''export'' is interpreted to mean the departure of a commodity from the Unites States.

VII. What Is the Process for Exempting Methyl Bromide for Use in Quarantine and Preshipment Applications?

With this action, EPA is establishing a process to exempt methyl bromide used for quarantine and preshipment applications from the Allowance Program's control measures that phase out production and consumption of methyl bromide (described in Part I. Background above). Today's action exempts quantities of methyl bromide used for quarantine and preshipment applications from the production and consumption reduction steps between now and 2005, as well as beyond the final phaseout of production and consumption under the Montreal Protocol and Clean Air Act on January 1, 2005.

EPA is creating a recordkeeping and reporting process that is flexible enough to respond to demands arising when commodities need to be protected from infestations by quarantine pests and when commodities need to be treated immediately prior to shipment in accordance with official requirements. Such flexibility needs to be balanced with the U.S. Government's reporting requirements under the Montreal Protocol. Today's action includes a certification and reporting procedure under authority of the Clean Air Act (CAA) for exempted production and consumption of methyl bromide for quarantine and preshipment applications.

A. What Recordkeeping and Reporting Must Producers and Importers Perform?

Until the January 1, 2005 phaseout date for methyl bromide, U.S. companies will continue to hold production and consumption allowances, calculated as a percentage of their baseline production and consumption. After January 1, 2005, there will not be production allowances and consumption allowances for methyl bromide. The relationship between each company's baseline production allowance and baseline consumption allowances and the reduction steps in these allowances is in accordance with the control measures under the Montreal Protocol and the Clean Air Act as described in part I of today's rule and in the direct final rule published in the **Federal Register** on November 28, 2000 (65 FR 70795).

Because quarantine and preshipment applications are exempted from the phaseout, the total quantities of methyl bromide produced and imported that are specifically designated for quarantine and preshipment will not be counted as net production or net import for the purposes of the Allowance Program. In order for EPA to ensure that qualifying quarantine and preshipment quantities of methyl bromide are being properly exempted from companies' total allowed production/import, the Agency must have a record of those exempted quantities.

Currently, § 82.13 requires producers and importers to submit quarterly reports to EPA with information on the gross quantity of methyl bromide produced or imported in that quarter. In that same report, producers and importers indicate the quantity specifically designated for transformation and for destruction and,

thus, exempted from the reduction steps and phaseout of methyl bromide. EPA subtracts these quantities for transformation and for destruction from the gross quantity reported to obtain the company's net production or import. The interim final rule required producers and importers to include the quantities of methyl bromide specifically designated for quarantine and preshipment applications on these same quarterly reports. Quantities of methyl bromide used for quarantine and preshipment applications are also subtracted from the gross quantity of production or import because of their exempted status and, thus, are not counted against a company's production and consumption allowances.

In addition to the reporting requirements outlined above, the interim final rule established the following recordkeeping requirements for producers and importers. Domestic purchasers (distributors or customers) must provide producers and importers with certifications that a designated quantity is being purchased solely for quarantine and preshipment applications (discussion of requirements for foreign purchasers appears below in part VII.D.) Certifications from distributors will attest that the material will be sold only for quarantine and preshipment applications, and certifications from applicators purchasing directly from a producer or importer will attest that the material will be used only for quarantine and preshipment applications.

While EPA received no comments on the specific recordkeeping and reporting procedures described in the interim final rule, several commenters submitted general feedback. All comments on this topic focused on the burden of recordkeeping and reporting and suggested that the creation of a FIFRA label specific to quarantine and preshipment would help to ease that burden. EPA recognizes the potential utility of a quarantine and preshipment specific FIFRA label (see full discussion below in part VII.E.). However, until such a label can be established, EPA must rely on another means of obtaining the information it needs to meet the U.S.'s reporting obligations under the Montreal Protocol and to ensure domestic compliance with the phasedown and phaseout schedule for production and import. The requirements created by the interim final rule were discussed with many industry representatives and represent one of the least burdensome options available. Thus, with this final action EPA is continuing the recordkeeping and reporting requirements for producers and importers established by the interim final rule and described in the above text.

B. Are Methyl Bromide Applicators Required To Report?

Today's action includes a certification requirement for purchases of methyl bromide by applicators. Applicators must submit a certification to the seller of the methyl bromide when they want to purchase a specific quantity of methyl bromide explicitly for quarantine and preshipment applications. The applicator will certify that the quantity purchased will be used solely for quarantine and preshipment applications. The applicator must send the certification to the company selling the methyl bromide before the seller ships the cylinders of methyl bromide (*i.e.*, certification before shipment).

The applicator can obtain the certification form at EPA's Web site at *http://www.epa.gov/ozone/mbr* or from their methyl bromide distributor. The applicator must check the box indicating that the particular quantity being ordered is solely for quarantine and preshipment applications as defined on the form (see the definition above in Part VI) and will neither be sold nor used for any other purpose. The applicator must sign the form certifying, under penalty of law, that the quantity of methyl bromide purchased will be used solely for quarantine and preshipment applications in accordance with the definitions. The applicator must return the completed and signed form to the distributor. The distributor retains the certification form in order to compile data that they will submit to EPA on the quantity of methyl bromide sold under the exemption for quarantine and preshipment applications. The certification form ensures that quantities of methyl bromide produced or imported under the exemption for quarantine and preshipment applications are used only in accordance with the strict requirements of the exemption. It is important to note that the applicator will also be able to purchase non-exempt methyl bromide until the phaseout date for methyl bromide.

For quarantine applications, the applicator must collect documentation citing the regulatory requirement or other official requirement that justifies the use of exempted methyl bromide. Acceptable documentation for a quarantine application includes the forms provided directly to the applicator by an official from a national plant, animal, environmental protection or health authority (*e.g.* USDA/APHIS) requesting the treatment of commodities to control quarantine pests. In the absence of official documentation from a plant, animal, environmental protection or health authority, the commodity owner, shipper or their agent must provide a letter to the methyl bromide applicator requesting the use of methyl bromide that explicitly cites the regulation requiring a quarantine treatment or quarantine official control. Likewise, the applicator must collect documentation citing the official requirement calling for a preshipment application. The commodity owner, shipper or their agent must provide a letter to the methyl bromide applicator requesting the use of methyl bromide that explicitly cites the official requirement for a preshipment application. The letter that the commodity owner, shipper or their agent presents to the applicator must include the following statement: ''I certify knowledge of the requirements associated with the exempted quarantine and preshipment applications published in 40 CFR part 82, including the requirement that this letter cite the treatments or official controls for quarantine applications or the official requirements for preshipment requirements.'' Both the commodity owner, shipper or their agent and the applicator must maintain this letter for three years in accordance with current recordkeeping requirements in 40 CFR part 82, subpart A. Neither the applicator nor the commodity owner, shipper or their agents are required to submit the letter to EPA.

The requirements established by today's final action exactly match the requirements of the interim final rule. EPA received one comment related to these reporting requirements. The commenter raised the concern that requiring distributors to send and recover Certification Forms prior to every sale could cause supply delays and backlog of commodities needing fumigation at ports. EPA does not believe that the above requirements will cause such a backlog if efficiently managed. While the above protocol explicitly requires that distributors must receive completed Certification Forms prior to distributing the order of methyl bromide, there is flexibility regarding when distributors must provide the blank forms to their customers. In fact, a distributor may send a blank Certification Form to every applicator with instructions to make many copies of the blank form, so each applicator is ready to place immediate, ''rush'' orders for methyl bromide for quarantine and preshipment applications. However, in

situations when an applicator needs to have methyl bromide on-hand to fumigate a shipment hours after it arrives, EPA understands applicators strive to anticipate these busy seasons and accordingly place large orders well in advance. Under today's exemption, when an applicator places a large order in anticipation of future needs for methyl bromide for quarantine and preshipment applications, the applicator can and must submit the Certification Form for the quantity that will be stored to be used solely for quarantine and preshipment applications in the future.

C. Are Distributors Required To Report?

With today's action, EPA is requiring that a person who distributes methyl bromide to applicators (the distributor) compile all the information from applicator certifications (as described in part VII.B above) on a quarterly basis and submit the summary data to EPA. In administering other parts of the stratospheric ozone protection program over the past decade, regulated companies have often expressed an appreciation for the submission of smaller, quarterly reports, rather than one large, end-of-year report. EPA also believes that regular, quarterly tracking by distributors will increase the accuracy of reporting. Since EPA received no comments objecting to the submission of quarterly reports, we are requiring distributors to submit quarterly reports that summarize the total quantity of methyl bromide sold over a quarter to applicators who submitted certifications described in part VII.B above.

The collection of information on the quantity of methyl bromide sold and certified for quarantine and preshipment applications is needed so that the U.S. can respond to a recent amendment to the Protocol. The amendment, to which the Parties agreed at their Eleventh Meeting in Beijing in 1999, adds a provision to Article 7 (Reporting of Data), requiring Parties to submit information on the amounts of methyl bromide used for quarantine and preshipment applications. Reporting by the distributors will allow a comparison between the quantities of methyl bromide sold and certified for quarantine and preshipment applications with the amount of methyl bromide produced and imported for quarantine and preshipment applications, as reported in the producers'/importers' report as described in part VII.A above.

D. What About Methyl Bromide Exported for Quarantine and Preshipment Applications?

With today's action, producers and others that export methyl bromide must report the total quantity of methyl bromide explicitly exported to individual foreign countries for quarantine and preshipment applications on a quarterly basis. Under § 82.13, producers and exporters already distinguish other exempted quantities of methyl bromide explicitly exported for transformation or destruction. For each export of methyl bromide for quarantine and preshipment applications, as for exports for transformation or destruction, the exporter must obtain a certification from the foreign person (entity) importing the methyl bromide stating that the material will be used only for quarantine and preshipment applications. These certifications must be submitted with the quarterly reports. These certifications will then be shared with the appropriate foreign government officials in the importing country and the compiled data will be shared with UNEP advisory bodies to the Protocol. Certifications must accompany the reporting on quantities exported for quarantine and preshipment applications because of a concern that the U.S., as one of the largest worldwide producers of methyl bromide, could potentially contribute to the creation of a loophole for non-exempt uses of methyl bromide around the globe. EPA feels it will be important to closely monitor and track production of methyl bromide that is exported for quarantine and preshipment applications because these uses are exempt from Protocol control measures.

The above requirements are consistent with those created by the interim final rule. EPA received no comments related to this issue.

E. Will There Be a FIFRA Pesticide Label Change?

The interim final rule introduced the possibility of EPA's Office of Pesticide Programs developing, under the authority of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), a unique label for methyl bromide specifically designated for quarantine and preshipment use. The Agency received five comments in support of such an action. Commenters advocated that EPA replace the record keeping and reporting requirements established by the interim rule (and continued with today's action) with such a label in order to reduce the burden on users associated with the Quarantine and Preshipment Exemption.

EPA recognizes the potential burden reduction that creating a new QPS-specific FIFRA label could offer, however, the Agency also remains cognizant of the need to retain access to the information it needs to meet the U.S. government's own international reporting requirements as established by the Montreal Protocol. Thus, after the Office of Pesticide Programs finishes the process of making changes that create a new QPS-specific FIFRA label for methyl bromide, the Office of Air and Radiation will consider ways to simplify today's recordkeeping and reporting requirements but likely retain some of these requirements to ensure the accurate submission of data in accordance with U.S. obligations under the Montreal Protocol.

A registration/label change would designate individual cylinders of methyl bromide specifically for quarantine and preshipment applications and it would be illegal to use the material in these cylinders for other uses. Under an approved registration/label change there would be unique registration numbers for the new labels that would accompany each cylinder through the chain of commerce from producers or importers to the end-user (the applicator). As currently required under FIFRA, establishments would report total quantities of methyl bromide under this new quarantine and preshipment registration/label to EPA's Office of Pesticide Programs on an annual basis. Following a change in the FIFRA authorized registration/label, it would be possible for the Agency to reconcile the total quantity of methyl bromide certified to be solely for quarantine and preshipment applications under procedures described in parts VII.B and VII.C above, the total quantity of methyl bromide produced or imported for quarantine and preshipment applications under today's part VII.A above, and the annual FIFRA establishment reports on methyl bromide, which reference specific products by registration number.

EPA's Office of Pesticide Programs is continuing to work with the Methyl Bromide Industry Panel to develop a registration and label change for methyl bromide products. EPA reserves the ability to reevaluate the record keeping and reporting requirements established in today's action if and when such a label is created.

VIII. What Were Other Considerations and Situations on Which EPA Sought or Received Comment?

In the interim final rule, EPA sought comment on a number of possible variations on the exemption that were

not incorporated into the interim rule as it was published. The Agency received comment on some of these items, as well as on other topics for which comment was not expressly sought.

EPA recognizes that additional questions may arise regarding aspects of today's final action. If a person has a question about whether a certain aspect of today's final action applies to their situation, EPA is encouraging the submissions of written questions accompanied by a detailed description of how methyl bromide relates to the person's particular enterprise. The Agency will consider questions about whether aspects of today's final action apply in the context of EPA's regular process for issuing written determinations.

A. Methyl Bromide Is the Only Feasible Treatment Option

EPA received 31 comments in response to the interim final rule that addressed the lack of feasible alternatives available for specific uses of methyl bromide and the economic impact of the phaseout on sectors of the agricultural industry. In response to such comments, EPA notes that there is no ''critical need'' requirement associated with the Quarantine and Preshipment Exemption at this juncture. The exemption applies only to uses of methyl bromide that qualify as a quarantine or preshipment application, as defined by this final action, regardless of the availability of alternatives.

The Montreal Protocol and the CAA created two distinct exemptions to the methyl bromide phaseout: (1) The Quarantine and Preshipment Exemption, and (2) the Critical Use Exemption. The Critical Use Exemption was created by the Parties to the Protocol to address the possibility that substitutes and alternatives may not be available for all methyl bromide uses by the January 1, 2005 phaseout date. The term ''critical use'' is defined, in part, by the lack of technically or economically feasible alternatives. For more information about the Critical Use Exemption please consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section or visit *http://www.epa.gov/ozone/mbr/cueqa.html.*

B. Has the Agency Considered Definitions Under the International Plant Protection Convention (IPPC)?

Under the International Standards for Phytosanitary Measures (ISPMs) adopted by members of the International Plant Protection Convention (IPPC) on April 22, 2001, the definition of ''official control'' is different than the definition that was agreed to by the Parties to the Montreal Protocol and adopted by EPA in the interim final rule. The IPPC definition of the phrase ''official control'' is, ''the active enforcement of mandatory phytosanitary regulations and the applications of mandatory phytosanitary procedures with the objective of eradication or containment of quarantine pests or the management of regulated non-quarantine pests.'' The IPPC glossary of phytosanitary terms defines ''official'' as ''established, authorized or performed by a National plant protection Organization (NPPO).'' In the United States, the NPPO is the USDA Animal and Plant Health Inspection Service (APHIS), Plant Protection and Quarantine (PPQ) Program.

Further, under the ISPMs adopted by the IPPC, the phrase ''regulated non-quarantine pests'' is defined as, ''a non-quarantine pest whose presence in plants for planting affects the intended use of those plants with an economically unacceptable impact and which is therefore regulated within the territory of the importing contacting party.''

EPA sought comment in the interim final rule on this IPPC definition of ''official control'' and received 3 comments. All commenters stated that EPA ought to adopt the IPPC definition because it is broader than that adopted in the interim final rule.

In this final action, EPA is adopting the definition of ''official control'' found in the interim final rule and agreed upon by the Parties to the Montreal Protocol. The IPPC definition is broader, insofar as includes within its scope not only regulated quarantine pests but also regulated ''non-quarantine pests'', an addition not found in EPA's definition. However, IPPC defines the phrase ''non-quarantine pests'' as being applicable only to ''plants for planting''. [With this final action, EPA explicitly applies the quarantine exemption to use of methyl bromide for growing propagative material if it is being used to meet official quarantine requirements of the destination to which the propagative materials are being transported. However, the IPPC's definition is much narrower than the Protocol's, because the word ''official'' under the IPPC is limited only to national plant protection organization, and the Protocol's quarantine definition refers to ''plant, animal or environmental protection or health authority'' and the preshipment definition refers to ''national plant, animal, environmental, health or stored product authority''.

Additionally, in 1998, the TEAP explicitly laid out the differences between the IPPC's and the Montreal Protocol's definitions of ''official control'' for consideration by the Parties. The Parties rejected making any changes to the Protocol's definition of ''official control'' even when presented with the IPPC language (See discussion in section IV above). The Agency is acting in conformity with customary international law by adhering to the decision of the Parties on this matter.

C. What Action Is the Agency Taking Regarding Prophylactic Fumigation of U.S. Exports When the Fumigation Is Not Mandated by Import Regulations?

U.S. businesses sometimes use methyl bromide against non-quarantine pests for a commodity that is being exported because it is known that the importing country will treat with methyl bromide at the port of entry if the detected level of these non-quarantine pests during port-of-entry inspection exceeds that country's standards. Some U.S. exporters give their commodities a prophylactic treatment in the U.S. to prevent a much more damaging treatment in the receiving country that could occur if non-quarantine pests were found, possibly reducing the quality of the commodity. In cases where an official foreign Party requirement is specific to quarantine pests, or there is a general performance-based quarantine requirement, the use of methyl bromide under the exemption for quarantine applications would be appropriate. In addition, fumigation with methyl bromide to meet U.S. government or foreign non-quarantine requirements 21 days prior to export of the commodity would also be exempt under the definition of preshipment applications. The Agency reminds methyl bromide users that non-exempted quantities will be available until the January 1, 2005 phaseout date and that the Critical Use Exemption will become available after the phaseout (see section VII.A. above).

D. What Action is the Agency Taking Regarding the Exclusion of Specific Quarantine and Preshipment Applications From the Exemption at Some Future Time?

The Parties to the Protocol in Decision XI/13 request Parties to ''review their national plant, animal, environmental, health an stored product regulations with a view to removing the requirement for the use of methyl bromide for quarantine and preshipment where technically and economically feasible alternatives exist.'' The reason for a review process

would be to limit the production and import of methyl bromide to only those cases where no other ''technologically and economically feasible alternatives exist.'' Through time, it is likely that the use of methyl bromide will be less and less necessary for quarantine and preshipment applications. When technically and economically feasible alternatives to methyl bromide are available, a process will be devised that will allow the U.S. to limit the use of this ozone-depleting substance while taking into account the need to protect international trade. In the years beyond the methyl bromide production and consumption phaseout, there will continue to be an exemption for quarantine and preshipment applications but there may no longer be price pressures for moving away from these quarantine and preshipment applications of methyl bromide. Therefore, the Parties to the Protocol emphasize the importance of reviewing quarantine and preshipment applications and identifying when technically and economically feasible alternatives exist, and removing these applications from the exemption.

EPA offered several options for implementing such a review process in the interim final rule. The Agency received 5 comments related to this issue. All commenters asserted that the option to eliminate the Quarantine and Preshipment Exemption after the phaseout and ask users to apply for critical-use exemptions where no technically or economically feasible alternatives exist offered by EPA in the interim final rule was contrary to the provisions of the Montreal Protocol and could not be pursued without an amendment to the agreement. Given the request by the Parties for a future contraction of the Quarantine and Preshipment Exemption, EPA does not agree that the Protocol prohibits such a course of action. However, the Agency agrees that this option may impose the burden of completing a Critical Use Exemption Application on users where it may not be necessary. Thus, with this action, EPA sets forth its intent to meet the Parties' request for a domestic review process for quarantine and preshipment applications of methyl bromide by establishing a procedure for excluding specific quarantine and preshipment applications from the exemption when EPA determines by notice and comment rulemaking that alternatives are in significant international use for the specific applications. In undertaking the process of notice and comment rulemaking, EPA will consult with USDA/APHIS regarding alternatives that are efficacious for quarantine and preshipment and are in significant international use for specific quarantine and preshipment applications. Such a notice and comment rulemaking process will allow U.S. users of methyl bromide for quarantine and preshipment applications to make the case that although alternative(s) are in significant international use, the specific circumstances of their U.S. applications are unique (*e.g.*, the alternatives are not feasible or commercially available in the U.S.) and continue to warrant the use of methyl bromide.

EPA considered relying on market prices to guide methyl bromide use as an alternative to the formal review process described above. However, the Agency was unable to gather adequate information to determine whether the price of methyl bromide would be sufficiently likely to provide an incentive for the development and use of alternatives. Without adequate economic analysis, the Agency is unable to rely on market forces to meet the U.S.'s international commitment.

IX. What Are the Steps To Conform the U.S. Methyl Bromide Phaseout Schedule and Exemptions to the Montreal Protocol and Amended Clean Air Act?

During stakeholder meetings, and in the proposed and final rules that established the 25 percent reduction in methyl bromide baseline allowances beginning in 1999 (64 FR 9290, 64 FR 29240), EPA described its intention to follow with separate rulemakings that would include the additional phaseout steps for methyl bromide and establish additional exemptions in accordance with the Protocol and the CAA. The rule establishing the remaining reduction and phaseout schedule for methyl bromide was published November 28, 2000 (65 FR 70795). The reduction and phaseout schedule is listed above at the end of part I.

After the phaseout on January 1, 2005, critical-use exemptions are permitted under the Montreal Protocol and the Clean Air Act when nominated by the United States and approved by the Parties. In addition, an emergency use exemption of no more than 20 metric tonnes is available after the phaseout on January 1, 2005. In 2001, EPA initiated stakeholder meetings to develop a process for an emergency use exemption and for critical use exemptions, which is designed to ensure that the U.S. meets its obligations under the Montreal Protocol consistent with statutory requirements in the Clean Air Act. On May 10, 2002 EPA published a **Federal Register** document (67 FR 31798) asking for people to submit Critical Use Exemption Applications. At this time no final decision has been published regarding what uses will be exempted as ''critical.'' Sometime in advance of 2005, EPA will establish a process for an emergency use exemption through notice and comment rulemaking.

X. Administrative Requirements

A. 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 the applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective of least burdensome alternatives 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. The rule imposes no enforceable duty on any

State, local, or tribal government. The recordkeeping and reporting requirements are the only mandates imposed on those members of the private sector that choose to take advantage of the exemption to the methyl bromide phaseout established by this rulemaking, which EPA calculated to be under $100 million per year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has also determined that this rule contains no requirements that might significantly or uniquely affect small governments. Thus, today's rule is not subject to the requirements of section 203 of the UMRA.

B. Regulatory Flexibility Analysis

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that is identified by the North American Industry Classification System code (NAICS) in the Table below; (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.

Type of enterprise	NAICS Code	Size standard (number of employees)	Size standard (millions of dollars)
Pesticide and Other Agricultural Chemical Manufacturing	32532	500	.....
Support Activities for Agriculture and Forestry	115	.....	$6.0
Exterminating and Pest Control Services	56171	.....	$6.0

After considering the economic impacts of today's final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. We have determined that although some small percentage of distributors may be small entities and many of the applicators are too, that all entities regulated by today's action receive a benefit through the exemption, which allows them to continue to obtain quantities of methyl bromide outside of the reduction schedule and phaseout controls. We estimate that these benefits are equal to approximately 7 to 10% of the U.S. baseline of methyl bromide, annually, or about 1,787 to 2,552 metric tonnes, which at current prices for methyl bromide of approximately $3.00/pound would be equal to an estimated annual benefit of $12 to $17 million. The costs of this exemption arise from the limited recordkeeping and reporting requirements which are estimated to be less than $53 thousand per year for the entire industry that uses methyl bromide for quarantine and preshipment applications.

Although this final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. EPA held several stakeholder meetings to explore options for establishing a reasonable record keeping and reporting system that would allow the Agency to monitor and collect information for the U.S. reporting obligations to the Montreal Protocol. One option considered would have asked for certifications from applicators to be submitted to producers or importers prior to exempted production or import. This and other options were not only administratively too burdensome, but would also be too disruptive of normal commerce. In today's action, for each level in the methyl bromide market chain, the Agency chose the least burdensome method for collecting the minimum amount of information that would allow the U.S. to accurately fulfill its Protocol reporting requirements.

C. Executive Order 12866

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)), the Agency must determine whether this 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 mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, OMB has notified EPA that it considers this a ''significant regulatory action'' within the meaning of the Executive Order. EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations on the original rule submitted to them will be documented in the public record.

D. Applicability of Executive Order 13045 (Children's Health Protection)

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.

EPA interprets 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 Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it implements a specific exemption set forth by Congress in section 604(d)(5) of the Clean Air Act.

E. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule for three years under the provisions of the Paperwork Reduction

Act, 44 U.S.C. 3501 *et seq.* The OMB control number is 2060–0170.

In relation to the expected benefits of today's exemption from the phaseout schedule for methyl bromide, this action is maintaining the additional reporting and record keeping requirements required in the interim final rule. This action requires reporting by distributors of methyl bromide regarding the total quantity sold that is certified to be solely for quarantine and preshipment applications. This action also requires applicators of methyl bromide to certify that specified quantities purchased will be used solely for quarantine and preshipment applications. Producers and importers of methyl bromide must include additional information in existing quarterly reports. As in the interim final rule, producers that export and third-party exporters must submit additional information regarding quantities of methyl bromide exported for quarantine and preshipment applications. Today's action also maintains the record keeping requirements of the interim final rule associated with the reporting listed above and for commodity owners or shippers who must formally request methyl bromide use citing the official control or official requirement for the quarantine and preshipment application.

EPA is making the reporting forms associated with this rule available electronically, as a first step. In addition, EPA is working to make it possible for people to complete the forms electronically with special guidance on a ''file naming protocol.'' EPA wants to create this ''file naming protocol'' so forms completed electronically by producers and importers can be saved with similar nomenclature for transmission to EPA by email. For example, the company, Acme Ltd., might complete the third-quarter importer's report electronically and save the document with the name 3Q—ImpR—Acme and send it, by email, to EPA. The Agency believes guidance on a ''file naming protocol'' will ease the process for electronically filing, searching and identifying forms for both the Agency and companies, and be especially helpful if a question arises about information in a specific form. EPA will strive to have forms available that can be completed electronically by the regulatory deadline for submission of the first-quarter reports (30 days after the end of the quarter in 2003), and will make every effort to have them available no later than for submission of second-quarter reports. Concurrent with the process for making it possible to electronically complete forms for submission by email, EPA is pursuing technical and logistical questions about creating a secure Web-based system for direct electronic reporting of data. If EPA deems that it is feasible and efficient to create a secure Web-based database for direct electronic reporting, then EPA will work to bring such a system online by 2004.

The information collection under this action is designed to implement the exemption in paragraph 6 under article 2H of the Montreal Protocol for quantities of methyl bromide used for quarantine and preshipment applications as well as the exemption under 604(d)(5) of the CAA. The information collection under this rule is authorized under section 603(b) and 603(d) of the CAA. This information collection is conducted to meet U.S. obligations under Article 7, Reporting Requirements, of the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol); and to carry out the requirements of Title VI of the CAA, including sections 603 and 614. The reporting requirements included in this rule are intended to: (1) Allow exempted production and import for a specific exemption and the consequent tracking of that production and import; (2) respond to industry comments on the functioning of the program to streamline reporting and eliminate administrative inefficiencies; (3) satisfy U.S. obligations under the international treaty, The Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol), to report data under Article 7; (4) fulfill statutory obligations under Section 603(b) of Title VI of the Clean Air Act Amendments of 1990 for reporting and monitoring; and (5) provide information to report to Congress on the production, use and consumption of class I controlled substances as statutorily required in section 603(d) of Title VI of the CAA.

EPA informs respondents that they may assert claims of business confidentiality for any of the information they submit. Information claimed confidential will be treated in accordance with the procedures for handling information claimed as confidential under 40 CFR part 2, Subpart B, and will be disclosed only to the extent, and by means of the procedures, set forth in that subpart. If no claim of confidentiality is asserted when EPA receives the information it may be made available to the public without further notice to the respondents (40 CFR 2.203).

The information collection requirements for this action have an estimated reporting burden averaging 1.38 hours per response. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing the collection of information. The estimate includes the time needed to comply with EPA's reporting requirements, as well as that used for the completion of reports.

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; 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.

Collection activity	No. of respondents	Responses/ respondent	Total responses	Hours per response	Total hours
Producers & Importers Report	4	4	16	1	16
Exporters Report	2	4	8	8	64
Applicator Certification	15	6	90	0.5	45
Distributor Report	15	4	60	4	240
Commodity Owner, Shipper or Agent Record keeping	500	10	500	1	500
Total burden hrs					865

F. 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 rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national governmental and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule does not in any way restrict States from continuing to operate their plant, animal, environmental, health or stored product protection programs associated with quarantine and preshipment applications. Thus, Executive Order 13132 does not apply to this rule.

G. 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.'' This final rule does not have tribal implications, as specified in Executive Order 13175. There is no enforceable mandate imposed on tribal governments within this regulation. Thus, Executive Order 13175 does not apply to this rule.

H. The 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 standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

I. Executive Order 13211 (Energy Effects)

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this rule is not likely to have any adverse energy effects.

XI. Congressional Review

A. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating that 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 rule is not a major rule as defined by 5 U.S.C. 804(2). This rule will be effective January 1, 2003.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Exports, Imports, Reporting and recordkeeping requirements.

Dated: December 23, 2002.

Christine Todd Whitman,

Administrator.

For reasons set out in the preamble, title 40 chapter I of the Code of Federal Regulations is amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for subpart 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

Subpart A—Production and Consumption Controls

2. Section 82.3 is amended by adding new definitions in alphabetical order for the terms, ''Applicator,'' ''Commodity Owner, Shipper or their Agent,'' ''Distributor of methyl bromide,'' ''Preshipment applications,'' and ''Quarantine applications.''

§ 82.3 Definitions.

As used in this subpart, the term:

Applicator means the person who applies methyl bromide.

* * * * *

Commodity Owner, Shipper or their Agent means the person requesting that an applicator use methyl bromide for quarantine or preshipment applications.

* * * * *

Distributor of methyl bromide means the person directly selling a class I, Group VI controlled substance to an applicator.

* * * * *

Preshipment applications, with respect to class I, Group VI controlled substances, are those non-quarantine applications applied within 21 days prior to export to meet the official requirements of the importing country or existing official requirements of the exporting country. Official requirements are those which are performed by, or authorized by, a national plant, animal, environmental, health or stored product authority.

* * * * *

Quarantine applications, with respect to class I, Group VI controlled substances, are treatments to prevent the introduction, establishment and/or spread of quarantine pests (including diseases), or to ensure their official control, where: (1) Official control is that performed by, or authorized by, a national (including state, tribal or local) plant, animal or environmental protection or health authority; (2) quarantine pests are pests of potential importance to the areas endangered thereby and not yet present there, or present but not widely distributed and being officially controlled. This definition excludes treatments of commodities not entering or leaving the United States or any State (or political subdivision thereof).

* * * * *

3. Section 82.4 is amended by redesignating paragraphs (a) as (a)(1) and republishing the text, adding (a)(2), redesignating paragraphs (c) as (c)(1) and republishing the text, adding (c)(2),

redesignating (k) as (k)(1) and republishing the text, and adding (k)(2) as follows:

§ 82.4 Prohibitions.

(a)(1) Prior to January 1, 1996, for all Groups of class I controlled substances, and prior to January 1, 2005, for class I, Group VI controlled substances, no person may produce, at any time in any control period, (except that are transformed or destroyed domestically or by a person of another Party) in excess of the amount of unexpended production allowances or unexpended Article 5 allowances for that substance held by that person under the authority of this subpart at that time for that control period. Every kilogram of excess production constitutes a separate violation of this subpart.

(2) Effective January 1, 2003, production of class I, Group VI controlled substances is not subject to the prohibitions in paragraph (a)(1) of this section if it is solely for quarantine or preshipment applications as defined in this subpart.

* * * * *

(c)(1) Prior to January 1, 1996, for all Groups of class I controlled substances, and prior to January 1, 2005, for class I, Group VI controlled substances, no person may produce or (except for transhipments, heels or used controlled substances) import, at any time in any control period, (except for controlled substances that are transformed or destroyed) in excess of the amount of unexpended consumption allowances held by that person under the authority of this subpart at that time for that control period. Every kilogram of excess production or importation (other than transhipments, heels or used controlled substances) constitutes a separate violation of this subpart.

(2) Effective January 1, 2003, production and import of class I, Group VI controlled substances is not subject to the prohibitions in paragraph(c)(1) of this section if it is solely for quarantine or preshipment applications as defined in this subpart.

* * * * *

(k)(1) Prior to January 1, 1996, for all Groups of class I controlled substances, and prior to January 1, 2005, for class I, Group VI controlled substances, a person may not use production allowances to produce a quantity of a class I controlled substance unless that person holds under the authority of this subpart at the same time consumption allowances sufficient to cover that quantity of class I controlled substances nor may a person use consumption allowances to produce a quantity of class I controlled substances unless the person holds under authority of this subpart at the same time production allowances sufficient to cover that quantity of class I controlled substances. However, prior to January 1, 1996, for all class I controlled substances, and prior to January 1, 2005, for class I, Group VI controlled substances, only consumption allowances are required to import, with the exception of transhipments, heels, and used controlled substances. Effective January 1, 1996, for all Groups of class I controlled substances, except Group VI, only essential-use allowances or exemptions are required to import class I controlled substances, with the exception of transhipments, heels and used controlled substances.

(2) Notwithstanding paragraph (k)(1) of this section, effective January 1, 2003, for class I, Group VI controlled substances, consumption allowances are not required to import quantities solely for quarantine or preshipment applications as defined in this subpart.

* * * * *

4. Section 82.13 is amended by:

a. Adding paragraphs (f)(2)(xvii) through (f)(2)(xix), and (f)(3)(xiii) through (f)(3)(xv),

b. Adding paragraphs (g)(1)(xvii) through (g)(1)(xix), and (g)(4)(xv) through (g)(4)(xvii),

c. Revising paragraph (h),

d. Adding paragraphs (aa), (bb), and (cc).

The revisions and additions read as follows:

§ 82.13 Recordkeeping and reporting requirements.

* * * * *

(f) * * *

(2) * * *

(xvii) For class I, Group VI controlled substances, dated records of the quantity of controlled substances produced for quarantine and preshipment applications and quantity sold for quarantine and preshipment applications;

(xviii) Written certifications that quantities of class I, Group VI controlled substances produced solely for quarantine and preshipment applications were purchased by distributors or applicators to be used only for quarantine and preshipment applications in accordance with the definitions in this subpart; and

(xix) Written verifications from a U.S. purchaser that class I, Group VI controlled substances produced solely for quarantine and preshipment applications, if exported, will be exported solely for quarantine and preshipment applications upon receipt of a certification in accordance with the definitions of this subpart and requirements in paragraph (h) of this section.

(3) * * *

(xiii) The amount of class I, Group VI controlled substances sold or transferred during the quarter to a person other than the producer solely for quarantine and preshipment applications;

(xiv) A list of the quantities of class I, Group VI controlled substances produced by the producer and exported by the producer and/or by other U.S. companies, to a Party to the Protocol that will be used solely for quarantine and preshipment applications and therefore were not produced expending production or consumption allowances; and

(xv) For quarantine and preshipment applications of class I, Group VI controlled substances in the United States or by a person of another Party, one copy of a certification that the material will be used only for quarantine and preshipment applications in accordance with the definitions in this subpart from each recipient of the material and a list of additional quantities shipped to that same person for the quarter.

* * * * *

(g) * * *

(1) * * *

(xvii) For class I, Group VI controlled substances, dated records of the quantity of controlled substances imported for quarantine and preshipment applications and quantity sold for quarantine and preshipment applications;

(xviii) Written certifications that quantities of class I, Group VI controlled substances imported solely for quarantine and preshipment applications were purchased by distributors or applicators to be used only for quarantine and preshipment applications in accordance with the definitions in this subpart; and

(xix) Written verifications from a U.S. purchaser that class I, Group VI controlled substances imported solely for quarantine and preshipment applications, if exported, will be exported solely for quarantine and preshipment applications upon receipt of a certification in accordance with the definitions of this Subpart and requirements in paragraph (h) of this section.

* * * * *

(4) * * *

(xv) The amount of class I, Group VI controlled substance sold or transferred during the quarter to a person other than the importer solely for quarantine and preshipment applications;

(xvi) A list of the quantities of class I, Group VI controlled substances exported by the importer and or by other U.S. companies, to a Party to the Protocol that will be used solely for quarantine and preshipment applications and therefore were not imported expending consumption allowances; and

(xvii) For quarantine and preshipment applications of class I, Group VI controlled substances in the United States or by a person of another Party, one copy of a certification that the material will be used only for quarantine and preshipment applications in accordance with the definitions in this subpart from each recipient of the material and a list of additional quantities shipped to that same person for the quarter.

(h) Reporting Requirements—Exporters.

(1) For any exports of class I controlled substances (except Group VI) not reported under § 82.10 of this subpart (additional consumption allowances), or under paragraph (f)(3) of this section (reporting for producers of controlled substances), the exporter who exported a class I controlled substance (except Group VI) must submit to the Administrator the following information within 45 days after the end of the control period in which the unreported exports left the United States:

(i) The names and addresses of the exporter and the recipient of the exports;

(ii) The exporter's Employee Identification Number;

(iii) The type and quantity of each controlled substance exported and what percentage, if any, of the controlled substance is used, recycled or reclaimed;

(iv) The date on which, and the port from which, the controlled substances were exported from the United States or its territories;

(v) The country to which the controlled substances were exported;

(vi) The amount exported to each Article 5 country;

(vii) The commodity code of the controlled substance shipped; and

(viii) The invoice or sales agreement containing language similar to the Internal Revenue Service Certificate that the purchaser or recipient of imported controlled substances intends to transform those substances, or destruction verifications (as in paragraph(k) of this section) showing that the purchaser or recipient intends to destroy the controlled substances.

(2) For any exports of class I, Group VI controlled substances not reported under § 82.10 of this subpart (additional consumption allowances), or under paragraph (f)(3) of this section (reporting for producers of controlled substances), the exporter who exported a class I, Group VI controlled substance must submit to the Administrator the following information within 45 days after the end of each quarter in which the unreported exports left the United States:

(i) The names and addresses of the exporter and the recipient of the exports;

(ii) The exporter's Employee Identification Number;

(iii) The type and quantity of each controlled substance exported and what percentage, if any, of the controlled substance is used, recycled or reclaimed;

(iv) The date on which, and the port from which, the controlled substances were exported from the United States or its territories;

(v) The country to which the controlled substances were exported;

(vi) The amount exported to each Article 5 country;

(vii) The commodity code of the controlled substance shipped; and

(viii) The invoice or sales agreement containing language similar to the Internal Revenue Service Certificate that the purchaser or recipient of imported controlled substances intends to transform those substances, the destruction verifications (as in paragraph (k) of this section) showing that the purchaser or recipient intends to destroy the controlled substances, or the certification that the purchaser or recipient and the eventual applicator will only use the material for quarantine and preshipment applications in accordance with the definitions in this subpart.

* * * * *

(aa) Every distributor of methyl bromide (class I, Group VI controlled substances) who purchases or receives a quantity produced or imported solely for quarantine or preshipment applications under the exemptions in this subpart must comply with recordkeeping and reporting requirements specified in this paragraph (aa) of this section.

(1) Every distributor of methyl bromide must certify to the producer or importer that quantities received that were produced or imported solely for quarantine and preshipment applications under the exemptions in this subpart will be used only for quarantine applications or preshipment applications in accordance with the definitions in this subpart.

(2) Every distributor of a quantity of methyl bromide that was produced or imported solely for quarantine or preshipment applications under the exemptions in this subpart must receive from an applicator a certification of the quantity of class I, Group VI controlled substances ordered, prior to delivery of the quantity, stating that the quantity will be used solely for quarantine or preshipment applications in accordance with definitions in this subpart.

(3) Every distributor of methyl bromide who receives a certification from an applicator that the quantity ordered and delivered will be used solely for quarantine and preshipment applications in accordance with definitions in this subpart must maintain the certifications as records for 3 years.

(4) Every distributor of methyl bromide who receives a certification from an applicator that the quantity ordered and delivered will be used solely for quarantine and preshipment applications in accordance with definitions in this subpart must report to the Administrator within 45 days after the end of each quarter, the total quantity delivered for which certifications were received that stated the class I, Group VI controlled substance would be used solely for quarantine and preshipment applications in accordance with definitions in this Subpart.

(bb) Every applicator of class I, Group VI controlled substances who purchases or receives a quantity produced or imported solely for quarantine and preshipment applications under the exemptions in this subpart must comply with recordkeeping and reporting requirements specified in this paragraph (bb) of this section.

(1) Recordkeeping—Applicators. Every applicator of class I, Group VI controlled substances produced or imported solely for quarantine and preshipment applications under the exemptions of this subpart must maintain, for every application, a document from the commodity owner, shipper or their agent requesting the use of class I, Group VI controlled substances citing the regulatory requirement that justifies its use in accordance with definitions in this subpart. These documents shall be retained for 3 years.

(2) Reporting—Applicators. Every applicator of class I, Group VI controlled substances who purchases or receives a quantity of class I, Group VI controlled substance that was produced or imported solely for quarantine and preshipment applications under the exemptions in this subpart shall provide the distributor of the methyl bromide, prior to shipment of the class I, Group

VI controlled substance, with a certification that the quantity of controlled substances will be used only for quarantine and preshipment applications as defined in this subpart.

(cc) Every commodity owner, shipper or their agent requesting an applicator to use a quantity of class I, Group VI controlled substance that was produced or imported solely for quarantine and preshipment applications under the exemptions of this subpart must maintain a record for 3 years, for each request, certifying knowledge of the requirements associated with the exemption for quarantine and preshipment applications in this subpart and citing the regulatory requirement that justifies the use of the class I, Group VI controlled substance in accordance with definitions in this subpart. The record must include the following statement: ''I certify knowledge of the requirements associated with the exempted quarantine and preshipment applications published in 40 CFR part 82, including the requirement that this letter cite the treatments or official controls for quarantine applications or the official requirements for preshipment requirements.''

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At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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